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Some Desirable Attributes for Executors [Part I]

Who Should Your Executors Be? An Analysis of Desirable Attributes

Choosing Executors is difficult for every Willmaker. It is one of the most important decisions a Willmaker needs to make. The results of doing it badly can be disastrous for the estate, and the assets intended for the beneficiaries.

The material in this article is an extract from a paper written by Peter Worrall and delivered at two interstate high end seminars for lawyers, in Queensland and Victoria. Kate Moss, one of our Senior Associates, also presented similar material in an online seminar attended by a large number of lawyers from around Australia.

This article is the first in a three part series that considers some desirable attributes a Willmaker should look for when choosing an Executor.

Empathy

The Executors need empathy in dealing with the beneficiaries who, in almost every case apart from institutional and charitable beneficiaries, will have suffered a personal loss by the death of the Willmaker. They will be in mourning. So having at least one Executor who is readily able to express appropriate empathy for the beneficiaries is a great advantage in the administration of an estate. The Willmaker should be careful to pick Executors, or an

Executor, who has a natural degree of empathy with the beneficiary group.

Communication

Excellence in communication with beneficiaries and with advisors will enhance the process of estate administration. Failure to communicate well, or at all, will cause problems. Although there is no specific duty of an Executor to communicate (with the exception of the Executor's duty to account) a failure to communicate well with beneficiaries will lead, more likely than not, to an increase in disputes between the Executor and the beneficiaries, and perhaps between the beneficiaries themselves. For these reasons, Executors should have high level communication skills.

Leadership

Executors should have strong leadership qualities.

They need leadership qualities because they will need to lead the process of implementing the terms of the Will. Leadership qualities will also be necessary when dealing with other professionals (including lawyers, accountants, financial planners, and real estate agents, for example), beneficiaries and with co-Executors.

Management

Executors should know how to plan processes and know how to manage processes. The management skills necessary in highly complex estates and higher net worth estates are different from those necessary in more modest and more straightforward estates.

Consensus

People who have an ability to work towards consensus decisions are more likely to be successful Executors than those who have difficulties compromising (which involves listening or reasoning with others), or are confrontational.

Team Work

Where there is more than one Executor, it is more likely to lead to a successful estate administration where the appointed Executors can and do work as a team and are not opposed to each other. A sense of inclusiveness assists in a team work approach between Executors. A readiness to communicate and consult with other Executors is also a useful attribute.

An Executor should be a unifying figure rather than a divisive figure. They should be an enhancer of relationships amongst other Executors, the advisers to the Executors, and with the beneficiaries.

Good Executors should be supportive of the other Executors and compatible with them.

Like in any good team, each Executor will have personal strengths and weaknesses. Attempts should be made to achieve a balance of skills between co-Executors.

Balance

Good Executors are balanced in personality and make balanced judgments.

Non Aligned and Strongly Independent

People who are not aligned with factions within a family, or who are not aligned with classes or groups of beneficiaries are more likely to be successful than those who have a tendency to align themselves with particular groups. If they are strongly independent of factions and groups, they are more likely to be perceived by the beneficiaries to be fair and act appropriately.



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We will look at some more attributes of good Executors in the next edition of Estate Planning Tasmania News.

Free Family Law Information Sessions

Worrall Lawyers regularly conduct free Family Law Information Sessions.

The sessions are aimed at providing an insight into the various considerations that parties confront in relation to financial and child related matters at the end of their marriage or de facto relationship. Sessions are also focused on using family law as an estate planning tool through appropriate agreements when marriages and relationships are in a sound condition.

For further information about our information sessions or to book your place at a session please telephone us on **(03) 6223 8899**.

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- Property Settlements, Maintenance & Superannuation
- Agreements, Negotiations & the Family Law Courts

Bookings are essential
so speak to us on 6223 8899
www.pwl.com.au

Five Reasons to Have a Power of Attorney in Place

Having a Power of Attorney in place is a sensible thing.

Here are some of the reasons why:

1. if you lose capacity, it is too late. Loss of capacity to complete a Power of Attorney means that someone else will decide who it is that is to make financial and business decisions for you. This may be someone that you would not choose;
2. you can put in place a Power of Attorney that, in a sophisticated form, is only able to be acted on if you are overseas, or if you have lost capacity;
3. people can lose capacity at any stage in life. It is not just in old age. It can be a result of a medical condition or an accident;
4. the costs involved in putting in place an advanced form of Power of Attorney (as opposed to a simple form one) are relatively inexpensive. The government registration fees are currently \$136.65 per Power of Attorney;
5. you can specifically limit the powers that an Attorney has at particular stages of your life; and
6. you can put in place a Power of Attorney which cascades from one person to another. For example, you can nominate your spouse or partner as a first attorney, and others as the succeeding attorney if the spouse or partner is unavailable for any reason on death, disability, or resignation.



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If you would like to discuss completing a Power of Attorney, speak with one of our lawyers on **(03) 6223 8899**.

Glossary: Guardian

In estate planning, there are three different meanings of the term “Guardian”:

The first is a “Testamentary Guardian”. This is a person appointed under a Will to be the guardian of the Willmaker’s children who are under 18 years of age at the death of the Willmaker. Note that the Family Court can override a provision of this type in a Will.

The second is a role that sometimes arises under family trusts, or under a testamentary discretionary trust. This person as a “Guardian” will have some powers in relation to the Trustee and Trust Assets, or the views of the Guardian may have to be considered by the Trustee of trusts of these types.

The third is a “Guardian” appointed by a person to make medical and lifestyle decisions when the person becomes incapable to do so. In Tasmania, this is done by completing an Instrument Appointing Enduring Guardian.

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Further Information

Our Website: A wealth of information in relation to estate and commercial matters can be found at our website www.pwl.com.au

Contributions: Contributions and suggestions from Estate Planning News readers are always appreciated. Email us at jacqueline.goodwin@pwl.com.au

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