

CHOOSING THE RIGHT EXECUTOR

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Appointing the right executor in the Will is as important as leaving a valid Will after someone has passed on.

Executor's Duties

The responsibilities of the executors may differ due to several factors such as the size and value of the deceased's assets, the beneficiaries' age and the distribution process.

Generally, the duties of an executor include:

- Apply for the grant of probate to unfreeze the frozen assets.
- Collection and recovery of the deceased's assets.
- Pay off the deceased's tax, debts and liabilities.
- Distribute the remaining properties and possessions according to the terms and instructions in the Will.

The executor does not need any qualification, but it is important to appoint someone reliable because this is a tedious task and the executor must have the time and ability to perform the task. As such, crucial care must be taken when appointing an executor to execute the Will.

1. The age of the executors.

Generally, the testators can appoint anybody to be their executors. However, if they appoint someone who is still a minor at the date of their death to be their

executor, the minor will be unable to apply for the grant of probate to unfreeze their assets.

On the other hand, if the testators appoint someone who is too old, there are high chances that the executor may have predeceased them or the executor may be incapacity to administrate their estate. As such, it is always good to consider how old the executor will be in 10 years time.

2. Location of the executors.

The general rule is that the testators can appoint someone who resides outside of Malaysia to execute their Will. However, it is always preferable to appoint somebody who stays in the same city where the majority assets are located. This allows the executors to keep their eye on the assets while the estates are being settled. Also, it will minimize the delay in the process involved and the executors can be available for court appearances. Furthermore, if they executors travel from a great distance, they may have to travel several times to sort everything out and thus, greater expenses may incur.

3. How many executors can the testator appoint?

The testators can appoint multiple executors to act jointly in their Will. However, problems may arise when there are too many executors especially when they are unable to work together. This may lengthen the administration process and make it stressful and inefficient. In the worst-case scenario, they may renounce their position as your executor.

While appointing too many executors creates problems, appoint only one executor may place too many burdens on his/her shoulder as this is always a monumental task. Even the Will may be simple, the task which he/she needs to perform may be complicated and time-consuming due to lack of information or knowledge. For young executors, they may have limited liability in performing the task. So, the testators should always appoint an experienced joint executor to assist the young executor in administrating the estate. This will further protect the interest of the beneficiaries in the Will.

4. Should the testators appoint professionals as their executors?

If the Will is not complicated and requires no specialized knowledge, it is advisable to appoint family members who are trustworthy to be the executors as this helps to save cost and they understand the family relationship situation better. However, while dealing with the grief of losing their beloved family

member, they might not be able to take the administrative burden themselves at such a difficult time. Thus, it is a wise choice to appoint the professionals as the executors.

On the other hand, if the testators have complicated family relationship and there are highly likely to be family disputes upon their demise, complex property issues or complex financial situations, they should consider to appoint a skilled and trustworthy professional to administer their estates as they have the respective legal knowledge to solve all the legal issues.

5. Can the beneficiaries be the executors?

Commonly, testators will appoint their beneficiaries in their Will to act as their executors. This can ensure that the instruction in their Will can be executed efficiently as they are also the beneficiaries.

6. Does the executors need to be informed about the appointment?

The job of an executor may be complicated even the Will is simple. As such, it is better to have someone willing to perform the task. This also avoids renunciation of executorship in the future which may lead to other problems.

7. Does the executors need to know the content of the Will?

The testators do not have the onus to reveal their Will to their executors. What they should reveal is the place where they keep their Will as this will allow the executors to retrieve their original Will at the necessary time.

In order to ease their workload, they should also list down the relevant details of their assets in an inventory booklet for their executors. This can also avoid problems such as omission when the executors are searching for the assets which will eventually lead to other issues such as unclaimed assets.