



Executor Duties

Being named as the executor in a will brings with it complicated, and sometimes onerous duties, which can take months to complete. It is a role, which carries with it considerable administrative, legal and financial responsibilities. Administering the estate correctly is important as the Executor has a legal responsibility to do so and can be held accountable if things go wrong.

As an Executor, your duties will be varied; some things will need to be attended to promptly after the death, such as making sure any property is secure; and some issues, such as disposing of the deceased's assets will of necessity take some time. This can seem rather daunting in the abstract.

This factsheet covers all the areas you need to know about when acting as an Executor. It will explain in more detail:

- What an executor is;
- What your duties and responsibilities are;
- What your liabilities may be if you do not undertake the task correctly;
- What probate is and how to apply for it; and
- Where to get help if you need it.

Bear in mind that a lot of the information you will need to fulfil these duties will be detailed in the deceased's personal Estate Plan. It will list:

- Where all their documents are stored;
- Who have been appointed to act as executors, as there may be other people you will need to contact and work with to sort out the estate;
- Who has access to the deceased's property;
- If the deceased had any special bequests to make; and

- What arrangements they have made for any pets or children and/or adult dependants they are responsible for.

Please do not feel overwhelmed by this. Remember we are here to help. If you would like any advice or help, the teams at Woodgate Financial Planning and Moss Solicitors can undertake some or all of the work on your behalf. It is also possible that as a client the deceased may have expressed the wish that we undertake the probate work on their estate. If this is the case they will have noted this desire in their Estate Plan, which should be your first port of call.



What is an Executor?

When someone dies, many people assume that their next of kin will sort out their affairs, or what is referred to legally as administering their estate. This is not often the case. When someone has made a will they will also usually have appointed executors, or the people they want to carry out their wishes for them.

If you are named as an Executor you are being asked to take responsibility for administering the estate of the person who made the will (the testator) upon the testator's death.

The term 'estate' simply refers to the property the person leaves behind, whether it is worth hundreds or millions of pounds.

Whether it is a large or small estate, it has to be accounted for and distributed. If no one is named in the will family members can apply to act as what is known as 'personal representatives' or 'administrators of the deceased', and they can also apply for probate and the right to administer the deceased's estate on their behalf.

Who can be an Executor?

Anyone over the age of eighteen, who is of sound mind, and not in prison, is eligible to be an executor.

Can I choose not to act as an Executor?

Yes. If you do not wish to act as an Executor you can refuse to apply for the grant of probate. This gives a person the legal right to administer the estate on behalf of the deceased. If this happens another Executor named in the will can step in and apply for the grant of probate. However, if you know that you have been appointed as an Executor of someone's will and that you do not wish to act in that capacity it is better to say so at the time so that they can choose to appoint someone else.

When is it appropriate to seek professional help?

Administering an estate can get complicated. It is also a lot of work, which you may feel is too much for you at this difficult and busy time. You can engage the services of a professional lawyer at any time. They can provide you with advice, or they can undertake the full administration of the estate, including applying for probate on your behalf if you so wish. However, it is wise to seek professional input if the deceased's estate has:

- A high value
- Business and/or agricultural property involved
- Involvement in a business partnership
- Large trusts or gifts intended for minors under the age of eighteen listed in the will
- A likelihood that someone who thinks they have been badly treated may make a claim against the estate
- The possibility that their will was badly drawn up and therefore may need legal interpretation

We can help

The teams at Woodgate Financial Planning and Moss Solicitors can provide you with a full in-house probate service. We can ensure that you are given detailed advice and support and undertake the administration of the estate on your behalf. This will give you the security of knowing that the deceased's affairs are being attended to as they would have wished and in as smooth and efficient a manner as possible. It is possible that as a client of ours the deceased may have expressed the wish to use our probate services. Please check their Estate Plan to ensure their wishes in this regard are followed.

What are an Executor's duties?

The duties of an Executor are many and wide-ranging. This section of the factsheet aims to give you an idea of the things that you are likely to be involved in administering. At some point as an Executor you will also need to apply for probate, or the legal right to deal with the deceased person's estate. More details on how to do this follow this section.



It is usual to apply for probate somewhere in the middle of the process of administering an estate. Some of the duties of an Executor need to be dealt with quickly. These will be looked at first, before looking at the longer-term work involved in this role.

❖ **Immediate Executor duties**

There are some duties that as executor you will need to attend to promptly and these are outlined below.

1. Securing any property



It is important that any property the deceased left is properly secured whilst the estate administration

is taking place. You will need to ensure that any personal property, including holiday homes, as well as any business premises is secure.

