



BUTLERS

*Barristers & Solicitors
Notary Public*

The Personal Law Firm

CHOOSING AN EXECUTOR

What Is An Executor?

Your Executor is the person whom you appoint in your Will to deal with your Estate after you die. For information on the *Duties of an Executor*, see our separate Information Handout.

Who Can Act As An Executor?

Any adult (in Australia any person 18 years of age or older) who has the mental capacity to undertake the duties of an Executor may be appointed by you to carry out your wishes, as contained in your Will. There are also professional organisations, such as the Public Trustee and Perpetual Trustees which will carry out the duties of an Executor for a fee based on a percentage of the value of the Estate and/or a percentage of the income of the Estate.

Who Is Normally Appointed As An Executor?

Any individual whom you choose to be your Executor should be trustworthy and capable of carrying out the responsibilities of an Executor.

In the majority of cases a married person will appoint his or her spouse to be the Executor. This is often the most convenient appointment, because your spouse is likely to know more about your wishes and your financial position than any other person. In addition, your spouse will usually be the person to whom you leave the majority of your assets and who will be able to carry out your wishes without charging a fee for doing so.

We recommend that you appoint an alternate Executor in your Will in case the first Executor whom you appoint does not survive you or is unable to act as such. If you have adult children you may well choose to appoint your spouse as Executor and then to appoint one or more of your adult children to be the Executor if your spouse either does not survive you or is unable to act as your Executor.

However, there are some situations in which it may not be wise to appoint your spouse as Executor. One is where your business affairs are complex and your spouse is not aware of them or equipped to deal with them after your death. Another situation in which it may not be appropriate to appoint your spouse is where you have remarried and your adult children of a previous marriage are in conflict with your present spouse.

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Some clients choose to appoint either a close personal friend who has knowledge of their wishes and financial position, or a professional adviser, such as their accountant or solicitor, as their Executor. Alternatively, clients often choose to appoint one or more adult children, together with a close friend, their accountant or solicitor, to act jointly as Executors.

Is The Person I Name Obligated To Act As My Executor?

The person whom you name in your Will to act as your Executor is not compelled to accept that appointment. Therefore, we recommend against appointing anyone without informing them of your intention to do so and unless they are happy to take on this responsibility.

If the person you have named declines to accept the appointment after your death, then it is necessary to apply to the Supreme Court for the appointment of an Administrator of your Estate. This is also required where only one Executor is named in your Will and that Executor has died.

An application to the Supreme Court for a Grant of Letters of Administration involves additional work and expense, as all of the beneficiaries of your Estate must be approached and asked to consent to the appointment.

How Do I Choose My Executor?

Your personal circumstances are an important consideration in the advice that we give. Although there is no single recommendation which is suitable to all clients, we are happy to discuss with any of our clients their choice of Executor and the advantages and disadvantages of the appointment of any particular person(s). One of the many considerations we discuss is the length of time it is likely to take before the administration of your Estate is completed.

Does My Executor Get Paid?

You have the right in your Will to state whether your Executor is to be paid or not. We recommend that you clearly state in your Will exactly what you want to happen with regard to payment. If your Executor is engaged in a profession or business, he/she can charge a fee for the work and time spent in the administration of the estate. If your Executor is not engaged in a professional business, then in the absence of an express provision in your Will regarding payment, your Executor will be required to file an Application to the Supreme Court which will allow your Executor to charge a fee based on the value of your estate.

If you nominate us to act as your Executor, we will not charge a percentage of the Estate. However, we will want to be paid our usual professional fees for the work done by us. Even if you appoint your spouse as your Executor, we are normally asked to do the legal work involved in applying for a Grant of Probate. For more information, see our separate Information Handout in relation to *Applying for Probate*.