

yourLAW

WINTER 2006

Choosing an Executor

Creating an estate plan requires you to put on your decision-making cap. You'll obviously need to make decisions about the distribution of your assets. You will also need to spend some time choosing the person (or institution) to be in charge of your assets after you're gone: the executor of your will.

The law requires an executor because someone must be responsible for

- collecting the assets of the estate,
- protecting the estate property,
- preparing an inventory of the property,
- paying valid claims against the estate (including taxes),
- representing the estate in claims against others, and
- distributing the estate property to the beneficiaries.

These last two functions may require liquidating assets; that is, selling items like stocks, bonds, and other valuable assets in order to have enough cash to pay taxes, creditors, or beneficiaries.

In most states, you can name anyone you please as your executor, as long as he or she is over eighteen and not a convicted

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Prepare for Fire and Ice

Winter can be a hazardous time of year in the home. Subfreezing temperatures may lead to burst pipes and related damage. Storms may fell trees and damage homes. People may slip and fall on or around your property. And electrical fires are a special concern during the winter months when people spend more time indoors and increase their use of lighting, heating, and appliances. It is important to insure against these types of damage and to make your property as safe as possible for family and visitors alike.

Standard homeowners' policies usually cover winter-related disasters such as burst pipes and wind damage caused by weight of ice or snow, as well as fire-related losses. Basic home insurance policies will only cover the actual cash value of your home and its contents; broad policies and comprehensive policies will provide the replacement value. Check your insurance policy to find out what kind of coverage you have. If you rent, then standard renters' insurance should cover damage to your personal property caused by winter perils. And winter-related damage to cars is

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Leave for Military Service

United States military personnel are deployed in nearly 130 countries around the world. Servicemen and -women perform a variety of duties around the globe, from combat operations to peacekeeping to training with foreign militaries. Many Americans serving in the military have had to take leave from civilian jobs; thanks to federal law, however, those jobs are protected.

The **Uniformed Services Employment and Reemployment Rights Act (USERRA)** provides valuable rights for all employees who perform military service. The **uniformed services** include the full-time and reserve components of the Army, Navy, Marine Corps, Air Force, Coast Guard, and National Guard and the commissioned corps of the Public Health Service. USERRA applies to voluntary as well as involuntary service in peacetime and in wartime. The law applies to virtually all civilian employers, including the federal government, state and local governments, and private employers, regardless of size.

The act prohibits employment discrimination because of an employee's or applicant's past, current, or future military obligations. It requires employers to grant an unpaid leave of absence of up to five years to any employee serving in the uniformed services. It entitles employees to reinstatement to their former positions, with the same rights and benefits they had on the date they began uniformed service. This includes seniority-based rights and benefits they would have attained had they remained continuously employed, such as status, rate of pay, pension vesting, and credit for pension benefits. While in uni-

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formed service, employees are to be treated as if on leave of absence and are entitled to any non-seniority-based benefits that are available generally to employees on leave of absence. For example, USERRA gives an employee the right to continue health insurance coverage during periods of military service. The employee may be required to pay for the health insurance.

In order to be reinstated to a civilian job following a period of service in the uniformed services, a military member must

- Have informed the employer that he or she was leaving the job for service in the uniformed services
- Not have served more than five years
- Have been released from service under "honorable conditions"
- Have reported back to the civilian employer in a timely manner or have submitted a timely application for reemployment.

USERRA also provides certain employees with special protection against firing. It provides that a person who is reemployed cannot be fired *except for cause* within one year after reemployment, as long as the employee's period of military service was more than 180 days. An employee whose period of military service was more than thirty but less than 181 days may not be fired except for cause within 180 days after reemployment.

The Office of Veterans' Employment and Training Service (VETS) of the Department of Labor has the responsibility for investigating complaints under USERRA. Individuals may also file lawsuits in federal court to enforce their rights. If you think your rights under USERRA have been abridged, talk to your lawyer to find out what steps you need to take. ✎

Legal Update

Foiling ID Theft in the Military

Identity theft occurs when one person uses the personal information of another person to commit fraud or theft. In many cases, identity theft involves someone using your Social Security number to apply for credit cards in your name. The thief then runs up credit card bills, which go unpaid, damaging your

credit record. As a result, you may be refused loans, cars, and even job opportunities.