Please consult the deceased's personal Estate Plan for full details of all the properties owned by the deceased and who has access to them. There will be details of these people's contact addresses. The deceased may also have specified who they want to undertake this duty. If they have not it will be your responsibility as Executor to ensure things are secure.

2. Funeral arrangements

Once the death has been registered a funeral can take place. This is usually organised by the family. However, it is possible that the deceased's executor may have been left with this duty. If the deceased expressed any wishes re their funeral these are often left in their will. However, they may also have chosen to indicate any instructions through their Estate Plan. If they have left directions

through their will its location will be detailed in their Estate Plan.

If however the deceased has not expressed any wishes regarding their funeral it will be up to you to arrange what happens. If you need any information on how to register a death or arrange a funeral please ask for the factsheet on this topic.

3. The Will and other documents

The team at Moss Solicitors will have advised the deceased about the importance of leaving a will and may have used our will writing service. They will have been offered the opportunity to store their will, whether drawn up by us or not, and other important personal documents, such as birth and marriage certificates in our fire proof strong room at Moss Solicitors. If they have chosen to store their will with us this will be detailed, along with a full list of any other documents we hold on their behalf, in their personal Estate Plan. If they have chosen to make their own storage arrangements, details of where their documents and will are stored will also be listed in their personal Estate Plan.

The deceased's will details what they wish to happen to their estate once any debts and Inheritance Tax have been paid. However, it may not list any personal wishes re the disposal of specific assets. If the deceased has left any personal letters or has expressed any wishes about who is to receive a particular item as a bequest this may not have been included in their will. Please make sure you check their personal Estate Plan to see if any specific items or instructions have been left as regards bequests.

4. Pets and animals

If the deceased had any pets or animals it is important to ensure that they continue to receive care until suitable long-term arrangements can be put into place. Any instructions left by the deceased will be in

their personal Estate Plan and should be taken care of.

5. Other people

Equally, if the deceased had any regular visitors or staff, such as a housekeeper, cleaner or gardener who would need to be informed of the death quickly, these will have been detailed in their personal Estate Plan. The information included there should allow all the relevant people to be informed in a timely manner.

6. Other organisations you need to contact following a death

After registering the death, if you are not using Moss Solicitors to administer probate on your behalf, as Executor there are other organisations you will need to contact. These will include:

- HM Revenue and Customs (HMRC). Depending on the deceased's circumstances you may need to contact them about income, pensions, benefits and whether there is a surviving spouse or partner. Visit <http://www.hmrc.gov.uk/tools/bereavement/index.htm>
- National Insurance Contributions Office. You may need to contact them to cancel the deceased's National Insurance payments if they were self-employed. Visit www.hmrc.gov.uk/nic/offices
 - Local council about council tax payments. Visit www.gov.uk/find-your-local-council
 - Banks re regular payments that no longer need to be made



- Child Benefit Office. You must contact them within eight weeks of the death. Visit www.hmrc.gov.uk/child-benefit
- DVLA to return the deceased's driving licence and cancel any car tax. Visit www.dft.gov.uk/dvla
- Passport Office. You will need to return the deceased's passport to prevent fraud. Visit ips.gov.uk or call the Passport Advice Line on 0300 222 0000.

You can either contact these yourself directly or use the **Tell Us Once** service, which most councils run. They will contact different government services on your behalf. When you register the death the Registrar will explain your options for using Tell Us Once. These are:

- Online – <https://www.gov.uk/after-a-death/organisations-you-need-to-contact-and-tell-us-once>
- By phone - the registrar will give you the phone number
- In person by making an appointment with your local council bereavement adviser – <https://www.gov.uk/find-bereavement-services-from-council>

Your registrar will give you a unique reference number to use at Tell Us Once online. You will need this to be able to sign in.

❖ The duties of administering the estate

Once the immediate tasks have been taken care of the bulk of the work, or the administration of the estate begins. This can be complicated and it may be a good idea to seek professional help and advice, which will certainly ensure that things are done as speedily and efficiently as possible with the least pressure on you. Moss Solicitors can administer the estate on your behalf if you so wish as part of the probate services we offer.

1. What are the duties of an Executor?

The duties of an Executor involve corresponding with other parties, keeping

records, filling out forms and being answerable to creditors, beneficiaries and carrying out the intentions of the deceased as recorded in their will.

