



WILLS

Matter

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JOINT EXECUTORS = DOUBLE TROUBLE

When advising clients on who to name as an Executor in their Will, we always stress the importance of naming not just one, but two people as Executors, with the second acting as a back-up, in case the first-named Executor is no longer available, has already died, or just simply declines to do the job.

Clients frequently ask whether they should, rather than using the 'backup' approach, name two persons to act together as joint Executors of the Will. Our answer is usually: "it depends".

The deciding factor will be whether the 2 joint Executors are likely to get along, to see eye-to-eye on the administration of the Estate. With joint Executors, all decisions must be unanimous. If this is unlikely to happen, then we don't recommend this option.

In addition to making joint decisions, problems can arise when it comes to splitting 'Executor's fee'.

Executors are entitled to claim Executor's fees to a maximum of 5% of the value of the estate for their time and effort in administrating the Estate. If there is more than one Executor, this fee must be shared between them. And, it is up to the Executors to decide amongst themselves how that fee will be split. This can often lead to difficulties or disagreements amongst Executors, where one feels that he or she has done the lion's share of the work and spent more time administering the Estate than the co-Executor.

Sometimes, if there is a real stalemate, an Executor might engage a lawyer to assist in resolving the dispute. In worst case scenarios, if an agreement cannot be reached, either Executor may apply to the Court for a determination on how the Executor fee should be split. Of course, the Executors are each personally responsible for any legal fees that they incur in resolving the dispute, because the estate doesn't cover these legal fees.

As you can see, naming joint Executors in your Will could be troublesome, so think carefully before you take this approach. If in doubt, discuss this matter with an experienced Wills & Estates practitioner, who can assist you in making a well-informed decision.

Contact Fulton & Company's Wills & Estates Team

if you have any questions regarding wills or estate matters.

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BY DONALD KNAPP



BY DANIEL CARROLL



BY LEAH CARD



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FULTON & COMPANY_{LLP}

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WILLS & ESTATES LAWYERS

| | |
|--------------|-------------|
| DONALD KNAPP | LEAH CARD |
| DENNIS HORI | EDWIN MARK |
| RICK HENEY | DAN CARROLL |



300 - 350 Lansdowne Street, Kamloops, BC Phone: 250-372-5542 Fax: 250-851-2300

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