

THINK ABOUT IT

Diversity of opinion helps us be more successful! Your Success Matters! Therefore Prudential is pleased to provide you with material that offers different views and opinions on various subjects. Please note that these opinions are not necessarily those of Prudential. Leimberg's Think About It is distributed as a courtesy to our representatives at The Prudential Insurance Company of America. Prudential expressly disclaims responsibility for any content and advises that your clients should consult with their accountant, tax advisor and/or legal advisor to confirm the accuracy of these analyzes and for advice concerning their particular circumstances.

PROBATE - A PRIMER

Any legally competent adult could serve as an estate's executor. But, would anyone be quick to raise his or her hand to serve if he/she knew the awesome, complex, and time-consuming responsibilities and potential liabilities the task entails? Stated in another way, would an estate owner appoint an individual as executor if he or she knew all that would be required of the executor?

The following commentary presents, in Q&A format, what an estate's executor or administrator must do and the risks he/she/it or they must take.

Q. What is probate?

A. In its most narrow sense, the term "probate" means merely the process of proving that the will in question was the decedent's, and that it is the decedent's "last will." In its broader and more complete sense, "probate" refers to the entire process of administering the will, which includes: gathering the decedent's assets, paying the decedent's debts and taxes, and distributing the remaining assets to the proper beneficiaries. Probate is accomplished with the guidance and supervision of the court system, typically called the probate, or orphans' or surrogates' court.

Q. Why is probate process necessary?

A. There are many reasons why the probate process is used throughout the U.S. First and most importantly, the probate court serves as an advocate for the beneficiaries of the estate and guides and supervises the estate's personal representative in winding up the decedent's affairs. The probate court is meant to serve as an objective, disinterested party that oversees and safeguards the interests of the beneficiaries. Many probate courts require a full accounting of fees charged by lawyers and personal representatives and often cut back what are considered exorbitant legal, or accounting, or executor's fees – even if there are no objections by any beneficiary.

Second, probate consolidates the process of settling the decedent's estate, so that conflicting claims can be sorted out and resolved in an orderly manner. In the event of disputes among heirs (e.g., decedent's widow or widower, and children from a previous marriage), or conflicts between the decedent's family and his/her business associates, and/or claims of creditors, they file their claims with the probate court. The probate court will decide among the conflicting claims; and the executor or administrator will be able to distribute estate assets accordingly without fear of incurring personal liabilities for his or her actions.

A third purpose of probate is to protect the interests of creditors, and make sure that estate assets cannot be distributed to beneficiaries unless lawful debts (including local, state, and federal taxes) of the decedent have been paid. (Note that life insurance and retirement benefits typically have not been a concern, because those assets are not normally subject to the claims of creditors.)

Court supervision of an executor also protects the estate's representative from the claims of beneficiaries. Adult beneficiaries can review the actions of an executor or administrator and then sign "receipts and releases" that approve the accounts of the executor, and release the executor from any further liability to them. Of course minor beneficiaries and beneficiaries that might be born in the future cannot review the actions of the executor and/or sign legally binding receipts and releases. But the probate court can act on behalf of the minor beneficiaries (or appoint someone to represent them, usually called a guardian or trustee "ad litem") so that the administration of the executor can be terminated, and he or she can be released from any further liability to any minor beneficiary as well.

Q. How long is the probate process?

A. The degree (and, therefore, cost in terms of time and expenses) of the court supervision (or whether there is any court supervision at all) varies greatly from state to state, and estate to estate. Where the estate is relatively small and uncomplicated, the probate of a will at the local courthouse may take 15 or 20 minutes (and may not even require a lawyer). If the estate is large and/or there are complicating issues, the probate of a will can require a lawyer, advance notice to heirs, court hearing(s), and perhaps months to complete the process.

Some states may not require court supervision for routine estate administration, and the personal representative can collect the estate assets, pay the debts and taxes, and distribute the estate without court approval. In those states, the parties go to court only if there is a question or dispute that the court must resolve. In yet other states, the personal representative (the executor or administrator of the estate) cannot sell assets or even pay debts without prior court approval. This is where the administration of an estate can be a slow, complex process of seemingly endless court pleadings and proceedings. The probate process is particularly prone to complications and additional expenses and

lengthy delays if the decedent owned properties in several states, or held assets outside the U.S., or had heirs or relatives domiciled outside the U.S.

