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Wills - Choosing an Executor

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Choosing an executor is one of the most critical issues to consider when drafting your Will. An executor must be over eighteen (18) years of age and of sound mind in order to undertake the role.

An executor is a person appointed to take charge of your affairs upon your death. That person must thereafter ensure that your assets are collected, debts are paid and the Estate distributed to the beneficiaries named in the Will. Most people have two (2) executors but you can have up to four (4).

Your executor will often perform the task voluntarily and without remuneration unless specific provision is made in the Will that the executor is to be paid a fee for services performed. This is particularly important where the executor is a professional person and provides professional services to the Estate e.g. Solicitor or Accountant.

Some of the duties that must be undertaken by your executor include the following:-

1. Your executor may have to take steps including burial (if arrangements have not been made by your family) and some of your assets may, by their nature, require immediate attention for example, animals, perishable goods or business transactions;
2. Collect your assets;
3. Collect your debts;
4. Deliver up and obtain from the Court a Grant of Probate or Letters of Administration where necessary;
5. Pay your debts;
6. Invest Estate funds so that interest may be earned where appropriate;
7. Insure Estate property against fire and all other risks where appropriate;
8. Lodge a Tax Return;
9. Distribute the Estate to those persons entitled to the same pursuant to the terms of your Will.

The executor must therefore do all things and take all steps that are necessary to achieve the due and proper administration of your Estate. The position and appointment as an executor therefore carries with it various obligations and responsibilities that are not to be treated lightly.

If your executor does not take all appropriate steps with respect to your Estate then he/she may be held personally liable for any loss suf-

fered by the Estate. It is therefore advisable, in your Will, to direct your executor to seek professional guidance with respect to the administration of the Estate as this may relieve your executor of a lot of unnecessary stress and anxiety and ensure that the Estate is properly attended to.

When deciding who to appoint as your executor you should note the following:-

- It is not necessary to appoint a relative nor is it usual to appoint a solicitor or an accountant as an executor;
- Your executor should be a person that is completely reliable and honest and if possible has reasonable commercial sense;
- The executor should be of good health and more than likely to survive you;
- Minors and persons under the age of eighteen (18) years should not be considered;
- There are advantages if your executor lives in the general area in which you live;
- A person who is a regular traveller or who has an occupation which necessitates significant absences from home should generally be avoided;
- Where your family is large and if your Estate is to pass equally to your children the selection of your executor should require careful consideration. It is usually desirable for the appointed executor to be a person who is most likely to have a stable family relationship and it is suggested that at least two (2) children be appointed executors.

Appointing an executor requires careful and thoughtful consideration as the tasks and duties involved may be onerous and it is not always the case that your Estate may be administered quickly. It is not uncommon for an Estate to take years to administer and the executor's duties and obligations to your Estate do not cease until the Estate has been finally administered.

It is often the case that executor's are surprised by their appointment and the amount of work, responsibility and time involved and will sometimes begrudge the position. This should obviously be avoided as it may be detrimental to the proper administration of your Estate.

It is suggested that you discuss with your proposed executor the duties and obligations involved with the appointment to ensure that they are aware of their obligations and consent to the same.