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Report of Counsel

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Should You Accept a Position as an Executor or Trustee?

You previously agreed to be named as the Executor or Successor Trustee in the Will or Trust of a friend or relative who has recently died. Even though you agreed to serve as an Executor or Trustee, now that you are faced with performing those tasks, should you accept the job?

First, let's acknowledge that serving as an Executor or Trustee is a thankless task. Second, you are not required to accept the job. If you don't accept the job, and the document names another person to serve, the named successor will be asked to serve. If there is no named successor or if no person nominated to serve wishes to serve, a court will appoint an Executor or Trustee.

Before you decide to serve as a decedent's Executor or Successor Trustee, consider these important points before accepting the position.

Time. Do you have the time necessary to complete the task? Your personal circumstances may make it difficult for you to perform the tasks necessary in a timely manner even with the help of other professionals. Do you have a demanding full-time job? Do you travel with your job? Are you a full-time stay-at-home Mom with little free time? Do you have health or physical

limitations that would make it difficult for you to serve? If you are uncertain whether to accept an appointment as Executor or Trustee, please give me a call to discuss your specific situation.

Serving as an Executor or Trustee will involve meeting with attorneys and accountants at a minimum. It is also likely to involve meeting with financial advisors, bankers, Realtors, interior designers, and contractors if the decedent owned any real estate at their death.

Your Financial and Personal History.

Have you been through bankruptcy or suffered serious mental problems for which you were hospitalized? If so, you may not be legally eligible to serve as an Executor in Virginia.

The State of the Decedent's Financial Affairs. Try to gain an understanding of the decedent's financial life before you take on the task of serving as Executor or Trustee.

Did the decedent run a business? If so, try to obtain as much information about the business as possible before agreeing to serve as an Executor or Trustee.

Confirm that the decedent filed personal and business tax returns for the past five years.

Did the decedent have outstanding tax issues with any tax authority?

Try to determine what the decedent's assets are before you undertake the job.

Is the estate solvent or insolvent? Try to get a good idea of the outstanding debts of the decedent. If a decedent's debts exceed assets, the estate may be insolvent.

The Possibility of Persistent People Problems. Who are the decedent's beneficiaries? Was any heir at law omitted from the decedent's estate plan? Is litigation anticipated or threatened?

These are some of the issues that frequently face Executors and Trustees. In future issues of this newsletter we will consider other issues commonly faced by Executors and Trustees.