Q. In a nutshell, what is the role of an estate's personal representative?

A. State law requires that, when a person dies, property owned in the decedent's name must be assembled. Next, debts, taxes, and expenses of the decedent must be paid. The remainder must then be distributed to the individuals or charities entitled to that property according to the decedent's will. If there is no valid will, or to the extent his or her will is partially invalid, the distribution of any remaining property is determined by state intestacy laws. These are the state laws that specify what happens when someone dies without a valid will and are often called descent and distribution rules.

The estate's executor or administrator is legally responsible – and legally authorized – to collect the decedent's assets, pay appropriate death taxes, debts, and expenses, and distribute any assets remaining.

Q. What is the difference between an estate's executor and administrator?

A. An "executor" is the person appointed in a testator's will to guide his/her estate through probate. If the decedent left no valid will, if parts of the will are invalid for some reason, or if the named executor is unable or unwilling to serve, then either the surviving spouse or another relative of the decedent, or one or more of the persons entitled to his or her estate, may be appointed as the estate's administrator. In some states, if no one of higher priority is able or willing to serve, a court might appoint a creditor or any other "person" as administrator. The overall descriptive term for a person or party serving the estate in the capacity of executor or administrator is "personal representative." A female appointee is sometimes referred to as "executrix" or "administratrix."

Q. Is the executor or administrator responsible for the details of a person's funeral?

A. No. The funeral almost always occurs before the executor or administrator has been formally appointed. Usually, funeral details and decisions are made by the decedent's immediate family. The personal representative's only legal duty with respect to the funeral is typically to pay and keep records of reasonable funeral related expenses. Sometimes, however, the decedent's will provides instructions about the funeral and/or burial and the personal representative should honor these directions to the extent practical and possible.

Q. What is the legal significance of the term “domicile?”

A. One of the first determinations that must be made when a person dies is, “Where was that person's domicile?” The answer can be of great importance. Generally, a person's domicile will be in the state and county where his/her permanent and principal home is located. Some courts have defined domicile as “the place to which a person always intends to return.” Domicile is often confused with residence. The distinction is this: A person's residence is where he/she happens to have lived at the time of death. Domicile implies not only a person's presence, but more importantly, the person's intention to make a given location his/her permanent home.

Q. What is meant by “letters testamentary” or “letters of administration?”

A. When a person dies, his/her will is recorded in the office of the local register of wills of the county in which he/she was domiciled. The register of wills (or the appropriate court of jurisdiction) will issue to the named personal representative either “letters testamentary” (in the case of an executor) or “letters of administration” (if an administrator is serving). These “letters” are proof of the legal authority of the personal representative to collect and deal with the assets of the decedent's estate. In many states, the register of wills provides (for a fee) “short certificates,” which are brief documents evidencing the fact that the named individual (or a bank, or trust company) has been appointed to serve as the estate's executor or administrator. The executor or administrator takes title to the decedent's property on behalf of the estate.

Q. Is the attorney who drew the will automatically the estate's attorney?

A. No. Because of the difficult and often risky duties of the personal representative, that person can decide to hire (and fire) any qualified attorney he or she chooses – even if the attorney who drew the will specified that he/she or his/her firm was to represent the estate.

Q. Once an attorney is hired to represent the estate, does that conclude the personal representative's duties?

A. To the contrary, the executor or administrator remains legally responsible for the affairs of the estate and must keep continually informed as to exactly how the estate is being administered. No matter how much the estate is paying the attorney, the personal representative's duties continue and responsibilities remain. In one case, an administratrix was held responsible for the actions and mistakes of her attorney where she had surrendered all her duties to him and exercised no effective supervision whatsoever over his activities. The courts have made it clear that personal representatives must exercise the same degree of care, prudence, circumspection, and foresight a prudent person would employ in matters of his/her own – and when they don't and the estate suffered a loss because of their negligence – the representative is personally liable.

Q. What are the first things an executor must do after being appointed?

A. Many things must be done, almost simultaneously. Soon after a court authorizes a personal representative to act on behalf of the estate, he or she should begin to assess the size and nature of the decedent's assets, debts and taxes, and begin meeting and communicating with the decedent's beneficiaries. The second step, assuming it is warranted by the size, nature, and complexity of the estate, is to interview and employ competent counsel. Simultaneously, the executor should be taking appropriate steps to collect and protect the decedent's assets. It is imperative that the executor make a complete inventory of all of the decedent's assets.