Identity theft can pose particular problems for members of the military who are in active service. Amendments to the Fair Credit Reporting Act allow you to place a special alert called an **active duty alert** in your credit report. According to the Federal Trade Commission, the alert requires creditors to verify your identity before granting credit in your name. If you cannot be contacted, the law allows you to

use a personal representative to place or remove an alert.

To place an active duty alert on your credit record, call the toll-free fraud number of one of the three nationwide consumer reporting companies: Equifax, Experian, or TransUnion. Active duty alerts on your report are effective for one year, unless you request that the alert be removed sooner. If your deployment lasts longer, you may place another alert on your report. ✎

If you anticipate any problems making your mortgage payments, you should contact your lender and your lawyer as soon as possible.

Interest Rates and Mortgage Woes

Interest rates have risen over the past year, which means that if you have an adjustable-rate mortgage, your payments are probably taking a bit more money out of your pocket. A slight increase in mortgage payments is no problem for most people, but it may spell trouble if you need to make other large or unexpected payments. You also may be concerned if rising interest rates are combined with falling house prices in your area, which can make it difficult to sell your home. Read on to find out more about mortgages and what to do if you think you may fall behind on your mortgage payments. If you anticipate any problems making your mortgage payments, you should contact your lender and your lawyer as soon as possible.

Is there anything I can do if I can't pay my mortgage?

When people get behind on their mortgage payments, it's usually because of job loss, divorce, illness, or medical bills. The first thing to do if you're having trouble making your mortgage payments is to take the matter seriously. Many people refuse to face the fact that their home is on the line and delay doing anything until it's too late. Then you should take the following steps:

- Contact your lender as soon as possible. Call or write to explain your problem, and be sure to include your account number to speed the process.
- Ask if you could defer paying principal for a few months.
- Ask if you could refinance the loan at a lower rate to help make your payments affordable.



- If that won't work, ask for time to sell the home yourself. If you're actively trying to sell your home, your lender may cooperate by reducing monthly payments.
- Contact the nearest housing counseling agency, which offers advice and services to help you ward off foreclosure. If your loan is insured by HUD, for example, a HUD-approved agency can help you apply for federal mortgage-relief programs that may provide temporary aid. If you have a VA-insured loan, contact a local VA office for assistance.

Consider filing for bankruptcy, which in some states may ward off immediate foreclosure. But be sure to talk with a lawyer before beginning any bankruptcy proceedings.

What is foreclosure?

Foreclosure is a legal action in which a lender takes ownership of the property used to secure a loan because the property owner failed to make mortgage payments. Foreclosure terminates the homeowner's ownership interest. A **foreclosure decree** orders the sale of mortgaged real estate so the proceeds can satisfy the debt.

Refinancing Your Home

If your interest rate is higher than the current market interest rates, then you may benefit from refinancing your mortgage. Whether refinancing is a good option for you depends on the market, your mortgage, and your circumstances. You will need to have at least 20 percent equity in your home if you wish to avoid paying private mortgage insurance. Talk to your lawyer to work out the pros and cons.

What happens when a lender forecloses on the mortgage?

The law varies by state, and these differences have a critical impact on the homeowner's rights. That's why it's important to consult a lawyer in your state as soon as you can. In general, if the lender forecloses, all your rights to your home will end immediately or soon thereafter. The foreclosure process may take no more than six months, though some states have a more lengthy process and include rights of redemption.

State laws do provide homeowners with certain protections. In Illinois, for example, when a foreclosure suit is filed, the homeowner has ninety days to make up the back payments to reinstate the mortgage. After that date, the lender can legally require that the mortgage be paid in full within seven months of the original foreclosure notice. The important thing to remember is that you must act immediately to protect your home if your lender intends to foreclose. ❧

Think carefully about the identity of the executor when you draft your will, and talk to your lawyer about what your estate might require. You should also talk to your proposed executor to ensure he or she is willing to do the job.

felon. There's no consensus, even among lawyers, about who makes the best executor; it all depends upon your individual circumstances. It often makes sense to choose someone who is a major beneficiary under the will, because he or she is likely to do a conscientious job of managing your affairs. Many people name their spouse or adult child as an executor. However, appointing your spouse as an executor can cause problems if he or she is incapacitated by grief, illness, or disability, or has sole responsibility for any minor children. Executors may be faced with some duties that may be particularly unpleasant for family members, including the job of retrieving money or property you lent to other relatives or friends. If you think the role of executor would be too much of a burden on your spouse or adult child, you may wish to appoint a professional executor, even though it means paying a fee.

