

## **The Estate Lawyer is the Executor's Lawyer**

It will come as no surprise that disputes occasionally arise between the beneficiaries of an estate and the executor. Sometimes these disputes arise almost immediately, but more often than not, they arise over the course of the administration of the estate, which can easily take more than a year to complete. By this time, the beneficiaries may already have been in contact with the lawyer who is assisting with the administration of the estate. Quite often, in order to facilitate the administration of an estate, the lawyer will communicate directly with beneficiaries. This leads some beneficiaries to believe that the lawyer represents the estate and all of its beneficiaries. This view is mistaken.

When a lawyer is hired to assist with the administration of an estate, the responsibility of the lawyer is first and foremost to the executor of the estate. The lawyer is hired by the executor to help the executor do his or her job. If a dispute arises between the executor and a beneficiary, it is the lawyer's responsibility to provide legal advice to the executor—not to the beneficiaries. Beneficiaries who want the benefit of legal advice must hire their own lawyers—at their own expense.

To understand this, it may help to remember that it is the executor's responsibility to ensure the estate is properly administered. It is the executor who administers the estate—not the lawyer, not the accountant, not anyone else. There is no legal requirement for an executor to seek the advice of a lawyer. If the executor feels competent in his or her abilities, he or she can go it alone, without the benefit of legal advice. Executors are, however, accountable for their actions and bad decisions can lead to personal liability on the part of the executor. Most executors, therefore, hire a lawyer who can help them to do their job without getting sued.

Estate lawyers have the added benefit of familiarity with the estate administration process. An executor acting alone and for the first time will probably find the probate application materials quite daunting. Gathering the information that is required is difficult when you don't know where to begin. Having some familiarity with the process, the estate lawyer can ease the burden on the executor by saying, "I can take care of that for you." And the lawyer often does. Sometimes, so much of the legwork is done by the lawyer that it appears that the lawyer is administering the estate. This view, also, would be mistaken. No matter how much work the lawyer performs on the executor's behalf, it is the executor who retains ultimate responsibility.

Throughout the course of administering an estate, executors are called upon to make decisions. Should the house be sold now or should we wait until this slumping real estate market turns around? If we decide to sell, should we engage a realtor or should we try to do it on our own? Should we rent it out in the meantime? These are but a few of the infinite number of questions that an

executor could be called upon to decide and for which there are no one-size-fits-all answers. As the executor's lawyer, I can suggest some points for consideration, but I cannot answer the question. That is the responsibility of the executor. And if the choice made by the executor conflicts with the interests or wishes of one or more of the beneficiaries, it is not my role to advocate on behalf of the beneficiaries—it is to defend the decision made by the executor.