

# THE CASE FOR A CORPORATE EXECUTOR



## OVERVIEW

Deciding who will be the estate executor is one of the biggest decisions you will make when preparing your will.

The default choice is often to name a trusted friend or family member as executor. However, as this article from CrossonVoyer asserts, this may not be the best choice for a variety of reasons.

Westward also encourages clients to appoint a corporate executor, particularly in situations where a large amount of assets will be dispersed and also involve administration of complicated tax obligations and business interests. A professional executor can ensure that the process is managed smoothly and in exact accordance with your wishes.

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One of the most important things you can do in your life is to have a will – it represents what is likely the largest transfer of assets one will ever carry out. While thinking about and discussing one's demise is not a pleasant exercise, it is an essential piece of planning that everyone should go through. Even for people with simple affairs, not preparing a will to deal with your assets can cause months of delay and could possibly require involvement by the Public Trustees (more government).

In preparing a will, one of the biggest challenges is deciding who will be your executor. An executor is the person named in the will who will be legally responsible for the administration of your estate. It is very common for family – spouse, child, sibling, etc. – to be named as one's executor. Many people feel that if they don't name a family member, that person may be offended. Conversely, many people asked to be an executor are, at first, honoured to be asked to play such an important and trusted role in your life. However, some may also feel a sense of obligation and not want to offend the will maker by declining.

The truth is that being an executor is a complicated and time consuming process, especially if you have a career, family, and life of your own. In a recent poll, 38% of Canadians thought estate administration could be completed in less than 6 months. The reality is that even if everything goes well, the estate administration process typically takes between 12 and 18 months. Complications in determining assets, tax, and potential litigation can delay estate administration for months or even years.

Some people may also pick a friend or trusted advisor who is a professional as their executor – a lawyer, accountant, etc. While these are sometimes appropriate choices, there are some drawbacks. Depending on the situation, the most appropriate option may be to appoint a corporate trustee. A corporate trustee is a regulated corporation that carries on the business of acting as an executor and/or trustee to administer wills, estates and ongoing trusts.

**A corporate trustee has the experience to navigate complicated family situations and business dealings from an arms-length perspective.**

There are a few key reasons for engaging a corporate trustee over a family member, friend or a trusted advisor:

**Independence:** A family member may have a vested interest in your estate as a beneficiary. By naming one family member over another, the executor will have a say over the inheritance of other family members. Is this a good idea? Will one sibling appreciate having another sibling in charge of their inheritance? A corporate trustee is an independent 3<sup>rd</sup> party with no vested interest in who gets what. Their job is to safeguard the assets, make sure the will/trust is executed as intended, and to fulfil the legacy of the deceased.

**Complexity:** If there is a complicated family situation (for example, a couple who are both on second marriages with kids from their first marriages), does it make sense for some family members to be making decisions for others?



What if there is a business involved? Or you have a holiday home in the desert or somewhere tropical? A corporate trustee will have experience in dealing with all of these situations and will be able to navigate family challenges and business dealings from an arms-length perspective.

**Continuity:** If picking a sibling, a spouse, or trusted advisor, are they the same age as you? What is their health like? Do you travel together? Are they likely to outlive you? If a professional, will they retire before they are required to act? Do they have the appropriate insurance and do they understand the personal liability? A trust company is a regulated corporation, with minimum requirements of capital, insurance, independent auditors, etc., unlike an individual person.

A common complaint that many people have in appointing a corporate trustee is the cost. A family member will do it for "free", or they're a beneficiary, so they're doing it for themselves

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already. If your executor has spent months in lines or on the phone with banks or brokers, etc., they may charge a fee for their services. However, depending on how the will addresses executor fees (or doesn't), each province has legislated maximums that can be charged (BC has a maximum fee of 5% of the estate's value). If one of your children is your executor and decides to charge a fee for doing so, how understanding will other siblings be with that? Hiring a corporate trustee means that you can negotiate a fee before hand, knowing the cost to your estate for competent, efficient, and professional administration.

To leave you with one final thought: there's a well known quote used by many professionals in various industries, blue and white collar alike:

*"If you think it's expensive to hire a professional to do the job, wait until you hire an amateur." 'Red' Adair*

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- means that you can negotiate a fee before hand, knowing the cost to your estate for competent, efficient, and professional administration.