This process entails, among other tasks, a thorough review of the decedent's past income tax returns, cancelled checks, and mail to determine if there are any purchases, accounts, securities, or other assets of which the executor is not otherwise aware. Prior income tax returns are an excellent source of information on bank accounts or dividends from securities of which the executor may have no knowledge. From this information, or cancelled checks, deposit slips, or insurance policies, the executor can trace (or verify) the present location of the assets and determine whether they were owned by the decedent at the time of his/her death. In addition, the executor must try to collect all outstanding debts from, and legal claims against, others that the decedent had at the time of death. Note, that an executor can be held responsible for failing to make a claim that the estate was the beneficiary of (and therefore entitled to) monies from another estate.

There is no special order in which the executor must collect the decedent's assets, but usually one of the first priorities is to "gather cash" by filing the appropriate claim forms to collect insurance proceeds on the decedent's life, social security, veteran's benefits, unpaid salary, and fringe benefits. Arrangements should be made early in the process to access the decedent's safe-deposit box (if any) and make a list of its contents.

Q. How (and why) does an executor notify other parties of the estate owner's death?

A. Many jurisdictions require an estate to publicly advertise the fact that an individual has died and a person has been appointed executor, so that creditors or other persons who might have an interest in the decedent's estate will have public notice of his death; and thus have time to present any claims against the estate to the executor. The public notice also alerts the creditors that claims must be made before a certain date, or else they will be barred. Once notice of an executor's appointment is advertised, and the prescribed period of time elapses (that is, when the so-called "statue of limitations" runs out), then the executor files his/her final account with the court. Only after that time elapses and the executor has accounted for what came into the estate, what went out, and what he/she paid to the beneficiaries, can the executor be discharged of all responsibility for handling the estate.

Q. What is the purpose for estate checking and savings accounts?

A. First of all, a personal representative must take great care to segregate estate money from his/her own. He or she must keep meticulous records of what cash comes in and goes out of an estate, and must keep estate money safe and reasonably productive. So, it is a high priority for the personal representative to open both an estate checking account and an estate savings account. Then all of the estate's liquid assets can be passed through the checking account, and otherwise idle money can be funneled into the savings account, if appropriate, in order to maintain an accurate accounting of the assets collected and bills paid.

Q. What other tasks must be accomplished relatively early in the probate process?

A. The executor should notify all local banks where the decedent had (or may have had) an account (including successor accounts) that the account holder has died and that he/she has been named personal representative. A written request should be presented by certified mail to the manager of each bank requesting the exact values of the decedent's accounts as of the date of death, the dates that the accounts were opened, and the exact names/titles on the accounts.

All securities in the decedent's name should be assembled, and the personal representative should write to the decedent's stock broker to be certain that there is an accurate record of all the securities that the decedent owned, or had an interest in, at the time of his/her death. Forms necessary to transfer title to stocks or bonds must be obtained. The executor must also ascertain and document the value of the decedent's stocks and bonds on the decedent's date of death using appropriate IRS valuation methods.

Many individuals die owning some real estate in his or her "sole name." As is the case with other assets, the personal representative must immediately check and/or verify the titling of the assets. Also, the executor should check with a property and casualty insurance agent and obtain written confirmation that there is current and adequate coverage on the property, and that the property is safeguarded. If it is necessary or desirable to sell the property, the personal representative must see that the sale is conducted properly and the estate obtains a fair price and pays no more than a reasonable commission. Note, that the personal representative can be held liable for payment of unreasonable fees.

As the personal representative collects each estate asset, it should also be valued. This entails an independent professional appraisal of real property and of any valuable personal property that the decedent owned, such as jewelry, furs, clothing, automobiles, and household furniture and effects. And, of course, a value has to be placed on any business interest owned by the decedent. Some states require that all assets other than cash or cash equivalents must be appraised by court-appointed appraisers.

Q. What are a personal representative's duties with respect to a decedent's business?

A. A personal representative must take immediate possession of the tax returns, balance sheets, and profit and loss statements of a decedent's business. Tax returns must be quickly examined and the personal representative must take whatever action necessary to ensure that the business is being run as efficiently as possible, and its state and federal taxes are paid in a timely manner. The personal representative must ascertain (in concert with the firm's CPA and attorney) whether the business can and should be continued or immediately liquidated. An immediate search should be made for any buy-sell or other similar business agreements with a surviving owner (or owners) or the business entity as the buyer(s).

Continuing a decedent's business, absent specific directions in the decedent's will or permission from the appropriate court, is very risky. If the business later fails, the estate's representative could be held personally accountable. Of course, if the decedent's business was a sole proprietorship, it terminates upon his/her death. Absent a buy-sell or other specific arrangement, a partnership also terminates.

