Choosing an Executor

One of the benefits of having a will is being able to choose the person who will administer your estate after your death. (In Ontario, the name "estate trustee" has been introduced as an alternate way of referring to the executor.) Estates lawyers are frequently asked for advice on choosing an executor. Here are some points to ponder:

1. The best choice of executor is someone who knows you and your family and has good business sense. Sometimes, no one person fits that description and the appointment of two or more persons as co-executors may be necessary. At a minimum, choose someone who knows his or her own limitations and who will hire a professional to assist him or her when complex issues arise.

2. When your will makes an outright distribution to a single adult beneficiary (a spouse or adult child, for example), simplicity might dictate that the beneficiary be your first choice as executor.

3. Before signing your will, speak to the person you wish to appoint to ensure that he, she, or they will be able and willing to act for you. Remember, the role of executor is primarily a burden, not an honour. If you have ever had occasion to act as an executor, you will recognize the wisdom in this statement.

4. If your estate must be administered over an extended period of time, you would be wise to choose someone who is likely to survive to the end of that period. Better still, choose an alternate executor against the contingency of your first choice being dead or incapacitated (either before your death or after your death during the course of the administration), or perhaps being unwilling to act due, perhaps, to a change in circumstances since having agreed to act.

5. In most jurisdictions, there is no limit on the number of executors you can appoint. Remember, however, that two executors means the possibility of deadlock. If there are three or more, you will have to decide how decisions are to be made: unanimously, by majority, by majority with a specific executor having a veto, etc. The more executors you appoint, the more difficult it will be for them to meet, discuss, and agree on a particular course of action or sign necessary documents. (When you have several adult children and one of them is the obvious choice, you may be concerned that appointing that child as sole executor could cause ill feeling among the others. Remember what was said above about the burden of the executorship. Your other children may well consider themselves fortunate not to be appointed. Talk to them about it.)

6. Choosing an executor who lives at a distance from the estate assets or from the beneficiaries can be a problem. Persons who live outside the province may be obliged by the court to post a bond (an insurance policy, in effect, against possible misconduct).
7. Beware of potential conflicts of interest. For example, if you are in a long-term business relationship with another person, you may be inclined to choose that other person as executor (if not as primary executor, then possibly as a first alternate after your spouse). That can place your business partner in an untenable position if he or she is required under a business agreement with you to buy out your interest in the business after your death. How can your business partner be both a buyer and a seller?

8. In some cases, appointing a professional trustee (that is, a trust company) is the best answer, whether as the sole executor or jointly with others. That is particularly true when the estate is so large and complex that it would place a heavy burden on an individual.

9. You can appoint a separate executor to deal with specific assets. For example, if you have an important collection of literature, music, or art, you may wish to appoint someone knowledgeable in the field to handle the disposition of that asset.

While these points are important to keep in mind when choosing your executor, remember that everyone's situation is different. The best advice I can give is to discuss this matter fully with your estates lawyer before making a decision.

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