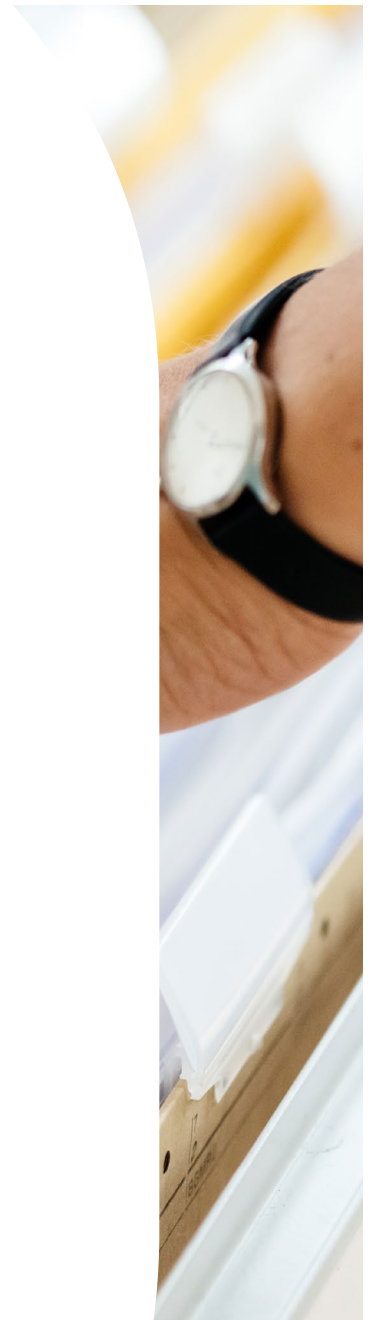


Wealth Guides

Being an executor

By Charles Calkin, Partner, Financial Planning Consultant



What you must know if you are asked to be an executor of a will

Being appointed an executor is an honour – the person who made the will trusted you implicitly to carry out their final wishes – but the position brings great responsibility and is governed by strict rules.

An executor is named in someone's will to be their representative and to organise their estate when they die. The role involves a lot of work. Sorting out the deceased person's property, money, possessions and debts usually takes several months. The job can even take decades if you find yourself administering money for grandchildren who might not gain access for 20 years or more.

Here we outline briefly the responsibilities and risks that the role entails. This is not a comprehensive guide, but it should give you a better idea of what is being asked of you. And it may also help those writing a will to understand just how much they are asking (and, perhaps, to leave some provision as compensation – though this can create an added complication, as we show below).

Many lawyers are willing to act as executors. They will charge for this service, so anyone making a will should ensure they have a clear idea of the likely costs before committing. (Our preference is for costs to be paid on an hourly basis rather than as a percentage of the estate.) If you are asked to be an executor, you may want to discuss whether a professional will be appointed as co-executor, or if a firm will be available as advisers, to support you in the role – especially if you anticipate there being arguments over the will or if the estate is complex.

Duties

The responsibilities of an executor can include:

- Registering the death and obtaining copies of the death certificate
- Contacting the Tell Us Once service to report the death to most government departments
- Arranging the funeral
- Locating the will
- Taking responsibility for post and property – informing insurers if a property is left unoccupied and making sure that it is secure.
- Collecting all the information about the estate, including an inventory of assets (many solicitors provide a checklist, which runs to several pages of A4 paper)
- Informing the institutions where the deceased held assets (or had liabilities) of their death and circulating the death certificate
- Valuing the estate for probate and inheritance tax (IHT)
- Preparing the tax returns (liabilities could include IHT, income tax and capital gains tax)
- Applying to the Probate Registry for a grant of representation (also known as the grant of probate) making a statement of truth and completing and signing the necessary HMRC forms with supporting documentation.
- Opening an executor's account for the estate transactions
- Selling the property and collecting any other assets
- Paying expenses and settling any other outstanding bills or liabilities of the estate
- Placing an advertisement in the *London Gazette*. After placing a 'statutory notice for creditors' two months should be left for any claims to be made

- Making sure the heirs/beneficiaries receive their entitlement
- Preparing detailed estate accounts and sending copies to the beneficiaries
- Keeping copies of certain documents

As executor, you will need to immerse yourself in the details of the deceased's life, including dealing with bank accounts, investments and other personal assets. This involves working with banks and other organisations, such as insurance companies and pension administrators. The executor contacts them to ensure that the full value of the estate can be calculated and that the assets they hold on behalf of the deceased are distributed according to the will or any expression of wishes.

An executor must also ensure that any outstanding obligations of the estate are honoured. This involves paying any remaining debts before any distribution can take place to the beneficiaries. Any tax liability on the estate must also be settled, particularly inheritance tax.

