

## Note Qualifications Needed For Executor

When a person decides to make a last Will and Testament, there are various duties which will need to be performed by others once the Will has been probated. Whether choosing a trustee to manage money or perhaps a guardian over minor children, each position, along with the choices made for the first-named person to be appointed and successors thereafter, should carefully be considered.

Among these positions is the Executor. The Executor serves in a fiduciary capacity on behalf of the Testator's estate and handles the estate administration process. The Executor's responsibilities include gathering estate information, paying debts, expenses and taxes, filing necessary tax returns and distributing the assets of the estate in accordance with the wishes of the Testator. The law requires a high standard of ethical conduct of a fiduciary, such as an Executor. Not only will the Testator want to choose a person who is trustworthy and dependable but there are also statutory exclusions naming certain persons who may not serve as Executor.

Section 304.003 of the Estates Code specifically identifies persons who are disqualified from serving as Executor or Administrator of an estate. This section provides that a person is not able to serve as Executor if he or she is:

1. Incapacitated;
2. A felon convicted under the laws of the United States or of any state of the United States unless, in accordance with law, the person has been pardoned or has had the person's civil rights restored;
3. A non-resident of the state who:
  1. (A) Is a natural person or corporation; and
  2. (B) Has not:
    1. (i) Appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate; or
    2. (ii) Had that appointment filed with the court;
4. A corporation not authorized to act as a fiduciary in this state; or
5. A person whom the court finds unsuitable.

The term "unsuitable" is not defined in the law; rather, it is a fact question for the judge. The probate judge has the discretion to determine whether the person applying to be Executor or Administrator is suitable based on the circumstances and facts of each case.

If you have not made your Will yet but are considering it, then make sure your selections are in accordance with the laws of the State of Texas. If you already have a Will, you should review it to make sure the choices you made are still appropriate.

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