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Should I consider a Professional Executor?

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Choosing an executor, or a personal representative, requires greater consideration than most people realize. Often, people appoint their spouses or adult children because they feel that the spouse or child will have that person's best interests in mind. While this may be true, relationship should not be the only factor a person considers when writing a last will and testament. The role of executor carries with it a great deal of responsibilities that demand a significant amount of time, as well as knowledge of financial issues and the probate process. Sometimes, a professional executor, like a bank or an attorney, is better suited to administer the estate than a spouse, a child, or even a close friend. Thus, appointing an executor requires a careful consideration of the complexity of the estate and the abilities of the potential executor to navigate both interpersonal and financial issues.

Keep in mind the following issues as you decided who to name as your executor:

Time, Ability, & Willingness

The probate process can be long and tedious, sometimes lasting more than three years. This is because of the large amount of responsibilities charged to the executor. Here is a list of such responsibilities:

- Arrange for proper disposal of the body and oversee funeral matters
- Locate the will and file it with probate court
- Collect assets and beneficiary information
- Determine and pay debts and other claims against the estate
- Determine and pay all taxes
- Keep accounts and records
- Manage the estate assets and/or convert assets to cash
- Distribute the estate to beneficiaries

The executor must have the ability and willingness to persevere through dealing with bills and other financial matters which require a great deal of paperwork. Additionally, the probate process can present unexpected tasks or challenges, such as locating assets or missing relatives, which can take a substantial amount of time.

The executor should also be someone who will work quickly and efficiently to keep the creditors and beneficiaries happy. Often, family members and friends will want to complete the process as quickly as possible. However, if the executor is a family member who travels frequently or lives in another state, he or she may find it more difficult to do so. The same concern exists with sick or elderly executors who do not have the physical ability to handle these matters quickly, if at all.

If the executor is a spouse, a child, or another close family member, they may be too distraught from the death to immediately handle the distribution. This grief may last for a significant amount of time, delaying the administration of the estate. Additionally, these people can be held personally liable for matters related to the estate, even if they delegated their duties to a lawyer. If they wait too long or are too distracted to pay attention to detail, they will likely subject themselves to liability.

Because of all of these time and responsibility considerations, you should sit down with your potential executor and make sure they are willing and able to take on the task. Keep in mind that a person who is young and in a good condition to administer the estate, that person may not be in the same position by the time you pass away.

Expertise

Probate is almost entirely financial in nature. Consider whether the potential executor has had financial issues of their own in the past, or whether they have experience in financial matters at all. If you do not have a trusted family member or friend with positive financial experience, it may be worth paying a professional institution or individual to administer your estate.

Occasionally, an estate will require the executor to temporarily run a business. If the executor has little or no knowledge of or expertise in the particular type of business, this could cause serious financial problems for both the estate and the business. Additionally, the executor could be subject to legal liability for anything that happens as a result of poorly running the business.

Taxes can be a particularly challenging financial issue. If a family member or friend is the executor, he or she would be better off hiring a CPA or Accountant to handle taxation matters. However, keep in mind that a professional executor would already have the appropriate business, tax, and financial contacts to handle all of the above-mentioned matters.

Size of the Estate

Smaller estates in which the affairs are all in order can easily be handled by a close relative or friend. However, larger estates or estates in which the affairs are not in order are much more complex, and professional individuals and entities, such as lawyers and banks, have more

knowledge and resources to handle distribution. This also ties in with time and ability concerns, since larger, more complex estates will naturally take more time to administer.

Organization

The executor is required to keep accounts and records of the administration of the estate. This involves a high level of organization and responsibility. Larger estates will have considerably more transactions than smaller estates, making accounting and record-keeping more difficult. Often, beneficiaries will approach the executor to ask for an update on the probate process. If the executor is well-organized, he or she will be able to answer beneficiaries' questions quickly. Therefore, you should consider whether the executor is organized and is likely to be responsive to all parties involved.

Location

Virginia does not allow the executor to be a nonresident unless he or she is surety bonded and has appointed a local agent, usually an attorney, to receive process service if the state is sued. You should consider if choosing someone who lives close to the location of the probate court makes sense to increase the efficiency of the process and remove these other requirements imposed if the executor is not a Virginia resident. From a practical standpoint, it will be easier on the executor if they are in close proximity to the probate court and assets.

Neutrality and Dispute Resolution

The executor should be able to remain neutral, even if he or she is also a beneficiary. If the executor is a beneficiary, he or she may not handle the estate as planned. For example, if the executor decides a portion of the will is unfair, or if he or she interprets the will in a different manner than the other beneficiaries, this could cause a great deal of disagreement. Consider whether this person has a history of conflict with the other beneficiaries, such as with siblings.

Regardless of whether the executor is a beneficiary or interested party, he or she should have good dispute resolution skills. Beneficiaries may complain that the size of their bequests are unfair or that the probate process is taking too long. In those cases, the executor should be able to handle those complaints and attempt to put beneficiaries at ease. To avoid conflict, the executor should frequently update beneficiaries on the administration process. Keep in mind that professional individuals and institutions are naturally good candidates for neutrality and dispute resolution.

Cost

Obviously, professional executors may cost more than people with whom you have personal relationships. However, there are ways to reduce cost, and, sometimes, the cost may be worth it for a smooth, quick probate process. For instance, some states set caps on the fees executors may charge. Also, some states set caps on attorney fees for those who hire attorneys to help with certain probate matters. Additionally, although some professional executors charge a

particular percentage of the estate, many people do not know that they can actually set an hourly fee instead, which could save on costs. Consider that the executor may have to hire an attorney, a CPA, or another professional to assist in the probate process, anyway.

Number of Executors

An estate may have more than one executor. This can be beneficial when the person you wanted to appoint as the primary executor lives in another state. You may want to appoint someone closer in proximity to the probate court and assets to handle certain matters for the co-executor who lives far away. This can also be beneficial if you want to appoint someone like your spouse or a child who knows you well and can speak to your preferences, along with an attorney who has the legal know-how and the professional connections to handle the more difficult matters.

Despite these benefits, naming more than one executor can cause a number of problems. For example, if you name your three children as co-executors, this may create even greater conflict as they disagree over how to interpret the will and distribute the estate. Also, the co-executors may not communicate well with one another. Another problem is that one co-executor may simply refuse to do any of the work because he or she believes the other co-executor(s) will do the work for them.

Conclusion

Strongly consider whether the spouse, child, or close friend you want to appoint is willing and able to handle all of the issues listed above. Major mistakes by an unqualified executor can lead to a lengthier and more expensive probate process. If the person whom you are considering is well-qualified, by all means, appoint them. But if you are having some doubts, consider appointing a professional to work either as the sole executor or the co-executor of your close friend or relative.

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