

Guidelines for Appointing Executors

Their Duties and Responsibilities

One of the most important legal documents a person can have is a Will. Having decided to make a Will, the first step, before even deciding who to leave money and property to, is who to appoint as Executor. For many, the obvious choice is a close family member, a spouse or a child. However, before making this decision, it is important to understand the role of Executor.

In general terms, an Executor is the person who has the responsibility of dealing with the deceased's money and property (known as the estate) and who must carry out the wishes of the deceased in accordance with the terms of the Will. It is a legal appointment and carries responsibilities under an Act of Parliament.

It follows therefore that the appointment of an executor is an important decision to ensure the executor is the right person for the role.

Here we set out some general criteria to be considered:

- Anyone over the age of 18, who is of "sound mind" can act as Executor.
- An Executor can also be a beneficiary and inherit under the Will.
- The maximum number of Executors who can act at any one time is four, the minimum number is one. Usually two Executors are appointed in the Will.
- An Executor should be someone who is likely to live longer than you, is trustworthy, and reliable.
- It is important to make sure that the Executors will be able to work together. If there are arguments between the Executors, this will not only cause delay, but can lead to lengthy and costly disagreements.
- It is also important to consider where the Executors live, as someone living abroad will not be able to deal with legal matters so easily.
- It is a good idea to mention to an individual they are being considered as an Executor, as it may be that a person feels that it is too great a responsibility to take on, and by asking them, it gives the person an opportunity to decline.
- The responsibilities and duties of an Executor are extensive, and can be onerous.
- The duties do not end when all the debts have been paid, and the deceased's assets have been distributed. The responsibilities of an Executor could continue for as long as six years after any mistakes made.

Here we set out some of the tasks an executor will have to undertake:

- Registering the death.
- Valuing the estate, to include any property and jewellery. This may involve writing to banks and financial institutions.
- Assessing any debts and liabilities.
- Completing Probate and tax forms and assessing if any inheritance tax is due.
- Paying inheritance tax if applicable, which in some cases may require raising funds if there are insufficient funds in the estate to cover this.
- Obtaining a Grant of Probate. This is the legal document which gives the Executors the legal authority to deal with the deceased's estate.
- Collecting in all the assets and money.
- Paying all the debts, and bills which includes funeral expenses.
- Preparing estate accounts showing the assets collected in and money paid out.
- Distributing the estate in accordance with the terms of the Will.
- Dealing with any claims which may arise, for example from a disappointed beneficiary who sometimes issue proceedings against the estate.

An Executor can be held personally responsible if, for example, debts are not paid, or if the estate is not distributed correctly.

One possible solution is to appoint a family member or friend together with a professional trustee such as a solicitor. The advantage is that the family member or friend has personal knowledge of the deceased whilst the professional trustee has the knowledge and experience to deal with the responsibilities and duties that come with being an Executor.

The advantages of appointing a professional trustee include:

- The professional trustee takes over the legal liability for any mistakes.
- If funds need to be raised to pay inheritance tax, a professional trustee can help with this.
- The professional trustee will complete complicated tax forms.
- The professional trustee will deal with any disputes. This would be particularly beneficial in the situations where the executor is also a beneficiary and could be conflicted should a dispute arise.
- If there are Trusts in the Will, usually the Executors become Trustees and their duties will continue during the life of the Trust. If the Trust is to continue for several generations and a professional trustee is appointed, this could never become an issue.

Whilst there will be a cost involved in appointing a professional trustee, many find that this is money well spent to ensure smooth and efficient handling of the estate at what is already an emotional time.



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The preparation of a Will is essential. Contact Linder Myers to help you with this – place your trust in a specialist lawyer.



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