

## What Are the Duties of an Executor of a Will?

The Executor of a Will is crucial to the probate process which sees a deceased person's estate distributed according to their wishes.

Whilst it is a role often carried out by friends or relatives of the individual, some find greater peace of mind in seeking the help of legal experts.

This guide will look in detail at what being the Executor of a Will entails and, whether you are looking to appoint an Executor or considering a request to act as one, we will help you to make an informed decision.

### What are the powers of an Executor of a Will?

An Executor of a Will has responsibility for implementing the wishes of a deceased person as set out in their Will.

The Executor must gather together all of the individual's assets (money, property and possessions) and, after settling all debts and liabilities, distribute it amongst the beneficiaries. If instructed by the Will, the Executor may also organise the deceased's funeral.

### Can an Executor benefit from a Will?

It is common for an Executor of a Will to be amongst the beneficiaries. Some would argue that this can be a positive thing as it provides the Executor with a strong incentive to carry out their duties as efficiently and speedily as possible.

Where the Executor is a beneficiary, however, they retain an obligation to act in good faith in the interests of all beneficiaries and not just themselves.

It is very important that anyone named as a beneficiary does not act as a witness to the Will – as this would invalidate their entitlement to an inheritance.

### Who should I choose to be the Executor of my Will?

The choice of Executor is made when drawing up the Will. It can be a demanding role as it involves taking responsibility for large sums of money, selling property and following the detailed procedures required by the process. In addition, in the case of family and friends, they will be doing this when they are still grieving.

It is important, therefore, that you discuss the issue with them and check that they are happy to accept the responsibility of being Executor of your Will.

Some people believe it is advisable to appoint more than one Executor in order to share the workload – the law allows up to four people to act as Executors.

Given the crucial part that the Executor plays in the probate process, many people prefer to appoint a solicitor to the position. This may be particularly beneficial if your Will contains complex arrangements.

While appointing a solicitor will be more expensive than using a friend or relative (with the fee being deducted from the estate), it will provide the reassurance that, after your death, your wishes will be carried out by an experienced legal professional.

Even if you know someone who is willing to take on sole responsibility for probate it might be advisable to appoint a second Executor so that you have a reserve should circumstances change and your original choice be unable to fulfil the role.

### What if there is no one I can choose?

In a case such as this, the Executor will be a government official called the public trustee. This may happen, for example, if the sole beneficiary of the Will lacks the capacity to act as Executor.

## Can someone change their mind about being an Executor?

If an Executor changes their mind during the lifetime of the person who appointed them, the necessary change to the Will can be made.

It may still be possible to step down after the person's death as long as the Executor has not begun distributing the estate. They might find it advisable to seek legal advice over the best way to do this.

Should the distribution have begun, it is usually only possible to step down as an Executor if there are extenuating circumstances such as ill health.

## What are the first things that an Executor should do?

### Registering the death

Although this is not a legal requirement of the Executor it may be best to do so as it is a necessary first step to implementing the Will.

You may find it advisable to obtain several copies of the death certificate at this stage as it will be more expensive later. A number of copies are likely to be necessary as you will have to provide one to any organisation that holds any assets belonging to the deceased.

### Getting a copy of the Will

This document will guide your actions throughout the probate process so it is important to get a copy of the most up-to-date Will as soon as possible. In many cases it will be in the possession of the solicitors who drew up the document.

### Securing the property

An important preliminary step for the Executor is to ensure that any properties owned by the deceased (and their contents) are secured as soon as possible.

### Grant of probate

The first formal stage of the probate process is to check whether it is necessary to apply for a grant of probate. This is usually required as it gives you the legal right to administer an estate. It is not always needed for relatively small sums (around £5,000) so, in such a case, you should write to whoever is holding the money (usually a bank or building society) to see if they require one.

Should probate be required, you will need:

- An estimate of the estate's value to determine if inheritance tax is payable. You should add together the value of all the deceased's money, property and possessions and subtract any liabilities (such as mortgages and loans). To follow HMRC guidance, it is advisable to have individual items worth more than £500 (including property) valued by a professional. All the proceeds from the estate should be held in a bespoke bank or building society account set up specifically for that purpose. Under no circumstances should the funds be placed in the Executor's personal bank account.
- A copy of the death certificate

You can apply online or by post for probate. [More information is available here.](#)

You will need to request several copies of the grant.

