

The background features abstract, overlapping green geometric shapes, primarily triangles and polygons, in various shades of green, creating a modern and dynamic visual effect.

Chapter 6

Personal Representatives: Duties & Powers

Introduction

- ▶ In estate planning, one must appoint the most suitable person(s) or corporation to carry out and execute one's wishes and instructions as efficiently as possible so that his objectives are met in the best interest of the beneficiaries.

Introduction

- ▶ Whoever is appointed to take charge of the estate, there are certain duties imposed as well as powers conferred on them. They are found in:
- ▶ Probate and Administration Act 1959
- ▶ Trustee Act 1949
- ▶ Judicial precedents have also laid down the legal principles that apply in circumstances which legislative provision are silent.

Introduction

- ▶ The person who takes charge of the affairs of the estate is called the personal representative (or PR).

Who is the Personal Representative

- ▶ Definition of a “Personal Representative” as found in P & A Act:” *the executor, original or by representative, or administrator for the time being of a deceased person, and as regards any liability for payment of death duties includes any person who takes possession or intermeddles with the property of a deceased person without the authority of the personal representatives or the Court*”.

Who is the Personal Representative

- ▶ The Act further states that **“representative shall not be granted to more than four persons in regard to the same property”**.
- ▶ At anytime, minimum one person acting as a PR but not more than four.
- ▶ The Act also states that if beneficiaries are minors, there must be minimum of two PRs.
- ▶ If a Trust Corporation is appointed, the above rule does not apply. A Trust Corporation can act on its own.

Who is the Personal Representative

- ▶ In a testacy, the executor is appointed by the testator and there are usually no significant problems that may arise in confirming his role as one.
- ▶ In an intestacy, it is for the courts to decide as to who is the person that is most suitable to administer the estate.
- ▶ The PR must not be a minor, must be of sound mind and not be a bankrupt.

Who is the Personal Representative

- ▶ The **executor or executrix** (female executor) is the person appointed by the testator to carry out the instructions in the Will. He derives his powers from the Will but must first obtain the Grant of Probate from the court.
- ▶ The **administrator or administratrix** (female administrator) is the person appointed by the court to administer the estate. An administrator can only exercise his powers after obtaining the letters of administration from the court.

Who is the Personal Representative

- ▶ An **executor de son tort** (Latin phrase for an executor in his wrong) is someone who intermeddles with affairs of the estate. He acts as the PR although he is neither an executor or administrator. He is personally liable for any wrong or loss to the estate, as a result of his actions.

Who is the Personal Representative

- ▶ An **administrator de bonis non** is one who is appointed when the sole or surviving administrator dies without completing the administration of the estate. He can exercise the powers of obtaining the letters of administration de bonis non from the court.

Who is the Personal Representative

- ▶ The P & A act provides that an executor or a sole or last surviving executor of a testator shall be the executor of that testator.
- ▶ So long as the chain of representation is unbroken, the last executor is the executor of every preceding executor.
- ▶ However, the chain of representation does not apply to administrator.

The Personal Representative's Duties

- ▶ The first responsibility is to arrange for the funeral of the deceased if the family does not make the arrangement.
- ▶ To determine whether the deceased dies testate or intestate.
- ▶ If testate, he needs to ensure the Will is the last Will, and there are no others in existence.
- ▶ He needs to engage the services of a lawyer to obtain the Certificate of Grant of Probate from the High Court.

The Personal Representative's Duties

The following must be available for the PR to declare the required information in an affidavit to the court:

- ▶ List of Assets
- ▶ Ownership Rights
- ▶ Solvency
- ▶ Beneficiaries
- ▶ Witnesses

Powers of Personal Representatives

The powers of the PRs are as follows:

- ▶ To sell or dispose off assets
- ▶ To borrow
- ▶ To purchase or enhance assets
- ▶ To invest and convert bonds or other securities
- ▶ To lend, provided it is a secured loan

Powers of Personal Representatives

- ▶ To make advancements to beneficiaries or to withhold distribution of assets
- ▶ To provide maintenance of beneficiaries
- ▶ To pay taxes and expenses
- ▶ To continue business and legal dealings
- ▶ To retain trust property