

Charles Calkin

James Hambro & Partners

Don't shoot the executor

Covid-19 has encouraged many people to revisit their wills and consider who will sort their affairs.

It is easy to make this decision without considering the consequences or understanding just how big an ask it is.

Sorting out the deceased person's property, money, possessions and debts usually takes several months. The job can take decades if you are administering money for grandchildren who might not gain access for 20 years or more.

The executor operates within a strict legal framework – they must be meticulous in their work, ensuring that everything is accurately recorded, calculated and communicated. An executor can be held personally liable for the consequences of any errors.

I have seen people pulled up for failing to account properly for costs normally paid by the estate, like funeral expenses, or for failing to settle all the bills before distributing money to beneficiaries.

You might assume that beneficiaries would work harmoniously with the

executor. It is not always the case. Increasingly, wills are being challenged. Perhaps a promise made before death has not been kept in the will or an estranged family member has been forgotten.

You will be named as a defendant in your capacity as an executor if someone launches proceedings against the estate.



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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 they may bring a claim against the executor personally or even try to have them removed.

It is important to take legal advice, though it is not guaranteed that your legal

costs will come out of the estate if you find yourself involved in litigation as an executor.

Reward

An executor is allowed to claim expenses, provided they can show the money was spent in the fair execution of the estate administration. This does

not generally extend to time spent.

We think that if you are asking someone to be an executor it is only fair to leave them something for their efforts. Although if someone is both an executor and a beneficiary then things can get complicated when there is a challenge.

Potential costs

There can be financial implications for the executor from the moment of death onwards. All the bank accounts of the deceased are frozen. If the estate does not have enough money readily available to pay for the funeral or ongoing expenses, like mortgage payments, then those costs will also need to be paid by the executor or a loan taken out.

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.

Get me out of here!

If you have been appointed executor but do not want to do it you can sign a deed of renunciation before the grant of probate has been taken out. But once you have taken out a grant of probate it is too late to get out of it.

Getting support

Many lawyers are willing to act as executors. They will charge for this service, so ensure you 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.)

Charles Calkin is a financial planner at wealth manager James Hambro & Partners.

Some of the responsibilities of an executor

- Registering the death and obtaining copies of the death certificate.
- Collecting all the information about the estate, including an inventory of assets.
- 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 tax returns (liabilities could include IHT, income tax and capital gains tax).
- Applying to the Probate Registry for a grant of representation.
- Make a Statement of Truth or swear an oath.
- Opening an executor's account for estate transactions.
- Selling any 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*.
- Ensuring beneficiaries receive their entitlement.
- Preparing detailed estate accounts and sending copies to the beneficiaries.