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CHOOSING YOUR EXECUTORS - INFORMATION FOR CLIENTS Walsh West Private Client Legal 2021

Choosing your executors

In making a Will a crucial issue is choosing executors. The importance of choosing the correct people as executors cannot be stressed enough. Executors are the representatives who will ultimately carry out the wishes of the deceased and 'administer' the estate of the deceased. The choice of executors can often be the difference between a smooth-running administration and conflicts arising.

The choice of executor is a personal one and should be exercised with care. Ideally people who are morally sound, essentially decent and people who are more likely to adhere to the wishes of the deceased should be chosen. It is possible to appoint independent executors and it may be sensible to do so if wishes are particularly contentious or a family dispute can be envisaged.

So, what are the duties and responsibilities of executors?

The duties of an executor may include:

- Establishing the assets of the deceased and corresponding with relevant organisations;
- Applying for a Grant of Representation, known as a Grant of Probate, if a Will has been made, or Letters of Administration if there isn't a Will;
- Dealing with Inheritance Tax, Income Tax and Capital Gains Tax returns and payment of any tax due;
- Identifying and dealing with any claims against an estate;
- Preparing Estate Accounts;
- Paying all debts and liabilities
- Tracing beneficiaries named in a Will;
- Dealing with and paying any legacies in the deceased's Will;
- Distributing the remaining funds in the estate to the correct beneficiaries named in the Will.

The role of an executor requires honesty and diligence and an executor is a 'fiduciary'. A 'fiduciary' is someone who has undertaken to act for or on behalf of another in a particular matter, in circumstances which give rise to a relationship of trust and confidence.



It follows that an executor as a fiduciary should:

- have an obligation of loyalty
- must act in good faith;
- must not make a profit out of his trust unless authorised;
- must not place himself in a position where his duty and interest may conflict;
- may not act for his own benefit or the benefit of a third party without consent.

The executors are responsible for all that they do, or fail to do. In fact an executor may be held personally financially liable for any loss resulting from a breach of their duty, even if the mistake is an innocent one.

The responsibilities of executors continue for any ongoing Trusts created by the Will i.e. where money has been left to minor children. Normally the Trustees are the same people appointed as executors in the Will. It is perfectly possible to refuse to act as an executor provided that work has not already started. This is known as 'renouncing' and anybody is entitled to renounce if they decide not to administer the estate of the deceased.

There are considerable administrative, legal and tax responsibilities for an executor of a Will. This can be very daunting, complex and time consuming. The duties may sometimes be onerous so think very carefully before accepting the role. Independent help is always available should it be needed and very often family and friends who have been in a similar position may be able to offer help and advice.

For initial advice about Estate Planning including Lasting Powers of Attorney, Wills, Trusts and Probate; call our team on 0203 488 7503, 01992 236 110 or contact us by email at welcome@walshwestcca.com or via our website www.walshwestcca.com and we will help you.