

Edited by
Maya Fisher-French

personal.finance@citypress.co.za



money lifestyle

If you are anxious to avoid executor fees, you may think it is simpler to appoint a family member, such as your spouse or child, as the executor of your estate. However, family members can end up forking out much more in executor fees than necessary, writes **Neesa Moodley**

DOCUMENTS YOUR FAMILY WILL NEED

When you die, there are several important documents your family will need to access urgently. Remember, this will be an emotional time for them, but you can make it easier by putting the following documents or copies thereof in a single folder that is easily accessible. Ideally, you should have one set at home and one with your financial planner.

The documents your loved ones will need are:

- Your will.
- Your life assurance policies.
- Your investments.
- Your bank account details.
- Contact details for your financial planner and the executor of your will.
- Proof of ownership of assets. These will include details of property you own, vehicles and investment portfolios.
- Your tax returns.
- Your retirement savings policies.
- Contact details for the human resources department at your office, along with details of any group life policies.
- Details of funeral policies.
- A copy of your divorce order or maintenance order, if applicable.
- Details of all your liabilities. These will include loans and accounts.

When Jon's father died recently, his estate was worth less than R125 000. Jon was the only heir and was also named the executor.

"I approached the master of the high court, and within three weeks, received a letter confirming my executorship. Absa told me that appointing them to wind up my father's estate would cost me more than the money in my father's bank account," he says.

However, Jon's case was the exception rather than the rule. Geraldine McPherson, senior legal adviser at Liberty, says you could boil it down to the size of the estate. "If the estate is worth less than R250 000 and is a fairly simple estate without too many assets or offshore investments, it is quite easy for a family member to wind it up as an executor," she says.

In such a case, the master of the high court would issue the appointed family member with a letter of authority confirming their executorship, and they are not required to advertise the estate publicly for debtors or creditors to put in their claims.

McPherson notes that, in the case of bigger estates (worth more than R250 000), the master of the high court is often reluctant to appoint family members as executors. Instead, you are often required to appoint one of the following to act as your agent and executor:

- A practising attorney;
- A practising accountant;
- A registered trust administration company; or
- A registered board of executors.

FEES

"There is a great misconception that you can avoid executor fees entirely if you appoint a family member as executor. What usually happens is that the appointed family member is out of their depth and ends up appointing an executor after you die," McPherson says.

She says the appointed family member then ends up paying either the full executor fee of 3.5% of the estate value, plus VAT, which works out to 3.99%, or they are charged a professional fee by the appointed executor.

The key thing to remember is, if you opt to be charged a professional fee, this can very quickly exceed the 3.99% executor fee, because you will be charged for every single letter or phone call the executor has to make while winding up the estate. McPherson suggests if you opt to be charged a professional fee, you should ask for it to be capped at 3.99% of the estate's value.

If the estate being wound up includes any interest-bearing assets, the executor is entitled to charge a fee of 6% of all interest or income accrued after your death.

Executor fees are therefore not entirely escapable - you may simply be deferring the cost and headache to the family member you nominate as executor. A simple way to address this is by appointing an executor during your lifetime. This allows you the opportunity to negotiate a fee, because the 3.99% is a maximum fee and not set in stone.

"The larger your estate, the lower the fee can be negotiated. For example, if your estate is worth R1.25 million and you negotiate a fee of 1.25%, that still works out to be a considerable sum for the executor," McPherson says.

She notes that if you do negotiate a reduced fee, you should have this included as a note in your will and have the executor sign acknowledgment thereof.

GUARANTEES

When you nominate an attorney or law firm as the executor of your estate, they would normally provide a guarantee. However, if you nominate a family member as executor, you can bypass that requirement by adding a clause in your will stating the executor is not required to provide security.

"Generally, the master of the high court only calls for security if he believes there is a reasonable risk of the estate funds being mishandled," McPherson says.

TAXES

When you die, your estate becomes subject to estate duty tax and capital gains tax. Estate duty is calculated at 20% of the value of the estate above R3.5 million.

There is, however, estate duty now payable on any assets left to a surviving spouse. If you choose to leave your entire estate to your spouse, the R3.5 million tax-free amount can be rolled over to when the he or she dies and he or she can then leave an estate worth R7 million to your children, free of estate duty.

Your estate also becomes liable for capital gains tax because the law takes it as though you have sold all your assets and realised capital gains when you die. The first R300 000 gained in your estate is exempt from capital gains tax. If you appoint a family member as executor and your estate is worth millions, they will have to grapple with those tax calculations or appoint a professional.

Executing YOUR WILL



MAINTENANCE claims on your estate

The latest divorce statistics from Stats SA, released in December 2014, were based on forms processed for the year to September 2012 and revealed that just fewer than 22 000 divorces were granted in that period.

Angelique Visser, national councillor for the Fiduciary Institute of SA, says with this high rate of divorce, maintenance claims on estates are becoming more common and can make the winding up of an estate quite complicated.

Geraldine McPherson, senior legal adviser at Liberty, says maintenance claims were recently highlighted as the main reason for delays in winding up estates.

"Ideally, you should have an independent executor, particularly in cases where there has been a divorce and the deceased has children from a previous marriage," Visser says.

If you have taken out a life assurance policy for your former spouse and/or children from a previous marriage, you should include a clause in your divorce order or will stating that the proceeds of the policy are intended to settle any maintenance claims after your death.

"A vicious former spouse can easily pocket the proceeds of the life policy and also institute a maintenance claim against your estate.

"This can have serious implications, because a maintenance claim is considered a creditor and must be paid by the estate before any inheritances are paid out.

"So if you have left 100% of your estate to your second wife, the maintenance claim for your first wife and children would have to be paid out before your second wife received any proceeds," McPherson warns.

FAMILY MEMBER AS EXECUTOR

If you are keen to appoint a family member as the executor of your will, this will serve as a useful check list:

- The estate is worth less than R250 000, which means there are no tax implications to consider and it will be simple to wind up the estate.
- There are no maintenance claims.
- A beneficiary can be nominated as an executor.
- You have included a clause in your will that the executor is not required to provide security.