A relative or friend who is preparing a will might have the foresight to ask if it's okay to nominate you as their personal representative, also known as an executor. Or you might learn later that someone has designated you for that role in their will, even if you're not sure whether you're ready to handle the responsibility. But many times, the person named as executor or personal representative in a will doesn't find out about the nomination until the creator of the will has passed away.

Regardless of the circumstances, there are some critical factors that you need to know if you're in this position. Just because you've been named in the will does not mean you are required to take on the role—you have the right to decline the nomination. Before you accept the position or take any action, it is important to understand the obligations and rules you need to follow. An experienced probate attorney can guide you step by step through the process and handle numerous tasks directly, saving you time and mental bandwidth to focus on family matters. For background information, here are some issues to be aware of.

You Don't Have Any Authority Until the Court Issues the Paperwork

If you've been named as the executor or personal representative in someone's will, it is natural to assume that when that person passes away, you are in charge of their affairs. However, no one is in charge of anything until the court grants approval. Even if you had power of attorney to manage all of the deceased person's accounts, when that person passed away, your authority ended. The belongings of the deceased person turn into what is known as an "estate."

No one has the authority to do anything on behalf of the estate until the court grants authority, usually by issuing what is known as "letters testamentary." In other words, your name is merely a nomination and you need to be officially approved and appointed by the court before you will be allowed to access accounts and handle other matters for the deceased person.

To obtain authority, you need to apply to the probate court. The type of application you make will depend on the way you plan to administer the estate. There are

different options for administering an estate depending on what the estate includes. So, before you can apply to the court for authorization, you need to determine the process you want to use. An attorney can review the options with you so you can make an informed decision about the best process for your situation. In many cases, Texas courts will require you to work with an attorney, but in some situations, you may be permitted to manage the legal issues without legal representation.

A Personal Representative Has Fiduciary Duties

One of the reasons Texas courts often require a personal representative to work with an attorney is that the person fulfilling that role has to represent the interests of others, and it is necessary to make sure that everyone is protected. The executor/personal representative of an estate is considered a fiduciary. Being a fiduciary means that you have an obligation to make decisions not for your own personal benefit but for the benefit of others.

In the case of an estate, the personal representative has an obligation to act in the best interests of the creditors and beneficiaries of the estate. The creditors are those with outstanding bills that need to be paid, such as the utility companies that provide service to the deceased person's house. The beneficiaries are those who are named in the will to receive property belonging to the deceased person. (While people commonly refer to beneficiaries as "heirs," technically, someone is only an heir when there is no will and they inherit property through the laws of intestate succession.)

Very often, the personal representative is one of the beneficiaries. When the personal representative is the only beneficiary, then the court might allow the probate process to proceed without an attorney. But to represent the interests of others, when there is more than one beneficiary, courts in Texas have required a probate attorney to protect the interests of the estate.

Some of the Deceased Person's Property May Not Be Part of Their Estate

The personal representative/executor will be managing the property in the deceased person's estate, using it to pay bills and other expenses, and eventually distributing the remainder to the beneficiaries. But some of the property owned by the deceased person may not be part of the estate, and that property may not be under the control of the personal representative.

Property That is Co-Owned with Others

If the deceased person owned property jointly with one or more other people, that property will not become part of the deceased person's estate if (and only if) the co-ownership included a right of survivorship. It is usually easy to tell how the ownership of real estate is structured, because it should be specified on the property deed. If the deed says the property is owned jointly with a right of survivorship or as community property with a right of survivorship, then when one owner dies, the other owner(s) take over the deceased person's share of the property and it passes to them directly. That property does not become part of the estate and does not need to go through the probate process.

On the other hand, if property is owned as tenants in common or community property without a right of survivorship, the deceased person's share of the property will be part of their estate, and that share will go through probate and be sold or transferred to someone else.

Unlike many states, Texas law does not include a presumption that co-ownership includes a right of survivorship. So, for personal property such as furniture, and deeds and titles that don't specify whether a right of survivorship is included, the deceased person's share of the property must be distributed through the probate process. Bank accounts, like deeds, will often specify whether a co-owner has a right of survivorship.

Property with a Beneficiary Clause or Assets Held in a Trust

Another type of property that will not become part of the estate and will not be handled by the executor or personal representative is property that transfers directly to others through a beneficiary clause. Many retirement accounts and life insurance policies include these clauses, so funds in the accounts will be distributed directly to whoever is named as beneficiary and will be probated as part of the estate.

In addition, if the deceased person transferred assets into a trust, those assets will not become part of the estate even if the deceased person still retained control over them. Instead, they will be distributed to beneficiaries named in the trust document.

Duties of a Personal Representative

Once you've decided whether to accept the role of personal representative, you've obtained authority from the court, validated the will, and you've taken inventory of the deceased person's property to determine what is part of the estate, then you're ready to move forward with the process of estate administration. It generally takes between six months and a year to complete.

Some of the tasks you will need to complete during the process include:

- Identifying and notifying the beneficiaries named in the will
- Identifying and notifying the individuals who would have been entitled to inherit property if there was no will (they must be given a chance to contest the will)
- Creating an inventory of assets in the estate and the value of those assets (this may need to be filed with the court)
- Notifying potential creditors as required by local law (often a notice must be published in a local newspaper)
- Evaluating claims by creditors and paying valid claims with assets from the estate. It may be necessary to sell assets to raise cash. If the estate does not have enough assets to satisfy all the bills, the law establishes a priority list of which claims get paid first.

- Maintaining property in the estate during the probate process. For instance, if there is real estate, the utilities and insurance bills must be paid, and the lawn must be mowed, and repairs made to keep the property in good order
- Filing tax returns on behalf of the estate and paying taxes due
- Fulfilling other tasks specified in the will, such as setting up a trust account for minor children

Only after all the obligations are satisfied can you begin distributing assets to the beneficiaries. If you allow beneficiaries to take property too early in the process, you can be subject to liability. Once everything is completed, you will need to file a final report with the court.

Find Out How We Can Help Make the Duties of a Personal Representative Much Easier

If the obligations of a personal representative sound overwhelming, don't worry. Most people don't try to tackle the process on their own. It is generally expected that estate executors and representatives will at least consult an attorney for advice before embarking on the process of administering an estate.

At The Nordhaus Firm, we can tailor our assistance to your preferences. If you want us to manage as much as possible on your behalf, we are prepared to take on many tasks directly. If you'd prefer to be "hands on" with the process, we can provide you with direction so that you can avoid common mistakes that could subject you to liability or added expenses or delays in the probate process.

For a free consultation to discuss how we could help with probate and estate administration, call us at 214-726-1450 or contact us online now.