



Family Finance

Write it in your will: Executor fee is your call

Lynn Brenner

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Where can I locate the rules for executor fees? What's included in an executor's fee? If a house is left to someone in a will, for example, does the executor include its value in his or her fee? If the house is worth \$400,000, would the executor get 5 percent of the first \$100,000, 4 percent of the second \$200,000, and so forth? If a certain person receives a bequest of \$10,000, does the executor include that asset in calculating his or her fee? If there are two executors, do they split the fee?



C.B., via e-mail

First things first: There are no mandatory rules for executors' fees. Your will can stipulate any fee, or none. The fees you're talking about, which appear in Section 2307 of New York's Surrogates Court Procedure Act, apply only if your will is silent on the subject.

An executor's job really is a job: He locates your assets, pays your bills and taxes and distributes what's left to your heirs. The legal fee schedule lets him charge 5 percent of the first \$100,000 in your probate estate; 4 percent of the next \$200,000; 3 percent of the next \$700,000. On a \$1-million estate, that adds up to a \$34,000 fee. On estates bigger than \$1 million, an executor can charge 2.5 percent of the next \$4 million, and 2 percent of anything over \$5 million.

Sharp-eyed readers will notice that the above fees apply only to the probate estate. This may be a fraction of what you own. In fact, many wealthy people have virtually no probate estate. The reason: A probate estate doesn't include accounts with named beneficiaries, like retirement accounts, life insurance policies, annuities and ITF bank accounts (accounts "in trust for" a named individual); nor does it include assets owned jointly with right of survivorship.

Take that lucky hypothetical couple, Joe and Jane Smith. They jointly own a \$750,000 house. Joe also has \$2 million in IRAs and 401(k) accounts and a \$1-million life insurance policy - all of which name Jane as the beneficiary. He also has a \$75,000 bank account "in trust" for Jane. The couple's \$400,000 vacation house is solely in Joe's name, as is a \$55,000 non-retirement brokerage account.

Joe's total estate is worth \$3.905 million. But his probate estate is worth only \$455,000 - because it doesn't include his \$375,000 share of their primary residence, or the \$3 million in retirement accounts and life insurance, or the \$75,000 "ITF" bank account.

And not all of Joe's probate estate is subject to an executor's fee. A solely-owned house (like that vacation home) isn't included in the executor's fee calculation unless it must be sold to pay the

decedent's debts or taxes. In that case, the executor's fee is based on the net sale proceeds - what's left after the broker's commission and mortgage repayment.

Finally, there's no executor's fee on specific bequests in the will, even though they're part of the probate estate. "Specific" refers to the asset. "Ten thousand dollars to Jane," is not a specific bequest, for example. But "50 shares of Microsoft stock to Jane" is a specific bequest.

The law allows full commissions to be paid to three executors on probate estates worth more than \$300,000, says Jeff Zankel, a partner at Lamb & Barnosky in Melville, up to two full commissions on estates worth between \$100,000 and \$300,000, and one commission on estates worth less than \$100,000.

An executor who also is an heir often waives the fee - but if your estate is taxable, he should take his fee, says Stephen J. Silverberg, an East Meadow estate lawyer. The reason: After taxes, he'll have more left from the fee than if he inherits the same amount, because his own income tax rate will be lower than the estate's tax rate.

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