

WHO SHOULD BE THE EXECUTOR-AN IMPORTANT DECISION TO MAKE!

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The death of a loved one not only causes emotional distress but administrative and financial strain too. The appointed Executor undertakes to administer the deceased estate. It is therefore vital to nominate and appoint an Executor that will carry out your last wishes with dignity and professionalism.

WHO NOMINATES OR APPOINTS THE EXECUTOR?

An individual, known as a testator or testatrix, appoints and nominates an Executor or Executrix in their last will and testament.

If the deceased passes away without a valid last will and testament in place, the surviving spouse and/ or the major surviving children nominate an Executor for the administration of the deceased estate and request the Master of the High Court to appoint the nominated Executor. The nominated Executor cannot carry out his/her duties without being formally appointed by the Master of the High Court by way of a Letter of Authority/ Executorship.

INDIVIDUALS EXEMPT FROM BEING EXECUTOR:

- Mentally unsound individual;
- Minor Children (under the age of 18);
- Individual under curatorship;
- An unrehabilitated insolvent individual;
- A juristic person / partnership (a company);
- Individual disqualified (i.e. the individual that killed the deceased);

- An individual that signed as a witness to the last will and testament or signed on behalf of the testator; and
- An individual that drafted the handwritten last will and testament on behalf of the testator

WHO SHOULD BE NOMINATED AS THE EXECUTOR?

The Testator/ Testatrix can nominate and appoint any person they wish to have as the Executor of their estate. The testator usually nominates a trusted family member or friend.

However, should the deceased pass away intestate, the Master of the High Court requires the surviving spouse or a major child of the deceased to be appointed as the Executor, failing which the closest related family member shall be appointed.

CAN MORE THAN ONE EXECUTOR BE APPOINTED?

The Master of the High Court can appoint more than one Executor whom will be co-executors. The Co-Executors need to perform the duties of an Executor and ensure that the estate is administered. The fee of the Executor will be divided equally among the Co-Executors.

IMPORTANT FACTORS TO CONSIDER WHEN NOMINATING AN EXECUTOR

The Executor should have sound knowledge of the following aspects:

- Knowledge of the law of both testate and intestate succession;
- The process at the Master of the High Court;
- The process of administering the deceased estate;
- Accounting knowledge to draft the liquidation and distribution account.

RESPONSIBILITIES OF THE EXECUTOR

Firstly, the executor needs to report the deceased estate to the Master of the High Court and apply for and obtain the Letter of Executorship. The process of winding up the deceased estate cannot commence prior to the Executor obtaining such letter. Therefore, no assets can be distributed at this stage.

The Executor is required to notify possible creditors of the passing of the deceased and place an advert notifying creditors of the death of the deceased.

The Executor must take control of all the assets belonging to the deceased and the liabilities in the estate. Should there be claims against the estate, the Executor must defend such claims and if necessary, the Executor must institute claims to ensure that any outstanding money owed to the estate is collected.

As part of the administration of the deceased estate, the Executor must draft the liquidation and distribution account and get it approved by the Master of the High Court. The Executor must ensure that all of the Creditors are paid and that the assets are distributed according to the wishes of the deceased

based on their last will and testament or in the absence of a valid will, distribute according to intestate succession.

AGENT APPOINTED BY THE EXECUTOR

The appointed Executor may appoint an Attorney to allow for the successful administration of the deceased estate in an efficient manner.

The lodging and administering of a deceased estate are intricate by nature. Our attorneys have the relevant knowledge and skills to lodge and administer deceased estates.

Should you require assistance, contact Joseph Attorneys on 066 450 5996 or jessie@jjattorneys.online

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