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Sir Tony Robinson

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Executors' guide

A brief guide to
what an executor
needs to know



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guide



Questions and answers

What is an executor?

An executor is the person who is charged with dealing with the finances and possessions of the deceased as stated in their Will. These finances and possessions are collectively known as the Estate. The executor has the legal authority and responsibility to administer the estate.

Who can be an executor?

You can act as an executor even if you stand to inherit something from the Will. The person making the Will can appoint up to four executors (the standard is two), so you may be sharing the responsibility with others. A witness to the Will can also be an executor, but a witness cannot be a beneficiary of the Will.

Why me?

If you have been asked to be an executor, you will have been named as such in the Will of the deceased. Where there is no Will, the position of 'Administrator' is determined in accordance with a strict legal order of priority that applies to the next of kin of the deceased, following what are called the Rules of Intestacy.

Can I decline to be an executor?

To be named as an executor to a Will, you should have been asked and have agreed to take on the responsibilities of executor. However you can rescind your agreement providing you make the decision before any work has started. Anyone named as executor including any professional organisations can decide not to administer the estate of the deceased. By renouncing their entitlement they are not named on the Grant of Probate. You can also have what's called 'Power Reserved' so that you're 'in the background' should you need to come back and start acting as executor, e.g. where the executor who has taken out the Grant is no longer able to act.



Can I change my mind?

If you have accepted the role but change your mind, talk to the person who has appointed you about your decision as they'll need to change their Will. If you change your mind after the person has died, write to the Probate Registry to tell them you no longer want to be an executor. You will then need to fill out a formal document called a form or Deed of Renunciation. Note however, that you can only make this decision immediately after the death of the person who has appointed you as their executor and must not have dealt with their estate in any way before you sign the renunciation. Once you have started dealing with the estate you cannot then resign as executor.

Questions and answers

What's involved in being an executor?

Executors are responsible for administering the property and possessions of the deceased in line with their wishes and the law. They are responsible for everything they do, or fail to do, in relation to the estate. This responsibility lasts for the duration of the Administration of the estate and, in many cases, any ongoing Trust created.

Specifically executors need to:

- identify and collect all assets and money due to the deceased's estate (including any property)
- pay any outstanding taxes and debts (including any property)
- distribute the estate to the people who are entitled to it under the terms of the Will or under the Intestacy Rules
- make sure all the property owned by the deceased person is kept safe and secure as soon as possible after their death.

The precise duties fall under the following three areas:

Legal

- Applying to and attending a local Court to apply for Grant of Representation. This is known as the Grant of Probate. You can ask your solicitor to deal with this for you.
- It's worthwhile obtaining copies of the certified entry of death and the Will from the Registrar of Births, Deaths and Marriages, as photocopies for legal purposes are not usually accepted.
- Identifying and dealing with any claims against the estate.

Tax

- Completion and submission of Inheritance Tax returns and payment of any Inheritance Tax.
- Completion of any necessary Income and Capital Gains Tax returns and payment of any outstanding tax.

Administration

- Notification and correspondence with all relevant organisations in order to gather all assets and pay all debts and charges on the estate. Note that funeral expenses are usually the first thing to be paid out and can be arranged before grant of probate.
- Search for unclaimed or missing assets.
- Prepare and distribute estate accounts to residuary beneficiaries.
- Correctly distributing the estate to the beneficiaries; solicitors and other advisers can also help you to carry out your role as an executor. You can find a solicitor who specialises in this and other areas by visiting The Law Society website in England and Wales, or The Law Society of Northern Ireland. See useful contacts on page 8.

Questions and answers

Will it cost me time or money?

You need to think carefully before accepting the role of executor as it can and does commit you to spend time liaising with debtors and solicitors where appointed of the deceased. You can however claim reasonable expenses for this work. Note you do not need to use the solicitor who drew up the Will of the deceased.

Will I be legally bound or responsible for the Will?

An executor can be held personally liable for any loss resulting from a breach of their duty – even if the mistake is made in good faith.

Examples include:

- failure to pay the debts and liabilities of the deceased.
- failure to settle the affairs of the deceased relating to: Inheritance Tax, Income Tax and Capital Gains Tax. Most estates do not have to pay IHT as they are below the threshold, which is presently £325,000.
- failure to settle any claim against the estate.
- failure to identify and correctly distribute assets to the beneficiaries (including those initially not known about).

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.