No matter what the business is worth, if it is closed for any extended period of time following the owner's death, the probability is that its value as a going concern will be significantly diminished. An interruption of the normal flow of a business or professional practice will result in the loss of customers and clients and, in some instances, a substantial drop in the value for which the firm might be sold. If the assets (or inventory) of a business are perishable, or have a time sensitive value, then the personal representative must take immediate action or risk the loss of those assets (or their value).

As I noted above, the personal representative can be held personally responsible for negligence in the management of a decedent's business. All too often, when the personal representative does not act according to the terms of the decedent's will or court order, continuing the operation of a business results in personal liability. In one case, it was held that the personal representative did not have the unqualified right to continue a decedent's business without court approval, and that he had to reimburse the estate for any loss it suffered, because the business was not sold immediately upon the owner's death.

Q. What duties does an executor have in protecting and investing estate assets?

A. One of the first tasks of a personal representative is to collect, secure, insure, and protect assets. For instance, items such as silverware, jewelry, art and collectible objects must be immediately secured and insured. Firearms should be taken to the gun shop to be "cleaned and checked." This will be appreciated by the ultimate beneficiaries; but more importantly it eliminates (or minimizes) the possibility of theft or misuse, and the consequent liability to the estate (e.g., if a gun were left unsecured and was stolen, and subsequently used by a thief in a crime, or resulted in an injury or even death).

The executor should ascertain that the estate assets are properly invested, so that he or she will not be held responsible for dissipating the assets, or allowing their value to decrease unreasonably. In investing these assets, an executor is required to exercise the same degree of judgment and care that a reasonable person would exercise in managing his/her own assets. In one case, the executrix kept a balance of approximately \$6,000 in a non-interest-bearing checking account for 3 years because of the need for ready cash and liquidity of funds. However, the court held that it would have been more prudent to invest the money and not permit it to remain idle; consequently, the executrix was charged for failing to invest the funds.

The executor must try to obtain a fair price if he/she sells any of the assets. For example, the executor of the estate of a prominent painter sold paintings to an art dealer, and the dealer later resold the paintings at prices ranging from six to ten times what the dealer paid the estate for them. The court held the executor responsible for the loss to the estate.

Q. What does an executor do when property is jointly owned?

- A.** If the decedent owned property jointly with his/her spouse (or another family member, or even a business associate), the applicable state law will determine whether the decedent's interest in the property will be included as part of his estate to be administered by the executor, or whether, in fact, the property will pass immediately and directly to the remaining joint owner or owners.

For example, in most states, property owned jointly by husband and wife is considered owned as a joint tenancy with the right of survivorship (sometimes called a "tenancy by the entirety"). The right of survivorship means that upon the death of a joint owner, the survivor owns all property rights to the exclusion of the executor. However, property is sometimes owned by several persons "in common." In this situation, each person has an undivided interest in a certain percentage of the property. Where the decedent owned a tenancy in common, the estate's executor or administrator will represent the decedent's interests in his or her proportionate share of the property. In some cases, questions may arise as to the extent of the decedent's interest, and these situations require extreme caution on the part of the executor when dealing with the property. There is also the issue of the responsibility for taxes due on the decedent's share of the jointly held property.

Q. Are there particular types of asset/property that require special handling by the executor?

- A.** Yes. When the decedent was a physician, there are special duties which pertain to medical records and controlled substances.

In most states, the doctor owns the medical records although the privileged, confidential information belongs to the patient. Generally, a patient's files can be transferred only to another doctor with the patient's written consent. When another doctor purchases a decedent's practice, records should not be transferred until the patients are notified and have reasonable time to consent, or refuse to consent to the

transfer, or state an alternate doctor (if applicable) to whom records are to be transferred. Patients should be given at least 2 months to respond, and copies of all correspondence, notification, consent or refusal should be maintained. If the practice is not sold, patients should be notified that the estate will, upon their request, transfer records to their new doctors. If records are not sent to the new doctors, they must be stored for the requisite period of time (one to three years in most states). The executor may check with the local county medical society for storage of records.