These responsibilities and the legal framework in which executors must operate mean that executors must be meticulous in their work, ensuring that everything is accurately recorded, calculated and communicated. **If any mistakes are made, an executor can be held personally liable for the consequences.** Common errors include:

- Failure to manage the finances of the estate, meaning that costs normally paid by the estate (e.g. funeral expenses) are not accounted for
- Failure to note an outstanding debt owed by the estate early in the process and allocating the funds that should be used to settle it to a beneficiary
- Making a wrong allocation when distributing an inheritance and then failing to recoup the monies without causing detriment to other beneficiaries

Challenges to the will

Sometimes the will can be challenged. This is not as rare as you might imagine and can be for a number of different reasons:

- A promise made to someone that is not kept in the will
- Incapacity of the deceased at the time of making the will
- An invalid will
- A forged will
- Undue influence of someone when the will was made
- Second marriage or outdated will
- Poorly prepared wills, so insufficient provision made
- Estranged families being left out of the will

If someone launches proceedings against the estate, you will be named as a defendant in your capacity as an executor. You must try to preserve the estate as well as possible; if you do not then you risk a costs order against you personally. In this situation you should take legal advice immediately.

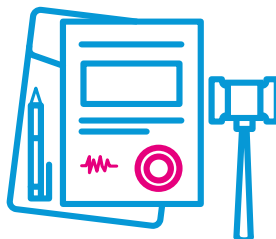
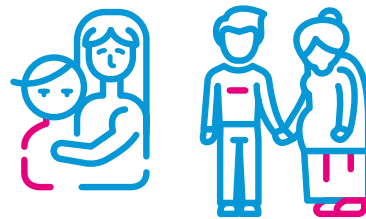
If someone is both an executor and a beneficiary then things can get complicated when there is a claim. The situation is quite common. Again, it is important to seek legal advice.

Dealing with beneficiaries

An executor can come under a lot of pressure from beneficiaries and claimants. There may be tough decisions to take during the administration process. You may be pressed to share details around the will. There are clear rules around who can and cannot see the will, and it is a complication you need to be aware of.

The most common dispute arises when selling the family home, especially when someone is living in it or one of the beneficiaries wants to buy the others out. If the beneficiaries feel the estate has not been administered appropriately then they may bring a claim against the executor personally, not the estate. Again, it is vital to take legal advice in this situation.

Unhappy beneficiaries may want you removed. This is not generally easy without them applying to court, which will consider a removal only if it is in the interests of the proper administration of the estate.



Expenses and costs

An executor is not entitled to receive payment for carrying out their duties. They are, however, allowed to claim expenses, provided they can show:

1. that the sum concerned was indeed spent and
2. that it was spent in the fair execution of the estate administration.

In some instances there could be financial implications for the executor from the moment of death onwards. When someone dies, all their bank accounts are frozen. This means it can sometimes be difficult to obtain funds to pay ongoing expenses such as mortgage payments and house insurance. If the estate does not have enough money readily available to pay for the funeral, then those costs will also need to be paid.

It is not guaranteed that your legal costs will come out of the estate if you find yourself involved in litigation as an executor.



Sharing the money

Although it is tempting to start to distribute the estate as soon as possible, beneficiaries are much happier to receive funds than they are to give them back. Before the estate is finalised it is always possible that additional liabilities will be discovered or additional tax liabilities may come to light. It is even possible that additional beneficiaries, such as previously unknown children of the deceased, may appear. This is why executors are advised to advertise the death in the *London Gazette*.

By law, an executor must pay all tax owed by the estate before distributing the inheritances to the beneficiaries. It is important not to be tempted to pay the beneficiaries at the point the calculations are first completed. The executor will be personally liable for any tax owed if it later transpires that there are insufficient funds in the estate.

If one of the beneficiaries is a bankrupt then their creditors must be paid before the beneficiary. The executor can be personally liable for paying the creditors if they get this wrong, so a bankruptcy search might be considered before making any payments.

The executor must complete an inheritance tax form. The form can be complex to fill in and if HMRC finds any errors, it can charge the estate interest on the sums owed. If there is a serious error then HMRC can issue substantial penalties. The executor may need to obtain a loan to settle the tax if there are not sufficient funds in the estate to pay the IHT that is owed.

One area that sometimes catches out executors is payments owed to the Department of Work and Pensions (DWP). If the deceased was receiving means-tested benefits when they died then the estate must not be distributed until there is clear confirmation that the assets and income were correctly declared in life and that all benefits paid have been taken into account. The executor is personally liable if the estate is distributed and there has been an incorrect claim. Sometimes the executor is able to recoup the cash from the beneficiaries, but often this is not possible because the money has already been spent.



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June 2020