

# Wills and estates - the role of an executor

As Benjamin Franklin is often quoted as saying: "There are only two certainties in life - death and taxes", and when you die you'll want your family to inherit all your worldly goods.

During your lifetime, you will build up an array of assets and liabilities, which will form part of your estate.

When you die, your estate will have to be administered by an executor, who will ensure that everything you leave behind is distributed and controlled according to the stipulations of your will.

Therefore, when drafting your will, naming an executor is one of the most critical decisions that you will make because this person will act on your behalf to see that your wishes are carried out when you die.

Ecsponent Financial Services explains the role of an executor and how to choose one.

## Executor application process

Floris Slabbert, director of Ecsponent Financial Services, explains that an executor is nominated in your will and thereafter, officially appointed by the Master of the High Court once the correct legal process has been followed.

However, if the Master of the High Court believes the nominated executor is unable to effectively fulfil the relevant duties, the court may rule that an alternative executor be appointed.

Slabbert says if it is found that the deceased's Last Will and Testament is invalid, the Master of the High Court may declare it an intestate estate.

In this case, the state will appoint an executor who will likely liquidate the estate at lower than market value, resulting in substantial loss to those left behind.

## The role of an executor

To help you choose an executor for your estate, consider the tasks they will be required to perform, which include:

- Assisting the family with the disposal of your remains (if specific instructions as to how, was provided in your will).

- Obtaining a letter from the doctor stating that you have died.

- Locating and identifying property and assets belonging to you.

- From the proceeds of your estate, it is the executor's duty to, in the following order, pay for:

1. The funeral expenses. These are all expenses related to the death itself. Should you have a funeral policy, it does not cover expenses outside of the actual funeral.

2. The testamentary legal expenses.

3. Any other statutory obligations such as taxations.

4. All other debts such as that from banks.

## Choosing a lay person as an executor

Another consideration when choosing an executor will be whether to appoint someone you know and trust, or a professional.

Historically, banks, accountants, trusts and attorneys would usually take on the duty in an estate as the executor.

Recently, however, it has become more common for family members to take on the role.

Appointing a family member as an executor has several advantages.

Firstly, family members usually try to wrap up the estate as quickly as possible and secondly, they are also more likely to act in the best interests of the family.

However, it is imperative for the chosen family member to have knowledge of estates in order to be deemed fit by the Master of the High Court.

If you nominate someone close to you, make sure they have a clear understanding of what their duties will entail, especially when it comes to the estate's tax obligations.

If they lack an

understanding and are therefore remiss in their duties, they will be held personally liable.

For this reason, Slabbert suggests appointing a professional to assist the family member throughout the process.

## Choosing a professional as an executor

Although it is more common for family members to administer estates, Slabbert suggests appointing a professional who specialises in estates if yours is complicated or if you are concerned about potential family conflicts.

He further explains that in order to avoid a situation where additional costs arise unexpectedly, it is important to enquire about probable costs that may exceed the normal executors' fees (which is a maximum of 3.5 per cent plus VAT).

This could include having to finalise the final liquidation and distribution account or outsourcing certain duties.

When consulting a professional, your aim should not only be to obtain the right advice, but it should also be to build a relationship with somebody (and it could be a company or practice) that understands your objectives.

The professional will have a better understanding of what's meaningful to you when the time comes to administer your estate.

Before making any final decisions regarding executorship, make sure you consult an expert who specialises in estate planning.

By providing him/her with a complete understanding of your estate as well as your expectations, you'll be better equipped to make the right decision.

Always ensure that the estate planner is duly qualified and registered with the Financial Sector Conduct Authority or the Fiduciary Institute of South Africa, another recognised professional body.