

Machins Solicitors LLP

Executors & Trustees:

Do You Know What You Are Doing?

ZOOM ETIQUETTE



**Mute mic
unless speaking**



Silence phone



**Video function
optional**



**Use chatbox
function**

CONTENTS

- Executors and Trustees
- Responsibilities and Duties
- Practicalities to Consider
- Common Mistakes
- When It Goes Wrong...



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EXECUTOR & TRUSTEE

- Often the roles are held by the same person
- Appointed in the will
- No choice if you don't have a will

EXECUTOR

- Deals with day-to-day administration
- Can be a very hands on role
- May have to pay out on behalf of the estate

TRUSTEE

- Can be a simple, almost non-existent, role
- Responsibilities may last for many years
- Tax, tax, tax!

COMMON TRUSTS

Discretionary

- Often holds a set sum of money only
- Usually lasts until a beneficiary attains a set age
- Monies can be paid out at discretion of trustee

COMMON TRUSTS

Maintenance

- Often holds a set sum of money again
- Usually lasts for a period of years
- Has more practical requirements than the discretionary trust

COMMON TRUSTS

Life-Interest

- Trustee becomes legal owner of a property
- Lasts for the life of the tenant (or until they want to sell)
- Trustee and tenant will have to work together so choose wisely!

WHY DIFFERENT PEOPLE?

- Age – it helps if the trustee will outlive the trust
- Expertise – financial advisors make for good trustees

PRACTICALITIES OF EXECUTORS AND TRUSTEES

- Number to choose
 - Recommend at least 2
 - Practical maximum 4

- Who to choose as executors and trustees:
 - Family
 - Friends
 - Professional
 - Trust company

DO I HAVE TO ACT?

- **Executor:**
 - Disclaim
 - Power reserved
 - Stand down later (Court approval needed)
- **Trustee:**
 - Retire
 - Removal – Court
 - Removal - Beneficiaries

COMMON MISTAKES TO AVOID

- **Executor:**
 - Incorrect valuations of assets
 - Failure to pay liabilities
 - Delays leading to loss
 - Incorrect distribution of estate
 - Charging the estate
- **Trustee:**
 - Charging the trust for time engaged
 - Failing to take proper advice
 - Insufficient meetings or record keeping
 - Biased or improper behaviour
 - Breach of trust

WHEN THING GO WRONG

Claims involving PRs

- Executor/Trustee or Beneficiary
- Types of disputes/actions
- Costs and commercial factors

Acting as Executor/Trustee

- Indemnity on costs
 - i. where properly incurred ii. when acting on behalf of the beneficiaries
 - Type of dispute will impact upon factors
- PR risk if found not to have acted properly
- Risk to Estate in costly litigation

DISPUTE TYPE 1

Requests for information

- Duty of PR to provide inventory and account
 - s.25 Administration of Estates Act 1925
 - *“When required to do so by the Court...”*
- Formal request for an inventory and account as first step
- Very rare for Court to refuse

Ali v Taj

- Application by beneficiaries for inventory and account
- 10 years since deceased died
- PR ordered to pay costs on the indemnity basis

Price v Saundry & Anor

- Account claim
 - Trustee found liable
 - Order to pay c.£53,000 plus interest
 - Order (on appeal) to pay costs because Trustee found to be acting for themselves in defending claim
- Removal claim
 - No order for removal, therefore no order for Trustee to pay costs

DISPUTE TYPE 2

Removal of PR

- Change of emphasis from claims for inventory and account
 - Starting position = PR has right to act
- Court will need good reason to remove

Removal of PR

- Grounds for application should be set out in detail prior to claim
 - Alleged breach and required action
 - Assists both in application and in costs position
 - Beneficiaries can request change, but no obligation to do so

Case Studies

- Caldicott v Richards
 - Court found Trustee had not acted properly, transaction rescinded
 - But Court did not remove from role
- Failure to complete administration
 - Sale of properties not actioned for 18 months
 - Court agreed to removal of Executor

Commercial factors

- Likelihood of succeeding
 - Who is likely to meet costs?
 - Obligation to provide inventory and account
 - Need good reason to remove PR
- Value of the Estate
 - PR indemnity means the Estate can pay
 - Beneficiaries lose out

ANY QUESTIONS?



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Tuesday 20th April 2021

2 pm – 3 pm

**A LASTING POWER OF
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