## What are the other stages in the probate process?

### Paying inheritance tax and other debts

The current tax-free allowance for inheritance tax is £325,000. Above this threshold, tax is usually payable at the rate of 40 per cent.

As well as paying off any mortgages and debts of which you are aware, it is advisable to put a notice in [The Gazette](#) so that other creditors have an opportunity to come forward and make a claim on the estate. This will protect you from the risk of being held liable for any unpaid debts in the future.

### Distributing the estate

Once all of the estate's liabilities have been settled, the Executor of the Will can distribute the assets amongst the beneficiaries according to the terms of the Will.

As with all stages of probate it is essential that the Executor keeps meticulous records. They should draw up estate accounts for each beneficiary to show what they are to receive – and make a record of when the payment is made. The more painstaking the record keeping, the less the chance of any kind of challenge over the process.

As part of this stage the Executor should check that none of the beneficiaries have been declared bankrupt and that any beneficiaries under the age of 18 have two trustees to safeguard their inheritance.

### Does the Executor of a Will decide who gets what?

The Executor's role is to ensure that the wishes of the deceased are implemented, and not to have any say in who receives what.

To this end it is important that the Executor behaves in a transparent way and keeps comprehensive records to show that they have fulfilled their responsibilities in a proper manner.

Should the Executor not behave in an appropriate way, they can be held personally liable by the other beneficiaries for any losses which result.

### Can an Executor of a Will take everything?

An Executor is entitled to be a beneficiary – including the sole beneficiary – of a Will.

### Can an Executor of a Will remove a beneficiary?

It is the duty of the Executor to distribute the deceased's assets as set out in their Will. An exception to this is where the law prohibits an individual from receiving an inheritance. This could apply, for example, where they have been a witness to the Will or have been declared bankrupt.

## Can a Will be challenged during the probate process?

A Will can be contested if someone believes that the proper process was not followed either in the drawing up of the Will or in its implementation.

Such a challenge is likely to extend the probate period and can prove highly stressful to the Executor and beneficiaries at what is already a very difficult time.

One way to reduce the chance of a legal challenge is to engage the help of a solicitor both in the drawing up of the Will and in acting as Executor.

A Will drafted meticulously by a legal expert and put through probate with the same professionalism and attention to detail is less likely to be open to challenge.

## How much do solicitors charge to execute a Will?

The fee charged will vary between solicitors and also depends on the size and complexity of the deceased's estate. A fee may be charged by solicitors on an hourly basis or as a percentage of the value of the estate.

Whilst the charge will reduce the value of the estate it may be money well spent if it results in probate being administered in an efficient and timely manner, and avoids the need for a friend or relative to carry out the role at such a difficult time.

One issue to be aware of is that in recent years some solicitors have offered a basic Will writing service either free or for a very low charge. While this may be attractive in the immediate term the downside is that the solicitors then expect to act as the Executors of the Will in due course. In some cases the resulting charges are more than the market rate and may significantly reduce the value of the estate.

You should always ask for transparency over fees from solicitors so that you can make an informed choice over whom to use as Executor of your Will – and ensure that legal expenses will not significantly erode the value of the estate.

## Does the Executor of a Will have the final say?

The Executor's role is to act as an impartial administrator in implementing the wishes of the deceased while ensuring that the procedure is carried out in the proper manner and is in line with the relevant legislation.

Due to the demanding nature of the role, many people decide to appoint a solicitor to act as Executor.

## Can a Wilson Browne solicitor act as the Executor of my Will?

Wilson Browne has a wealth of experience in handling probate with professionalism, sensitivity and integrity, adhering to the highest standards and offering excellent service at an affordable price. We will be happy to discuss our charges from the outset and answer any questions you may have.

With offices in Northamptonshire and Leicestershire, operating from Northampton, Kettering, Corby, Higham Ferrers, Wellingborough and Leicester, we offer a friendly, personal service tailored to your needs and providing you and your family with peace of mind over such an important issue.

Please call 0800 088 6004 or fill in our [online form](#) to see how we can help you ensure that your loved ones benefit from your estate as you intend.