

CHOOSING YOUR ATTORNEY AS EXECUTOR

20 April 2020

Your executor is the person who carries out your instructions in your last will. A person can choose anyone they like, however one must realise that it is a very important choice to make. By choosing your executor one must also ask the question as to who you can trust to take responsibility of your estate when you are gone.

Who can be an executor:

- Any person 18 years of age and above;
- A family member together with one professional, for example, your attorney or even your accountant.
- A beneficiary in your will, which would normally be a surviving spouse or children;
- More than one executor may be appointed. By appointing more than one executor would also mean they would have to act jointly. One must also bear in mind that too many executors can complicate practical administration;
- It is always supportive to have someone with specialised knowledge to make sure your will is properly executed.
- A person can also appoint a substitute executor, should your first executor predecease you or terminate his appoint.

Always make sure that you choose a responsible person, who is not in a bad financial situation or disqualified. Furthermore, it is important to understand that it does not matter where your executor is located. Preferably in the RSA.

There are a few aspects to consider as an executor, namely; the duties and responsibilities concerned with the winding-up of the estate, the complicated matters

that might arise and most of all, the time devotion as it is a lengthy process. Choosing a person with patience and who is emotionally grounded would be beneficial.

Duties of an executor:

An executor must:

- Report deceased's estate to the Master;
- Establish the value of assets in the estate;
- Establish the liabilities in the estate;
- Open estate banking account;
- Determine the method of the liquidation of the estate;
- Establish the procedure for the administration of the estate;
- Consult with the heirs in the event of a cash shortfall;
- Pay liabilities if there is no cash shortfall and the estate is solvent;
- Should an estate end up being insolvent, Section 34 of the Administration of Estates Act must be applied;
- Prepare the liquidation and distribution account, which must be submitted to the Master for approval;
- Advertise the account for inspection, once permission has been received from the Master;
- Pay out all the creditors, legatees and inheritances;
- Attend to payment of master's fees;
- Attend to payment of estate duty;
- Lastly, request the filing slip from the Master once all the final requirements have been met.

Why to appoint your attorney as executor:

It is advisable to consult with your attorney, to have him draw up your will and therefore it is also sensible to appoint him as one of your executors as he will be familiar with the instructions contained in your will. He will know where your assets are, all your information pertaining to your family affairs and having specialised knowledge of the

administration process, he will be able to wind-up your estate. He will also be able to carry out property registrations pertaining to all fixed property in the estate. As previously mentioned, your attorney has the knowledge and expertise and will therefore make sure your will is drawn up in terms of the Wills Act and properly executed and is valid and binding. He will also be able to deal with any complicated matters as they are experienced in their profession with regard to any legal issues.

Executor fees:

The big question, what fee is an executor entitled to? It is simple and it is set out by the Act. An executor is entitled to ask a fee of up to 3.5% (plus VAT) on the gross value of all assets in the deceased estate, however to negotiate a better fee is allowable.

With the above said, it is therefore very important to make the right decision when appointing your executor. It would be wise to choose a professional executor who has the knowledge and expertise, which will hold many benefits. Like mentioned before, the winding up an estate is a lengthy process and comes with many duties and responsibilities and for close family and friends to manage the affairs while they are still grieving, can relieve them from all the administration involved by appointing a professional executor.

By appointing an executor who is specialised in the field will give you the assurance that the estate will be dealt with correctly and in a timeously manner.

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