Special attention must be paid to "Controlled Substances." The "Certificate of Registration" (the document allowing a doctor to order drugs and write prescriptions) must be returned to the Director of the Bureau of Narcotics and Dangerous Drugs in Washington to be canceled. The Bureau will then return the cancelled certificate to the estate. This canceled certificate should be kept at least 2 years. Any official drug order forms with the doctor's name and official number for ordering controlled drugs should also be returned to the Bureau of Narcotics and Dangerous Drugs. An immediate inventory must be made of all narcotics and "controlled substances." These should be guarded and the Bureau of Narcotics and Dangerous Drugs should be contacted for directions for their disposal. If another doctor takes over the decedent's practice, these drugs can be purchased from the estate, but only after approval has been obtained from the Bureau of Narcotics and Dangerous Drugs. All prescription pads, stationary, syringes, etc. should be destroyed because of the potential for lawsuits if they are stolen and/or misused.

Q. What duties does a personal representative have to create liquidity?

A. Assembling sufficient cash to pay expenses, debts, and taxes in a timely manner is one of the first and foremost duties of an estate's personal representative. He or she has to analyze the assets of the estate after they have been assembled, determine how much cash will be needed to cover the debts, expenses, and taxes of the estate, and then develop a plan to make the necessary funds available when required. Since no estates are the same in terms of property/assets, debts, or other cash demands, no two estates will be handled in an identical manner.

There is very little market for some of the personal property that people own; therefore, it may be difficult (if not impossible) to realize cash from the sale of many of these assets. Of course, assets such as death benefits from life insurance contract(s), certificates of deposits, and Treasury bills may be available to satisfy the estate's liabilities. Listed securities can also be quickly converted to cash, but the market value at the time that funds are needed might preclude their sale at that time. Generally, assets such as real estate and closely-held business interests are not readily convertible into cash, and, absent a fire sale at pennies on the dollar, it might take months, or even years in the case of business interests, to realize cash from these assets.

Q. What are the common debts and expenses an estate can expect to pay?

- A.** Typical debts that the decedent might have outstanding at his/her death include: outstanding loans, credit card balances, and day-to-day bills such as household bills, telephone, electric, gasoline, department store charges, and past taxes.

Typical expenses include: probate costs, legal fees, executor's or administrator's fees, fees for appraisers, costs included in selling real estate and personal property, costs arising on account of the decedent's last illness, and the costs involved in winding up the decedent's business.

Q. What are some of the taxes estates may encounter?

- A.** An estate may be responsible for numerous categories of taxes, and it is essential that the proper tax returns (and requests for extensions if necessary) be filed on time. In many states the executors must pay two categories of death taxes – state inheritance and estate taxes, as well as federal estate tax. In addition, the executor is also responsible for the payment of unpaid income taxes, both federal and state, and any state personal property and real estate taxes that might be due on personal and real property in the decedent's name. The following briefly describes each of the most common categories.

State Death Taxes. State death taxes are typically paid by the executor out of the estate assets. (Technically, with respect to an inheritance tax, the person receiving the property is taxed on his right to receive such assets; while an estate tax is a tax on the right to transfer property.) The amount of any inheritance tax, which is on the transfer itself, usually depends on the relationship of the beneficiary or recipient of the property to the decedent. Where a decedent owns real estate located in a state different from that of his/her domicile at the time of death, the state in which the real estate is located has the right to tax the property. This often leads to problems, especially in those cases where two states are trying to tax the same property.

Federal Estate Tax. A federal estate tax return must be filed if the decedent's net assets exceed a specified amount (currently \$2,000,000) at the time of his or her death. It is important to keep in mind that a decedent's estate for federal estate tax purposes may be different from the estate for state death tax purposes. Federal estate taxes are due 9 months from the date of death. There are serious penalties if the return is not filed promptly, or if an extension is not obtained within a specified time period. In certain circumstances, there are options available to an executor that will extend the time period for the payment of all or a portion of the federal estate tax. If the estate qualifies, no payment of the tax is required for 4 years (although interest at a favorable rate is payable during this time). The executor can then pay the tax due (plus interest) in ten annual installments. This can stretch out the payments up to 14 years.

The executor is responsible for knowing all of these dates and taking advantage of all options and elections (see NOTE below). Courts have held that where federal estate tax returns were not filed in a timely manner, resulting in a loss to the estate, the executor was personally responsible. There are many cases where beneficiaries have attempted to surcharge executors for their failure to take advantage of tax saving and expense-saving opportunities.

[NOTE: Discussions of extensions of time to pay federal estate tax, alternate valuation date, valuation discounts, et cetera, that might be available to certain estates are beyond the scope of this commentary. But, keep in mind that any election or option means the estate must meet certain qualifying tests/requirements, and there are hidden costs.

For example, an extension to defer payment of estate tax (such as a Section 6166 election mentioned above) merely allows the estate to postpone payment of a certain portion of the tax – it does not create liquidity. More likely than not, the interest plus annual installment payments increase the overall costs substantially for most estates.]