The quality most desirable in an executor is perseverance in dealing with bills (especially the hospital, Medicare, and ambulance and doctor charges incurred in a last illness). These often require a lot of paperwork, up-front payment, and subsequent reimbursement from insurance companies. Choose someone who has the time and inclination to deal with bureaucrats and forms. Also, the executor may have to cope with relatives who may be wondering why it's taking so long to receive their inheritance or why their bequests are smaller than expected.

In most estates, no significant legal expertise is required to serve as executor; the issues are all financial. The executor will generally work with a lawyer to pro-

The Workhorse Executor

A will can impose additional duties on the executor that are not required by law. These might include requiring the executor to develop post-death tax strategies, to choose which specific property goes to which beneficiaries, and even to decide how to invest funds.

bate the will. Your will can direct that your executor use a lawyer's services for court appearances, filings, and other technical matters requiring legal expertise. The lawyer handles all the court appearances and filings while the executor provides information and input. Estate fees paid to the lawyer may be set by law (some states specify an hourly rate, some a fee based on a percentage of the estate).

If you run a business or are self-employed, consider making your executor or co-executor someone knowledgeable in your field. Sometimes the specialized knowledge of accounting or tax laws applicable to your area of business is easier for a colleague than for your spouse or other relative to master.

It's often advisable to use a lawyer or a bank as an executor for larger estates. A complicated estate that involves temporarily running a business often demands an institutional fiduciary, such as a bank, that can call on the advice of lawyers, tax experts, accountants, investment counselors, even business administrators. It's impartial and immortal. You might also consider hiring your lawyer as executor if you anticipate a will contest or know that the estate is going to require a lot of legal work.

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often covered under the comprehensive portion of an auto insurance policy.

Insurance can also protect you if someone is injured on your property as a result of your negligence. For example, home insurance should cover the costs (including medical bills and the cost of legal representation in a lawsuit) you could incur if someone were to slip on your broken steps and suffer an injury, or if someone were to trip over your living-room rug at a party. Of course, you should take steps to make sure your house does not pose such hazards. Try to place power cords in such a way as not to trip passers-by, repair stairs and handrails promptly, and warn visitors of any special hazards in your home. You do not have a legal duty to clear your property of snow and ice (although local ordinances may require you to clear the public sidewalk outside your home), but you may be negligent if you create a hazard, for example, if a leak from your gutter creates an ice slick.

There are several steps you should take to ensure that you get the most out of your insurance coverage if you ever suffer damage.

- Prepare an inventory of all the insured items in your household. The most effective way to do this is to photograph or videotape insured items.
- Keep copies of all your insurance documentation in a safe place inside your house, and in a safe place outside your home.

Of course, it's even better to take steps to prevent and avoid damage. Installing gutter guards and cleaning out gutters can help ensure that rain and meltwater flow away from the house and into the ground, rather than into your walls and ceilings. Caulking cracks in walls and around windows can also help avoid water damage. You can minimize the risk of storm damage by trimming trees, getting weak branches removed, and chopping down dead trees before they fall. You can avoid burst pipes by keeping your house warm and insulating your basement and attic. Just in case, learn how to shut off your water in an emergency. Most important of all, protect yourself and your family by checking that smoke and fire alarms work properly. And if you have any questions about claims under your insurance, be sure to consult your lawyer. ❧

Storms Have a Price Tag

According to the Insurance Information Institute, losses in winter storms cost more than \$1 billion a year between 1986 and 2005. Water damage and freezing account for approximately 17 percent of all homeowners' insurance claims, while wind and hail account for close to 50 percent. The average claim for water damage and freezing is \$5,095.