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expert legal assistance
with deceased estates

Choosing the Right Sydney Estate Lawyer

Does an executor have to use the estate lawyer named in the will?

Executors of an estate do not have to use the estate lawyers that prepared the will or the estate lawyers nominated in a will, especially in circumstances where there is no on-going relationship between the deceased and the lawyer named.

Estate lawyers have traditionally marketed their services by nominating themselves as estate lawyers in the will. Whilst there is nothing untoward about this practice, at law, the nomination of an estate lawyer in a Will **does not mean that the executor must use that lawyer**.

It is common place for some estate lawyers to do a simple and cheap Will for price conscious clients as this allows them nominate themselves as the future estate lawyer. This often results in an inadequate Will and the appointment to the estate of an ill-equipped lawyer.

Beware when an estate lawyer "graciously offers" to hold the original will in the firm's safe custody pending the death of the client – they often do so for their own financial interest.

What should an executor look for when appointing an estate lawyer?

Where the deceased owned significant assets, an executor should focus on the knowledge, competency and technology systems possessed by the lawyer and their firm.

Estate law has become increasingly complex and taxation law plays now has an important role in the administration of estates. Executors should also be aware that many of the deceased's assets will not be dealt with by the will. For example:

- A deceased's superannuation benefits are not governed by the will but by the terms of either an Industry, Retail, Corporate or Public Sector Superannuation Fund or if the deceased was financially sophisticated, by the terms of deceased's Self-Managed Superannuation Fund deed.

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- A financially sophisticated deceased may have wealth (sometimes very significant wealth) locked inside a private trust structure, be it a family discretionary trust, a hybrid trust or a unit trust and the assets of such trusts are not governed by the deceased's will.
- Similarly, the assets of an investment company owned by the deceased continue to be owned by the company on death and are not governed by the will.

Executors should appoint an estate lawyer who has an informed understanding of superannuation law, tax law, trust law/equity, company law and life insurance contract law. Frankly, anything less will result in delays, mistakes and possibly a tax bill!

Executor liability, conflict of interest & estate litigation

There been considerable growth in estate litigation as a result of disappointed dependants bringing family provisions claims (seeking more money from the estate) or because a disgruntled beneficiary alleges that family executors are preferring their own interests over other beneficiaries.

Executors are personally responsible for errors and omissions that damage the estate. Executors are also personally liable if they fail to avoid a conflict of interest by seeking to profit when dealing with the affairs of the estate and the entitlements of beneficiaries. Executors can and do stumble into problems because there has been a failure to advise by the estate lawyer who has simply failed to recognise the danger signs and the issues because such lawyers are ill-equipped.

CharterLaw Legal is a Sydney CBD based estate planning and taxation law firm, experienced in handling both straight forward and complex estates. We seek to protect both executors and beneficiaries and to ensure that the deceased's wishes are carried out.

We invite you to view our experience and capabilities at www.estate.charterlawlegal.com.au



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