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Soapbox

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## Will you be my agent?

### Carefully consider who to appoint as executor and why.

We all know the basics on Wills – why they are important, who should draft them and what can happen when you don't have one...but what actually happens when the estate has to be administered?

#### The role of an executor

One of the most important decisions you have to make when drafting your Will is who to appoint as executor. The executor has very specific tasks in the administration process, such as:

- reporting the estate to the Master of the High Court;
- collecting all assets and paying all liabilities of the deceased, including costs arising from the administration of the estate;
- distributing the remaining assets to the beneficiaries named in the Will or in accordance with relevant legislation if there is no Will;
- submitting a final liquidation and distribution account that complies with the formalities of the Administration of Estates Act to the Master of the High Court upon finalising the estate.

Included in the duties listed above, the executor must ensure that all tax returns are completed and taxes paid up to date; that all relevant parties are notified of the deceased's passing (i.e. creditors and all service providers), as well as that all the administration necessary to transfer assets to beneficiaries is completed.

Many complexities may arise during the administration process, such as litigation if there are disputes over the Will or if there are insufficient assets to cover the liquidity needs in the estate. When dealing with certain business assets, the process can be complicated even further and industry-specific knowledge would be required in dealing with such assets.

The Master of the High Court also imposes certain formalities on executors during the administration process in terms of timelines.

It is therefore clear that administering an estate requires specific skills, knowledge and experience to ensure a proper and timely process.

#### Who to appoint as executor

Many people prefer appointing their surviving spouse as executor, thinking it would be the safest and possibly most cost effective choice. Others choose a relative or individual specialist to wind up the estate. Let's look at what these choices may entail:

Where the value of an estate is R125 000 or more, an executor is appointed by the Master of the High Court. Usually the executor is nominated in the Will. Where no Will has been drafted, a person or company that can act as executor will have to be nominated by the heirs, subject to approval by the Master of the High Court.

Regulation 910 of the Attorneys Act states that only an attorney, trust company or auditor can be appointed as executor. Where an individual has been nominated as executor in a Will and this person is not an attorney, trust company or auditor, the Master of the High Court will require the appointment of a person or company (known as an agent) that complies with Regulation 910 to assist such individual with the administration of the deceased estate. It is also important to note that if the Will did not exempt the executor of security (or in cases where there is no Will), the executor will have to lodge security to the full value of the estate.

Besides the formal requirements of the Master of the High Court, the practical side should also be considered. A surviving spouse or relative will go through emotional trauma at the loss of a loved one and may not be in the right state of mind or in an emotionally stable position to arrange all the formalities of getting the deceased estate reported. When appointing an individual specialist, on the other hand, there is the risk of such individual passing away before the deceased who nominated him/her in the Will, or the individual no longer being able to administer estates at the time.

We therefore recommend the appointment of a credible institution which has proper succession planning in place with a panel of specialists to administer the estate.

#### What fees can the executor charge?

The fees an executor can charge are regulated, and capped at a maximum of 3.5% plus VAT (if so registered) on the gross value of assets in an estate. Furthermore, the executor is entitled to 6% of income accrued and collected after the death of the deceased. In certain circumstances the executor can negotiate a discount on the administration fees upfront.

#### Conclusion

There are many reasons why a person should carefully consider who to appoint as executor and why, even in the case where there was no Will. It is essential to contact a specialist to help you make the right decision when drafting your Will or to find an agent to administer the estate.

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Topics: WILL, EXECUTOR, TAX RETURNS, FEES, ESTATE

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