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A costly dispute

When someone dies the personal representatives are charged with administering the estate in an efficient and timely manner for the benefit of the beneficiaries. Contrary to popular belief, there is no reason why executors, if there is a will, cannot also be beneficiaries.

However, add a dash of jealousy and a twist of stubbornness and we have a cocktail for impasse and the estate being administered in a polar opposite way to the above.

Often the result is one or both of the personal representatives decides that the, now whipping-boy, solicitor is partial or inept, or both, and decide that they will instruct their own legal representative. But who bears the cost of the additional legal advice?

The basic principle is that a personal representative is entitled to an indemnity from the estate in respect of costs and expenses properly incurred in the course of his office.

The indemnity will not, however, be available (where there is more than one personal representative) to each personal representative who chooses to instruct his own separate solicitor, as the right to instruct a solicitor is limited by the overriding principle that personal representatives must act properly in exercising their rights and powers.

In particular they must not make, or cause there to be made, any wasteful or unnecessary payments out of the estate and so, ordinarily, it is incumbent upon personal representative to agree upon the joint instruction of solicitors.

It is, of course, always open to a personal representative to seek independent legal advice separately from the advice given by the firm instructed on behalf of all the personal representatives, but in such circumstances he will normally not be entitled to an indemnity from the estate for the cost of doing so, and will have to pay such costs personally.

Mere personal animosity between personal representatives does not justify the appointment of a separate firm so as to increase the costs payable by the estate. There are, of course, exceptional circumstances, such as where one personal representative is actively causing the value of the estate to fall.

It is also open to personal representatives to agree that they should be separately represented provided that the estate does not thereby bear any additional costs, unless, for some bizarre reason, all the beneficiaries are over 18 and agree to their inheritance being frittered away on duplicated legal fees!

That said, it is for the person when drafting their will to consider the suitability of an executor or a combination of executors and it is time well spent if the alternative is protracted, acrimonious and expensive administration.

If you have any queries you can phone or email Glenn Smyth or Rod Smith on glennsmyth@boltburdon.co.uk or rodsmith@boltburdon.co.uk or phone 020 7288 4700. Our full range of services includes Financial Planning, Trusts Wills & Probate, Property, Matrimonial and Family Law, Commercial Law, Commercial Dispute Resolution, Debt Collection, Compensation Claim Litigation. Visit our web site at www.boltburdon.co.uk. To stop receiving this bulletin, reply stating 'unsubscribe'.