Other Taxes. In many cases, there are other taxes to be paid and other forms to be filed. For example, income taxes have to be paid on the income that the decedent earned prior to his/her death. Tax on the income generated from estate assets must also be paid. Options are available to the executor in regard to the timing of the estate's income tax return, and the executor should make this determination after a thorough review of the entire tax liabilities of the decedent, the estate, and the beneficiaries.

There is also a federal (and in some cases a state) gift tax, the returns for which would have been filed by the decedent (if he or she had lived) in most cases. The executor should review any transfers made by the decedent prior to his/her death and make a determination as to whether any gift taxes are due. If so, the appropriate gift tax returns should be filed. Thus, an executor has to be aware of the recent changes in the gift tax laws as well as the changes in the state and income tax provisions.

Q. What's the final role of the estate's representative?

A. A. Once an executor has assembled the decedent's assets and paid appropriate debts, expenses, and taxes, he or she must distribute any remaining assets according to the decedent's will or under state intestacy laws. For an executor of a relatively small and uncomplicated estate (or where the spouse might be the executor and sole beneficiary), distribution can be accomplished by turning the property over to the beneficiary (or beneficiaries), and accepting a "receipt and release" of any liability. While this is certainly the most expedient and inexpensive way of concluding an estate, there are estates (especially complex ones) where the executors may remain personally liable for any outstanding debts and unpaid taxes, as well as any number of other problems that might arise.

If the executor wishes to be formally discharged from his/her duties, responsibilities, and liabilities, then it is necessary to prepare (and submit) a final account of administration. Unpaid creditors and beneficiaries are given notice of the filing of the account. In the event that there are charitable gifts in the will, the notice must be sent to the state's attorney general or other appropriate official appointed to protect the interests of the charities. On the date of the audit, those persons with any objections appear and are given the right to a further hearing, if necessary, to present their position to the court.

When the court is satisfied that the executor has complied with all of the procedures in handling the estate, the account is then approved and a formal schedule of distribution is presented and approved; after which, the executor distributes the assets to the beneficiaries and is discharged from his/her responsibilities. If trusts have been established in the decedent's will, assets are transferred from the estate's representative to the trusts so that these testamentary trusts can be immediately implemented if assets have not already been so transferred.

Complications in making distribution often occur for various reasons: The people named in the decedent's will are not all available to take the distribution, or assets that are supposed to pass to named beneficiaries are not in the decedent's estate at the time of his/her death, or are there but in different form. For example, if a decedent leaves his estate equally to his two brothers and, subsequent to the writing of the will but prior to his death, the two brothers die, with one leaving two children and the other survived solely by his wife. How should the executor distribute the assets? The answer would depend upon an interpretation of the decedent's will, or the law of the state of domicile, or perhaps a combination of both.

Further complications may arise when a decedent has bequeathed specific assets that are no longer in the estate at the time of death. For example, bequests of "all my money in my savings account at XYZ Bank to my brother," and "all of my stock certificates to my sister" would be complicated if, before his death, the decedent had closed his bank account and used part of the funds to purchase securities and part to purchase an automobile. In any event, if the executor were to make distribution in any contested situation without court approval, the executor could be held personally responsible if it were later determined that the distribution was improper.

Of course, the executor must make distribution promptly, unlike the tardy executrix who one court felt unreasonably and intentionally withheld distribution of funds to her sisters (under the will of their mother), and was charged with interest at the applicable legal rate for the period of the delay.

SUMMARY

To serve as an estate's executor is a serious business. In addition to the ability to understand the incredibly complex state and federal tax laws, the executor must also be accountable to the decedent's beneficiaries, creditors, business associates, various branches of government for the myriad of taxes for which the executor is responsible, and finally to the court. It is for these reasons that the use of a corporate fiduciary should be considered as sole or co-executor where the estate is large and/or complex.

This material is for internal use only and is provided courtesy of The Prudential Insurance Company of America, Newark, NJ. References to legal and tax considerations are made but are not meant to provide advice in this regard. Please remind clients that legal and tax advice, including the preparation of legal and tax documents, should come from an attorney and/or a tax advisor such as an accountant. These advisors can determine how best to utilize such product or technique.

Stephan R. Leimberg is not affiliated with Prudential and Prudential makes no representation as to the accuracy of the cites. Prudential Financial and the Rock logo are registered service marks of The Prudential Insurance Company of America and its affiliates.