

WILLS AND ESTATES: THE EXECUTOR

Introduction

When someone whom we love passes away, the last thing the family needs is stress about the division of the deceased's estate. In many cases, the deceased passes away intestate (without a will) and families end up caught up in family feuds over the possessions of the deceased. This creates difficulties regarding the distribution of assets of the deceased.

It thus becomes paramount to conclude a will and appoint an executor prior to death in order for assets to be distributed as the deceased intended upon death. This makes the process easier for the family members that remain.

The Executor

An executor is an individual who is specifically nominated in the will to carry out the wishes of the deceased as stated in his/her will. This is also referred to as the Executor Testamentary. However, if there is no will then the Master will either appoint an executor himself or request that the family of the deceased nominate a family member as an executor. Section 19(a) of the Administration of Estates Act 66 of 1965 provides for which family member enjoys preference in the case where more than one family member is nominated.

Regardless of the manner of appointment, an executor has a number of roles. A few of these include: taking actions to ensure the deceased assets are protected, distributing the property among the beneficiaries in accordance to the provisions of the will and ensuring the payment of the deceased liabilities.

Furthermore, even though an executor is nominated in a will, he is officially appointed by the Master of the High Court who may use his discretion for or against the appointed executor.

If the Master decides against the nomination, the appointment is denied and the Master will appoint an executor as he/she deems fit.

The executor will then be appointed by the Master of the High Court by way of letters of executorship.

Executors nominated in the will that is professionally drafted exempt them from the security requirement.

Previously it was common for an executor to be an accountant, or attorney, or even a trust however it has become more common for people to appoint a family member as an executor which has its advantages. The appointed family member will however have to have knowledge of administration of estates in order to be appointed. It is also crucial to note that the nominated executor may also deny the nomination of executorship. In this case, the Master will appoint an executor.

Remuneration of the Executor

In terms of Section 51(1) of the Act, an executor is entitled to be remunerated, from a portion of the deceased estate. The maximum fee which can be levied is 3.5%, plus VAT, however this fee is negotiable. The 3.5% fee is charged on the gross value of the deceased assets including all the assets the deceased had or was due, upon his/her death.

Conclusion

In order to provide family members with peace of mind after the death of a loved one, it is advisable to nominate an executor by way of a will. This nominated person, upon acceptance of the Master of the High Court will then be officially appointed by the Master to administer the deceased estate. The executor will then ensure that all wishes of the deceased are met in accordance with the will.

Contact an Attorney at Schoemanlaw for legal advice on Wills and Estates!