



TOP 9

Mistakes to Avoid

When You are the Executor of an
Estate



Sverdlov Law

MISTAKE 1



FAILING TO UNDERSTAND YOUR RIGHTS AND RESPONSIBILITIES.

As an Executor, you may have some powers. You also have many responsibilities, including fiduciary ones. Failure to understand both, as well as the time commitment, can have unpleasant consequences. You might have to pay to fix the mistakes you have made.

Speak to a qualified professional to learn about these responsibilities before you sign up!

MISTAKE 2



FAILING TO ADHERE TO PROBATE NOTICE REQUIREMENTS.

In New York there are very specific rules that must be followed during probate. The law requires that proper notice is given to all the required parties. This includes people and charities who have been named in the Will, people who would have inherited the estate had there been no Will, known creditors, and New York Attorney General (if any charities are named).

Depending on the type and the location of the party, the notice may require personal service, newspaper publications or certified mail.

MISTAKE 3



FAILING TO COMMUNICATE.

Beneficiaries and creditors are eager to know what is going on. Even if you are just waiting for the court to review the documents, the Executor should communicate with all the interested parties at least once every 2 months. Being transparent may help to avoid conflict. Beneficiaries will be more comfortable if they know what is happening.

If the beneficiaries cannot get any information, they are likely to become suspicious and might sue.

MISTAKE 4



FAILING TO ACT.

Some Executors are too busy with other life commitments and fail to administer the estate. However, being an Executor (and getting paid for it) requires fulfilling certain responsibilities, such as paying bills, pushing the process through the court system, etc. If you fail to do your fiduciary duties, you may be personally liable.

If you feel that you cannot fulfil your Executor duties, you should promptly submit your resignation to the court, inform the beneficiaries, and let someone else do the job.

MISTAKE 5



FAILING TO KEEP PROPER RECORDS.

As an Executor, you have many tasks to complete. You may need to consolidate bank accounts, sell real estate, pay professional expenses, pay creditor claims, etc. It is extremely important for you to keep track of all assets you collect and all expenses that you pay. At the end of the process, you will need to provide detailed summary of all your activities to the beneficiaries and you may be required to file a formal accounting with the court.

Not keeping track of expenses may cause you to personally be liable.

MISTAKE 6



TREATING THE ESTATE AS YOUR OWN BANK ACCOUNT.

This is NOT your personal money. All estate funds must be kept separate from your own funds. You may use the estate funds for legitimate estate expenses (such as court fees, accounting fees, appraisal fees, etc.). You cannot use estate funds for your personal expenses, even if you reimburse it later. Furthermore, some distributions could later be challenged by beneficiaries as excessive or unnecessary.

If you are not sure if the expense is a proper estate expense, ask your probate attorney.

MISTAKE 7



ENGAGING IN SELF-DEALING.

You cannot sell to yourself or to your friends the house owned by the estate for half of its value. Before you sell to yourself any of the estate's assets, you need a neutral appraiser. Otherwise, both the court and the beneficiaries may have a serious problem with your actions, and **you may be personally liable for the difference.**

MISTAKE 8



MAKING DISTRIBUTIONS TOO EARLY.

The Executor is personally responsible for the estate and the distributions. If the Executor transfers the assets to beneficiaries before the creditors are paid, or while some of the beneficiaries are still disputing the estate, or the appraised value of the assets is later challenged – the Executor is personally liable.

Make sure to have proper court authorization prior to any beneficiary distributions.

MISTAKE 9



AVOIDING PROFESSIONAL HELP.

Being Executor may involve working with real estate, financial accounts, court system, winding down businesses, the IRS, and difficult personalities. You cannot possibly know all these industries or intricacies of the steps by yourself. It is expected that the Executor will hire professionals to assist her in the process and that the Estate will pay for these expenses.

Do not attempt to learn it all by yourself, the mistakes are likely to be more expensive for the estate than hiring professional help.



Sverdlov Law

30 Wall Street, 8th Floor New York NY 10005

If you would like to discuss the next steps of the probate process, please call us at

212-709-8112

or

BOOK A FREE CONSULTATION