The Executor's aims are to:

- Identify the assets of the estate and assess their value at the date of death. Assets include: money; property and land; personal belongings, such as jewellery; furniture; cars; shares; trusts; pensions that include a 'lump sum' payment on death; and any pay-out from a life insurance policy. If the person gave away any assets before they died (known as gifts) these may have to be included in any valuation as well as the debts they had
- Identify the deceased's debts and pay them
- Distribute the legacies

The duties include the following:

A. Administration

- Inform close family and potential heirs that you are an Executor
- Appoint a solicitor. If you choose to do so the legal team at Moss Solicitors can provide you with a full probate service
- Obtain a copy of the will and carry out its instructions
- Gather together the deceased's vital paperwork. This will include: wills; death certificate; cheque books; bank statements; credit card details; insurance policies; stocks and shares; bonds and pension information; mortgage details; tax records and any paperwork related to any business that they owned, such as VAT records; and addresses of family and friends and professional advisers, such as accountants and solicitors. Please remember that the majority of this information should be accessible through the deceased's personal Estate Plan, and if it is not it will detail where it can be found

- Take an inventory of the deceased's possessions and debts
- Notify and correspond with all the relevant organisations to gather together all the assets
- Pay all bills, and debts of the estate
- Search for any unclaimed or missing assets
- Distribute the legacies as detailed in the will
- Prepare and distribute estate accounts to interested parties

B. Legal

- Apply for a Grant of Probate to prove that the Executors have the legal authority to deal with the deceased's assets
- Identify and deal with any claims against the estate

C. Tax

- Complete any Inheritance Tax returns and pay any Inheritance Tax due. Inheritance Tax is payable on any of the estate, which is worth more than £325,000
- Complete any income and capital gains tax returns and pay any outstanding tax



2. What are the liabilities of an Executor?

An Executor can be held financially liable for any loss resulting from a breach of duty even if this was made in good faith. This includes failure to:

- Pay the debts and liabilities of the deceased. Creditors owed money by the deceased which the Executor has not paid can make a claim against the Executor for up to twelve years after the death
- Settle the Inheritance Tax, income tax or capital gains tax of the deceased
- Settle any claim against the estate

- Correctly distribute assets to beneficiaries, including those not known about initially. Disappointed beneficiaries have up to six months to make a claim

This means Executors can be left open to prosecution by beneficiaries, estate creditors, and probate and tax officials for a considerable time after the estate has been distributed. This is worth considering when accepting the role of Executor. You can take out an Executor's Liability Insurance policy to protect you against any claims for negligence, or if you prefer the team at Moss Solicitors can carry out the probate work on your behalf and thus avoid the possibility of this happening at all.

3. What is probate?

Probate gives you the legal right to deal with the assets of the deceased. When you are appointed an Executor in someone's will you will need to apply for a Grant of Representation. You will then be given a legal document, which you can show to people, such as the deceased's bank or solicitor to prove that you have the authority to request information and to administer the estate.

4. Is probate always necessary?

Probate is necessary on all estates with a value of over £5,000 or where the deceased's property is held in the name of the deceased only or as tenants in common.

5. How do I apply for probate?

Applying for probate and dealing with an estate can be complex. You can do it yourself and the process is outlined briefly below. However, it can be quicker and easier to use a professional who knows what needs to be done. This would ensure the family and other beneficiaries receive their part of the estate as quickly and easily as possible. If you would like to use Moss Solicitors the team will be delighted to help you.

To apply for a Grant of Representation you need to:

- Complete the probate application form PA1
- Complete an Inheritance Tax form if applicable
- Send off an application. You will need to send form PA1, your Inheritance Tax form, a copy of the death certificate, the original will and two copies and an application fee of £105. If you need any information you should contact the Probate and Inheritance Tax helpline on 0845 302 0900
- You will need to swear an oath at your local Probate Office. You will need to take two forms of identification, such as a passport and driving licence. You should receive your Grant of Representation ten days after taking the oath.



Conclusion

This factsheet has covered all the areas that you will need to be aware of as an Executor. You should now understand what your duties are and how to apply for probate should this be necessary. It will also have alerted you to the potential liabilities you may face as an Executor if anything was to go wrong.

All the documentation you need and other information, such as the contact details of other executors and people who will need to be informed can be found in the deceased's Estate Plan. This should make the process smoother. However, it is important to bear in mind that administering an estate can be very complicated and take a long time. You can also be held personally liable if things go wrong.

If you are not sure that you are able or want to do this for any reason please do remember that the team at Moss Solicitors are here to

offer you any advice and guidance they can. Together with Woodgate Financial Planning they can also undertake the whole of the Estate Administration and Probate work on your behalf if you so wish.

As we work closely with our financial planning clients during their lives it is possible that they may have expressed the wish for us to undertake the work on their estate. Please do check their personal Estate Plan to see if this is the case. We keep very good records of clients financial affairs and this makes it very efficient for us to carry out estate administration.

Let us know if you think we can help. You can contact us on 01509 635467, or at www.woodgatefp.co.uk.

This factsheet is provided for general information only and the contents should not be construed as advice.

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