

How Independent are Executors?

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Most independent executors assume that they can take any action for the estate without probate court involvement. While court involvement is not generally required, there are some significant exceptions to that rule that can trap an unwary executor, as well as the executor's attorney.

Selling Real Property of the Estate

If the will does not have a specific "power of sale" clause, then a court order authorizing the sale of real estate must be obtained. There is an exception for sales of real or personal property to pay debts, but court approval may be the more prudent course even in that situation. Probate Code §§ 331,332.

Purchasing Property from the Estate

If the executor wants to purchase property from the estate, the executor should first obtain a court order that the sale is in the "best interest" of the estate. This is a safeguard against the executor violating his or her fiduciary duty by engaging in what would otherwise be self dealing in estate property. Probate Code § 352.

Settling Litigation by or Against the Estate

Settlements of litigation involving the estate must be approved in writing by the probate court, even in an independent administration. Probate Code § 234 (a) (4).

Summary

There are several situations in which independent executors are either required to seek court approval or in which court approval would be advisable. The three situations listed above are some of the more common examples.



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