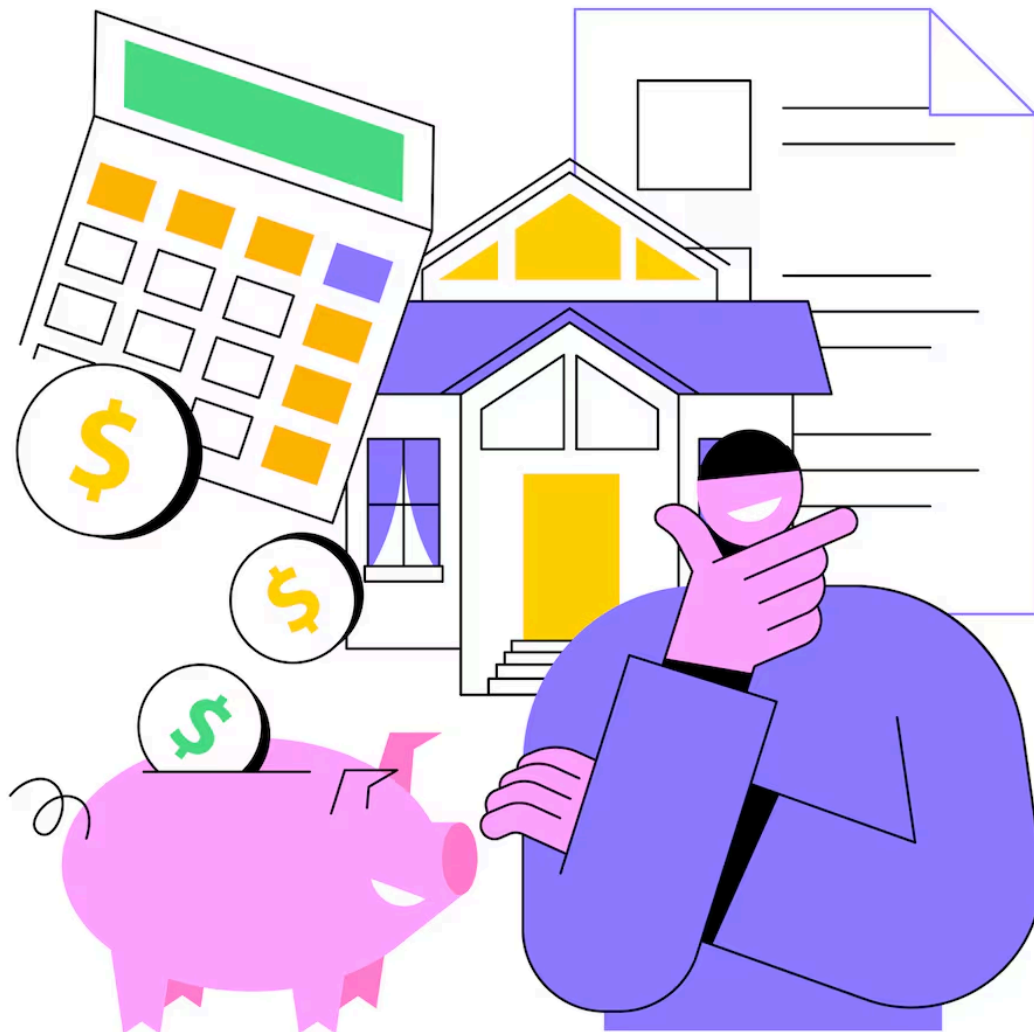


# When is a special executor necessary?

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Some clients are appointing special executors to manage a specific part of their assets that requires expertise.

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As estate plans become more complex, some clients are now appointing special executors to manage a specific part of their assets.

Margaret O'Sullivan, managing partner at O'Sullivan Estate Lawyers LLP in Toronto, says carving off a piece of the estate makes sense in situations in which the client has specialized assets and when a general executor, often a family member or friend, may not have the skills or knowledge to deal with them.

"They may want someone with special expertise or acumen relevant to those assets to deal with them in an effective way," she says. "When drafting the will, it's important to define the property that will be under the authority of the special executor carefully."

For example, Ms. O'Sullivan notes that literary executors are commonly appointed to manage an author's works, including copyright and published and unpublished writing. She also sees special executors for artists and musicians.

Estate planners point to four emerging areas in which special executors might be necessary.

## **1. Business owners**

If a client owns a business and family members aren't involved in operations, a special executor may make sense, Ms. O'Sullivan says. When selecting the person, she advises clients to consider the successors of the business and those with specific expertise.

But business conflicts of interest also need to be considered, she adds. Ms. O'Sullivan gives the example of a non-family member who is not a beneficiary of the estate but has an interest in the business.

"Appointing that person could be a conflict because they're also an owner and have a say on issues such as valuation," she says.

## 2. Assets in different jurisdictions

Clients may hold assets in multiple jurisdictions, whether that's a different province or country. Heirs may also reside in different countries, complicating matters further.

Heela Donsky Walker, partner at Robins Appleby Barristers and Solicitors in Toronto, often walks her affected clients through different scenarios, including whether multiple wills might be necessary or just appointing executors who have knowledge of certain regions and access to lawyers advising on those jurisdictions.

But testators and executors need to reside in the same country – preferably, the same province – or there could be tax consequences.

If a Canadian testator appoints an out-of-country executor, “it could have the unintended consequence of making that estate ... migrate to that other jurisdiction,” with different tax implications, Ms. Donsky Walker explains.

She recalls the case of a Canadian client who had three children, two living in Canada and one in the U.S. The testator wanted to include his U.S.-resident child as an executor along with the Canadian siblings. Ms. Donsky Walker might advise clients in this situation to include all three children as executors with a minimum Canadian-resident majority requirement. Put another way, the two children living in Canada would have majority rule but the child in the U.S. would still be able to participate and be included in all estate matters.

## 3. Disabled heirs

Clients who have a disabled family member listed in the will often want a separate person vouching for their interests, says Rachel Blumenfeld, trusts and estates practitioner at Aird & Berlis LLP in Toronto.

She provides the example of parents with two children; one of the kids has a mental or physical disability and will need help for life. While some parents will put the other child in charge, some don't want to impose a burden.

“Sometimes, there's a trustee company that steps in [for the disabled person], sometimes it's another professional,” she says.

Ms. Blumenfeld says the parents' concern is often that the able-bodied child lacks the expertise and knowledge needed to make plans for a disabled person. While she advises using a professional executor for this piece of the estate, she also recommends including the siblings so there's a family connection.

#### 4. Digital assets

Ms. Donsky Walker says millennials and younger generations, in particular, have flagged digital assets as reasons for appointing a separate executor. Digital assets can encompass items such as social media platforms, e-mail accounts, photos and documents in the cloud, online dating profiles, and cryptocurrency investments.

She says sometimes clients are concerned about privacy issues in the case of e-mail, social media and online dating profiles, and want to provide instructions to a separate person for locating passwords and shutting down profiles.

"Estate law is catching up to all the digital platforms and assets, and the digital companies also have their own policies," she says.

Cryptocurrency is also a niche asset that may require an expert executor, Ms. Donsky Walker adds. Accessing cryptocurrency requires a digital key that serves as that asset's password. Without it, the value of the asset will be lost or be inaccessible when the owner dies. She notes most lawyers won't hold those keys for clients for liability and privacy purposes.

Instead, she says clients should create a letter and give hints or clues on where to find the key. "They probably don't want to leave the information too readily accessible."

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