Useful contacts

Tell Us Once

A service available in most local authorities across England, Wales and Scotland, which allows you to tell the government just once about a person's death in order for their documents to be cancelled and benefits to be stopped.

www.gov.uk/tell-us-once (not available in Northern Ireland)

Probate Service

In England and Wales there are regional Probate Service offices. To locate yours please consult your solicitor or local government office.

For more information and advice on dealing with an estate:

Tel: 0300 123 1072

www.justice.gov.uk/courts/probate

In Northern Ireland, contact:

Probate Office
Royal Courts of Justice
PO Box 410
Chichester Street,
Belfast BT1 3JF

Tel: 028 9072 4678

www.courtsni.gov.uk

Law Society of England and Wales

Representative body for solicitors in England and Wales. Contact them or use the “find a solicitor” search tool on their website to find a solicitor.

www.lawsociety.org.uk

Tel: 020 7242 1222

Law Society of Northern Ireland

Tel: 028 9023 1614

www.lawsoc-ni.org

HM Revenue and Customs (HMRC)

For information about taxes, including Income Tax and Capital Gains Tax, visit the HMRC website. www.hmrc.gov.uk

There is also a national Probate and Inheritance Tax Helpline for general information about dealing with taxes on an estate.

Tel: 0300 123 1072

Citizens Advice Bureau

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

– for details of your local Citizens Advice visit

www.citizensadvice.org.uk for England, Wales

www.citizensadvice.co.uk for Northern Ireland

www.cas.org.uk for Scotland

Alternatively call

■ for England call 03444 111 444.

■ for Wales call 03444 77 20 20.

■ for Northern Ireland call 0300 123 3233.

■ for Scotland call 0808 800 9060.

■ TextRelay users should call 03444 111 445.

Glossary of legal terms

Beneficiary - A person or organisation that will receive a gift in your Will.

Bequest or Legacy - A gift to an individual or organisation in your Will.

Codicil - An amendment or addition to your existing Will.

Estate - Your possessions, property and money.

Executor - A responsible person (preferably two) chosen, usually from family or friends, by the person making a Will, who will sort out their affairs and carry out the instructions in their Will after their death.

Inheritance tax - All estates are required to be assessed for inheritance tax. The Inheritance Tax threshold is presently set at £325,000. Tax is payable at 40% on the amount over the threshold. From 6 April 2012 people who leave 10 per cent or more of their net estate to charity are entitled to pay a reduced rate of Inheritance Tax of 36%.

Intestate - The state of dying without a Will.

Letters of Administration - Where a person dies without making a valid Will, administrators will apply for a grant of letters of administration which confers on the administrators the right to administer the estate. If the deceased made a Will but no executors were appointed or those who were appointed are not able or willing to act, administrators will apply for a grant of letters of administration with the Will annexed. This also confers the right to administer the estate.

Pecuniary bequest - A gift of a fixed specific sum of money.

Power of Attorney - A Power of Attorney (POA) is a legal document which allows someone to make decisions on your behalf during your lifetime.

There are two types: Ordinary and Lasting POA. Ordinary POA gives someone else authority to act on your (the donor's) behalf. It is only valid while you still have mental capacity to make your own decisions about

your finances. Lasting POA can be set up to continue to be valid should there come a time when you lack mental capacity and are no longer able to make your own decisions. For a detailed fact sheet on POA visit alzheimers.org.uk and search for POA.

Different terms and regulations apply in Northern Ireland. Visit www.lawsoc-ni.org for more information.

Probate - A legal document that gives you the right to sort out the affairs of someone who has died and left a Will.

Probate Registry - The body responsible for the administration of grants of probate and grants of letters of administration.

Residuary bequest - A gift of what remains of your estate after paying all other bequests and costs.

Residue - The sum left from an estate when all debts, charges and gifts are deducted.

Reversionary bequest - A gift of property or possessions left to someone for the rest of their life (a life tenant), which is then passed onto someone else. Also known as 'Life interests' or 'Interests in possession'.

Reversionary beneficiary - A person who receives a gift after the life tenant's death (or at some other determinable event).

Specific request - A gift of a particular item, such as an item of jewellery or property.

Trusts - A Trust is where someone (or more than one person) holds money or property on behalf of someone else (called the beneficiary). For example, when the beneficiary is a minor.

Will - A legal document drawn up and signed in the prescribed form, stating how you wish your estate to be distributed after your death.