

The appointment of an Executor is unavoidable.

Trying to save on Executor fees by appointing a family member to do all the work no longer works. Here's why:

Planning type: Estate Planning

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Why do I really need an Executor?

The gravity of the appointment of an Executor is seldom understood by anyone unfamiliar with the possible pitfalls of a deceased estate. With the wrong Executor an estate can take years even decades to be resolved.

Leaving this appointment in the hands of Institutions is a risk that some are comfortable with if the Institution is a respectable one but far better is the informed appointment of a Professional Executor with a good track record to ensure your family and dependents are in the best possible hands at this difficult time. If you do not stipulate to an Executor and if none is appointed by way of one of your policies, the appointment of an Executor may need to fall to the State.

Professional Executors often can't afford to take on small estates simply because there's no money to be made. If your deceased estate is low in assets, you will struggle with this problem on top of all the rest.

A reliable and respectable friend or family member may be willing to perform this function however this person will need a good understanding of debt and taxes as well as long and short-term insurance. They must be able to handle the deceased procedures of the High Court Master's office and be able to manage the SARS tax submissions of the deceased.

Trying to save on Executor fees by appointing a family member to do all the work no longer works. 'Ignorance of the law' is not a valid defense; the executor is personally very vulnerable to costs.

The High Court Master insists that any layperson must be assisted by a professional person or body as the "Administration of Estates Act" places specific duties on the executor to fulfil, for which they can be held liable should they not comply.

Ultimately this appointment will be the final step to ensuring your absolute peace of mind that your dependents will receive dedicated attention and assistance in their ongoing lives should you no longer be with them and therefore the appointment of a professional Executor to perform all the statutory duties associated with the winding up an estate is one of the most important functions served by the drafting of a Will.

The nominated Executor of a Deceased Estate must amongst other important functions ensure that your estate is distributed among beneficiaries in accordance with your wishes.

It is very important to be informed of the fact that even where a family member is nominated in the Will to act as Executor the law requires the Master of the High Court not to appoint such a nominee unless he or she is assisted in the administration of the estate by either a chartered accountant or an admitted attorney or a Trust company. It is therefore preferable to appoint a professional chartered accountant, attorney or Trust company to act as Executor in the Will and to add a clause to the Will exempting the Executor from furnishing security to the Master of the High Court.

The furnishing of security by executors, tutors, trustees, fiduciaries and usufructuaries as well as natural guardians in respect of the inheritance of minors is an important aspect to be dealt with by means of a validly drafted Will. Insurance companies and financial institutions are reluctant to give suretyships and it is sometimes impossible to find security. Fortunately in almost every case, the testator's direction that security should not be furnished prevails now in terms of the Administration of Estates Act and the Trust Property Control Act.

Executor service overcharging

Executor services play a crucial role in South Africa's legal landscape, serving as vital pillars of the country's legal system. In a nation characterised by diverse cultures and complex inheritance laws, the role of executors becomes even more significant. Executors are responsible for ensuring the efficient and fair distribution of a deceased person's assets and the settlement of their estate in accordance with the law.

This not only helps in reducing disputes and conflicts among heirs but also ensures that the wishes of the deceased are respected. Moreover, executor services offer a lifeline to the layman by providing expert guidance and support during the challenging and often emotional process of managing a loved one's estate.

Legal services in this context are indispensable, as they help demystify complex legal procedures, ensuring that individuals can navigate the legal system with confidence and receive their rightful inheritance. Ultimately, executor services and legal support contribute to a more just and harmonious society in South Africa by upholding the rule of law and promoting a fair distribution of assets.

The problem

One persistent issue within the realm of executor services is the practice of charging a percentage of the estate value as fees, regardless of the actual amount of work involved. This standardised fee structure can lead to significant disparities in compensation for executors who may perform similar tasks but oversee estates of varying sizes.

It raises concerns about fairness and transparency in the estate administration process, as it can result in disproportionately high fees for larger estates and put an undue financial burden on beneficiaries.

Furthermore, this practice can disincentivize executors from efficiently managing smaller estates, as they stand to earn less for the same amount of effort.

To address this issue, there is a growing call for a more equitable fee system, one that considers the actual workload and complexity of the estate, rather than simply a percentage of its total value, in order to ensure a fair and just compensation for executor services.

The solution

Engaging an attorney who earns a fixed salary rather than a percentage of the estate's value can offer numerous advantages in estate administration.

Firstly, it eliminates any potential conflicts of interest, ensuring that the attorney's primary motivation is to execute the estate efficiently and in compliance with the law, rather than maximising their own earnings. This promotes transparency and trust among beneficiaries, reducing the likelihood of disputes.

Secondly, a salaried attorney is more likely to provide consistent and fair legal counsel, irrespective of the estate's size, avoiding the risk of overcharging for larger estates or neglecting smaller ones.

Additionally, this fee structure can foster a sense of cost predictability for the estate and its beneficiaries, making financial planning more straightforward. Ultimately, having an attorney on a fixed salary ensures that the focus remains on the best interests of the estate and its beneficiaries, contributing to a smoother and more equitable estate administration process.

Action required: Click on the 'Get Advice' button on the database template and the assigned financial advisor will help you when preparing your Legal Will when appointing an Executor.

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