How to Become the Personal Representative of Your Parents' Estate

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Children often want to ensure that their parents' estates will be properly administered after their deaths. Parents, in turn, naturally desire that their children should take over their personal affairs after they pass away. The personal representative is the individual responsible for taking care of a person's estate, and there are several different ways to become one. If you are interested in learning how to become the personal representative of your parents' estate, contact an an experienced estate lawyer. An estate litigation lawyer can assist with this process and help with the all-important task of probate.

Personal Representative vs. Executor: What's the Difference?

At one point in South Carolina law, the statutes referred to the individuals who manage the estates of decedents (those who pass away) as executors or administrators. Indeed, it's not uncommon to find these terms still used. A last will and testament often designates an individual as an "executor" of the estate.

Today, the correct term is personal representative. This person has the duty of settling the estate, paying debts, and distributing assets in accordance with the terms of the will (if there is one). This takes place during a process known as probate, which is basically proving the validity of the will. If there is no will or if the will does not effectively dispose of all of the assets, then the assets will be distributed in accordance with the intestate succession statutes. In terms of responsibilities, however, there is no essential difference between the term "personal representative" and "executor." They are often used interchangeably in probate litigation and estate planning.

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There are four main ways to become a personal representative.

Method 1: Being named in a will

The personal representative of an estate is typically named in a decedent's will. A person named as personal representative in the will does not have an absolute right to serve. Instead, such a nominee has first priority. A person cannot serve as personal representative if he or she is under age 18. Additionally, he or she cannot serve if the probate court finds him or her "unsuitable." Naming someone as your personal representative is the easiest and best way to ensure that someone of your choosing will be responsible for managing your estate after your death. While probate is still necessary, the process is typically much easier, and it is more likely

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that expensive and stressful probate litigation will be avoided.

Method 2: Appointment

Dying without a will is known as dying intestate. A personal representative of the estate will still need to be appointed, however. South Carolina law sets forth a priority list of who may be appointed the personal representative, and it's usually the surviving spouse or next of kin. Appointment is granted informally to someone who has priority under state law or formally with notice to all with higher priority.

However, it is possible that a person with priority may not wish to serve as personal representative of the estate. This is where the third method comes in.

Method 3: Renunciation

If a person who may otherwise serve as the personal representative of an estate does not wish to do so, he or she may renounce their position. Renunciation takes place when that individual files a form with the probate court known as the Renunciation of Right To Administer.

The person renouncing their position can name someone who does not have priority under law to serve as the personal representative. However, a formal hearing must take place. The probate court will set a hearing to make this determination.

Method 4: Termination

There are cases in which those with an interest in the estate (e.g., heirs) may wish to have the personal representative removed or to have the court place limitations on the personal representative's authority. Any such person can ask the court at any time to terminate the personal representative or to place restrictions on the personal representative's authority by filing a petition. The court will then schedule a hearing to determine whether there is cause to remove or limit the individual. Termination is a formal process that implicates a number of rules concerning probate litigation. A knowledgeable estate litigation lawyer can help.

Serving as the personal representative of your parent's estate is an honor and a privilege. But the task does come with a number of serious legal obligations. The probate and estate litigation lawyers of Rosen Hagood can explain what personal representatives do and how to become one. Give us a call or fill out our contact form today.

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