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Choice of Executor – A matter of trust



Fleming Muntz
Solicitors



Summary

One of the most important decisions for a will maker is who is to act as an executor of their will. The executor must be someone who can be trusted to carry out the wishes and represent the best interests of the will maker.

What does an executor do?

An executor's duty is to take charge of assets and property after the will maker's death, see that funeral and administration expenses, debts and taxes are paid, distribute assets to beneficiaries and otherwise carry out the terms and directions of the will. An executor must ensure that any taxation liability is paid from the estate (for capital gains tax purposes this will involve finding out the date and cost of acquisition of assets). An executor may also need to sell property, manage investments and continue operation of any business for a period.

What are the benefits of having a will with an appropriate executor appointed?

If there is no will there can of course be no executor. In that event a spouse, relative or potential beneficiary can apply to the Probate Registry of the Supreme Court to be appointed an "administrator". If no person is willing or available, then the Court can appoint the Public Trustee to act. In order to avoid this, it is crucial to have a valid will.

Who to appoint?

An executor must be at least 18 years of age. He or she may be a spouse, or any other beneficiary

named in the will. Any number of executors (or a series of alternate executors) may be appointed.

Depending on the complexity of a person's affairs, an executor may need to possess some business skills or knowledge.

Administering even a simple estate can be an onerous task involving significant time and effort on the part of an executor. An executor is entitled to apply to the Supreme Court for commission for their work and trouble.

To ensure that all legal matters are attended to properly, an executor may decide to retain a solicitor who can inform them in detail about their rights and responsibilities, prepare and help complete the necessary estate forms and advise generally on taxation issues.

How can Fleming Muntz help?

We can provide advice, prepare a proper estate plan, review an existing will and help with advice on choosing appropriate executors.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

We resent unwanted email as much as anyone – if you would prefer not to receive any further updates, please telephone us on (02) 6021 2222 or email to fmlaw@flemingmuntz.com.au.

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