

Why One Boss is Best

It has been said that a camel is a horse built by a committee. Obviously, the author of this little quip was not a fan of group decision making. When it comes to matters involving the estates, I'm not a fan of group decision making either. This is why I typically counsel my clients against the appointment of co-executors.

The appointment of co-executors means appointing two or more people individuals to collectively make decisions on matters involving the estate. Each of the executors is equal to the other in terms of legal authority. Each must act in concert with the other to make decisions. This usually means that the signatures of all executors are required to make a decision. And despite the fact that fax machines have been around for the last twenty years or so, a great many institutions continue to insist upon genuine signatures for legal matters. Faxed signatures can rarely be relied upon, and instructions sent to an institution by e-mail aren't worth the bandwidth they consume. So at a minimum there are logistical matters to deal with when two or more executors are involved. That usually means additional time and, of course, additional expense. That's the best case scenario.

Executors have joint liability for how they administer the estate. When something goes wrong—let's suppose a decision was made to hold onto certain investments that were owned by the deceased rather than causing them to be sold; then the stock market bottoms out—both executors are equally answerable to the disappointed beneficiaries, regardless of which of them championed the original decision. Executors can be sued for negligence just like everyone else and if the claim is successful, liability among executors is joint and several. That means that all of the executors have to contribute.

It has been my observation that in most estates involving multiple executors, one of the executors ends up making most of the decisions and doing most of the work. The other executors "go along with it" more or less. This is not how it is supposed to work. Each executor is expected to bring personal judgment to bear on each decision. Unless an executor is going to be actively involved in decision making, why take on the risk? If the goal of being a co-executor is to help, then there are plenty of ways a person can help without assuming the full responsibility of being a co-executor. Want to help? Get the keys from the executor and go clean out the deceased's garage. If on the other hand you think the executor needs supervision, then you've probably chosen the wrong executor. Executors shouldn't need supervision.

The worst case scenario is when two executors—usually siblings—are in hostile disagreement with one another. Disagreements can arise over truly substantive matters such as how to carry on the business that was owned by the deceased, or they can arise over matters that are much more ordinary but give rise to hostile disagreement nonetheless. After both sides have dug in their heels, the

only solution to these deadlocks is an application to the Court for advice and directions. Now we're into the thousands of dollars of additional expense. If family members are involved—as they usually are—relationships are destroyed irreparably.

Many people still regard the appointment of an executor as an honour to be bestowed and therefore choose to appoint two or more of their children as co-executors. It's not an honour. Choosing an executor is, in effect, choosing someone to run a corporation. Not everyone is well suited to run a corporation. And the best run corporations have only one chief executive officer. With one boss, everyone knows where the buck stops. So it is with corporations, and in my view, so it should be with executors.