



Who should be the executor of a Will?

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How to choose the executor of [your Will](#) is a question regularly asked but there is no simple answer to it. There are many factors to consider in who you might choose, some which may be dictated by family dynamics and others by taxation issues. In this blog, we explore some of the common things to consider when choosing an executor.

Can a beneficiary also be an executor of a Will?

There is nothing that prevents a beneficiary being the executor. But there are other issues that might determine whether appointing a beneficiary as the executor is a good idea.

Choosing family members and children

It is very common within the family group that members of the family be appointed as the executor. For a couple, unless it does not work for health or capacity reasons, they would usually appoint each other as the executor. Beyond that, they would then usually appoint the children to be the executors.

There is no limit to the number of executors that you can appoint. But it should not be too many otherwise the logistics of dealing with multiple executors can cause cost and delay. So, usually a maximum of three is appropriate but it does depend upon your own specific wishes. Where there is more than two executors, it is also appropriate to consider providing that the decision of the executors must be unanimous or perhaps that the majority view prevails.

If you only have one person in mind to act as your executor, you do need to think about having another person as a backup. This ensures there is always someone to act as executor just in case the first person you chose dies before you do (and before you

have [updated your Will](#) to change the executor), or was not capable or willing to act as the executor.

If there is a gap in the appointment of an executor, such as the appointed person having died and there being no alternate, an administrator needs to be appointed. This involves more work and time and sometimes cost which is better off avoided.

Choosing an executor who resides overseas

If the person you have in mind lives overseas, there are two issues that can arise from this.

Firstly, there is the logistics of dealing with someone outside of Australia in providing advice and having them attend to some of the practical issues of [administering an estate](#). For instance, it would be hard for an overseas executor to be involved in clearing out the deceased's home and preparing it for sale.

Secondly, there can be some tax issues arising if the executor is a non-Australian taxpayer.

For those reasons, we always suggest avoiding appointing someone who is outside Australia. But if the person might have returned to Australia by the time the Will comes into effect, then the appointment might be made with the proviso that if that appointment becomes difficult for the estate administration the person may renounce (step aside) from taking on the role. This is another situation where it is prudent to have a backup executor.

Choosing a trusted person

It goes without saying that the person you appoint needs to be someone who you have total trust and confidence in with the administration of your estate.

The executor effectively steps into your shoes and has the authority to deal with your assets upon your death. You are entrusting them to act properly, to follow the terms of your Will and to deal with the assets objectively and not in their own personal interest.

The executor and litigation – when a Will is contested

It is a sad fact of life that there are a number of occasions when the [Will may be challenged](#).

A classic scenario is the black sheep of the family feeling that they have been unfairly dealt with even though the rest of the family know that the black sheep has not acted appropriately within the family. If one of the white sheep of the family is appointed as the executor then he or she will be the focus of any litigation. It can create a lot of anxiety and stress, so this should be considered carefully when choosing the executors.

Appointing a professional executor

It is sometimes appropriate to appoint a professional executor such as a trustee company. This might be beneficial where you have no family or close friends that you feel comfortable with to take on the responsibility of being an executor. Or the administration of

the assets in your estate may be complex. There is no doubt that there are fees that would be payable to the professional executor.

A lawyer may be appointed as an executor. We do not encourage this as it can involve further cost to the estate both in paying legal costs associated with administration of the estate plus an amount for executor's commission. Also, where the Will is contested, the dynamics of the family are such that there is potential for disagreement. It is often better for the lawyer to be engaged by the executors to then be able to objectively guide them in dealing with the estate.

And things change over time

The appointment of your executor is not a "set and forget" decision. As time goes on you may need to change your executor. A classic example is having other family members to act as executors where you have young children who are unable to be appointed executors. As they mature and reach adulthood, you may update your Will to appoint your children as executors.

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