



Executor Guide

An executor has responsibility for completing the administration of the estate of a deceased person, in other words dealing with their money, property and possessions. Most Wills name two, three or four people as executors. An executor may also be referred to as a personal representative, which is the collective term for executors and administrators. An administrator is an equivalent role to an executor when someone dies without a Will.

If I've been named as an executor in a Will, do I have to carry out the role?

No. You can choose to renounce, which means that you are completely removed from the process, and you have no responsibility or liability. The renunciation needs to be in writing and signed in the presence of a witness and done at the beginning of the probate process when you have taken no action as an executor. When a renunciation is completed in this way the effect is as if you had never been appointed as executor of the estate.

The other option is to have "power reserved". In some situations, to renounce this right completely may seem too extreme, for example you may not feel emotionally strong enough to deal with the formalities of being an executor or have enough time to commit to the administration, but do not want to be excluded completely from the process. This means that you can decide to act as an executor at a later date. The other executors will obtain the Grant of Probate and will then proceed with administration. However, if at any point you wish to become an executor again you can make an application to the probate Registry for what is called a second or double Grant of Probate.

What should I consider before agreeing to be an executor?

It is important to remember that acting as an executor is a serious responsibility. The process that you are undertaking can be time consuming and complex. This is often a misconception that the role simply involves paying out sums of money to the beneficiaries but there is more that you will have to do. As an executor you have a statutory duty of care and so you need to exercise your powers with skill and care, acting in the best interests of the beneficiaries. This responsibility lasts for the duration of the administration of the estate and, in many cases, for any ongoing trusts created.



What are the responsibilities of the executor to a Will?

As an executor you are responsible for all the administration in relation to the estate. This could take anywhere from six months to a number of years in the case of particularly complex estates. Your responsibilities will include:

- **Tax.** You'll have to report to HMRC to confirm the position on Inheritance Tax and to ensure that the estate is accurately reported and any Inheritance Tax paid on time. You will also need to make sure that other taxes such as Income Tax and Capital Gains Tax are also paid.
- **Assets.** It will be your responsibility as an executor ensure that all the estate's assets, which might include cash, property, jewellery, furniture and cars among other items, are identified located and collected. You will then need to ensure that if they are sold, their full value is realised for the beneficiaries of the Will.
- **Debts.** As well as assets, the estate might well owe people money. You will have to identify who these people are, check the amount, verify that creditors' claims are legitimate and ensure payment.
- **Claims against the estate.** The responsibility of dealing with any claims made against the estate will also fall to the executor to handle.
- **Application for a Grant of Probate.** This is the core of your role as an executor. A Grant of Probate validates the Will and gives you legal authority to distribute the estate. It enables you, in your role as an executor to manage the assets (this might include closing bank accounts and selling items) and to make distributions to the beneficiaries.
- **Beneficiaries and Distribution.** All of the beneficiaries of a Will need to be located and contacted regarding what has been left to them and the estate must be distributed in accordance with the Will.

Can I step down once appointed?

If you've already started to administer the estate, normally, you would not be able to step down.

What challenges do executors typically face?

Sometimes collecting and selling assets can be tricky, for example selling properties. In the same way that deciding on the best time to put your own home on the market and identifying the best offer from a purchaser can be difficult, the same is true when you are doing it for the beneficiary – except that in this case you have a legal responsibility to get the best price. You will need the proceeds of such sales to pay taxes among other outgoings.

Executors have to account to the beneficiaries and one of the challenges can be dealing with disgruntled or demanding beneficiaries.

There can be additional complications if an estate includes assets based overseas. If, for instance, the deceased had a bank account in some overseas jurisdictions you would not be able to use the UK Grant of Probate to manage it. Instead, you would have to obtain the appropriate documentation in that jurisdiction. There might be other considerations in relation to cross-border administration.

Do I get paid for being an executor?

The answer to this question is, almost always, no.

What are the risks involved in being the executor to a Will – can I be held liable?

If you make a mistake as an executor, then you can be held personally liable. Mistakes might involve, for example, failing to pay off all the debts before making a distribution to the beneficiaries. Not understanding the process is not a defence, the law still regards these mistakes as a breach of duty.

Disappointed beneficiaries have up to six months to make a claim after issuing the Grant of Probate while creditors' owed money by the deceased can potentially make a claim against the personal representative for up to 12 years after the death.

If I'm going to be an executor, do I need to use a solicitor?

There's no legal requirement to do so. However, law firms have years of experience in dealing with administration of estates and, as solicitors who manage estates every day, we know what is involved and what to expect. Many executors rely on us to manage the entirety of the administration. We have a check list that we can talk you through.

If you do decide to get legal support, it is important to contact a solicitor at the start of the process. In some cases, executors begin work and then realise that they need the help of a solicitor. The danger here is that they have made mistakes which need to be unpicked and corrected, increasing costs and delays.

With so many aspects of the estate to consider, executors often come to us because we can act as a "one stop shop" for them. We have specialists in property, corporate, tax and family law. We also have an international probate department and so we can deal with cross-border issues.

Given that it requires so much effort and responsibility, acting as an executor can seem overwhelming at times. If you think that we can help, please get in touch.



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