

# DUTIES OF AN EXECUTOR OF A WILL



Being an executor of a will is rarely something that is thought about until the day arrives. When writing a will, the person creating the will is asked to name one or more individuals to deal with the estate following death. This person or persons become known as the Executor(s) i.e. their personal representatives.

Not only is the Executor dealing with the complexities of this role, but they are also dealing with the passing of someone that is close to them, and it can be overwhelming

Generally, an immediate family member is appointed as Executor, and normally the conversation will happen before the persons dies.

There is no limit to the number of Executors that can be appointed, but it is always wise to appoint more than one. Therefore, the role is often shared between 2 or more people.

## DO I HAVE TO SAY YES?

Often the person making the will may ask the proposed Executor(s) if they are willing to act before naming them in the will. This can be useful to give a person forward notice, so that the nominated person can choose to accept or decline at that point. Forward notice however is not always given, so the Executor may only be informed of the role following the death of the testator (the person writing the will).

When it comes to the role of Executor, you have 3 options. You can;

- a) Accept the role,
- b) Renounce the role, or
- c) Reserve your right to act.

Although there is no obligation to accept the role, once the role is accepted and the Grant of Probate is issued, you cannot step down without an Order from the High Court. The Grant of Probate is a court document that confirms that the Executors named in the will have the authority to deal with the deceased persons estate.

Similarly, if you renounce i.e., leave the role, you may not engage as the Executor at any stage after that.

Alternatively, you may reserve your right to act. This means that you would stand aside from being actively involved. If at a later point you wish to get involved in the will, a new application to the High Court will be required.



## DOES THE EXECUTOR GET PAID?

Except for essential related costs, the role is unpaid. However, the Executor may also be a beneficiary. While they cannot delegate their authority, Executors may employ experts such as accountants, solicitors' and auctioneers to assist them in their role. Legal advice may be necessary depending on how complex the estate may be.

## 'THE EXECUTORS YEAR' - WHAT DOES THIS MEAN?

The Executor should complete their duties as soon as is reasonably practicable. Ideally, this should be completed within one year of the death and this is known as the Executor's year.

After the expiry of the Executor's year, beneficiaries may take action against an Executor who has not fulfilled its duties under the will.



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## EXECUTOR DUTIES

Typically, the duties of an Executor involve:

- Locating the will.
- Arranging the disposal of the body and funeral of the deceased.
- Collecting and listing the value of the assets (For example money, shares, property, possessions) and liabilities of the deceased. This means that you will have to make note and find details of all the assets or liabilities. Note that money could be held in bank accounts, joint accounts, credit union accounts, post office accounts, pensions etc.
- Protecting and preserving estate assets for instance by insuring land, property, jewellery etc.
- Selling assets (if supported by the majority of beneficiaries in accordance with Section 50 of the Succession Act 1965).
- Settling any outstanding claims of the deceased. For instance, if the deceased was receiving Social Welfare Payments, the Department of Social Protection must be notified of the death.
- Paying debts, taxes and expenses of the estate. Note you may have to sell assets to pay debts. Debts could be loans, overdrafts or credit cards for example, and include money owed on mortgages.
- Identifying and notifying all beneficiaries (or next of kin if there is no will). Children and spouses/ civil partners may need to be informed of their statutory rights under the Succession Act and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 )
- Most importantly, the Executor must distribute the assets of the Estate in line with the instructions of the will.

## COMPLICATIONS THAT MAY ARISE

Oftentimes in the case of very complex estates some difficulties can arise that you, as the Executor may have to deal with. For example,

- If the deceased dies in debt.
- If some of the assets or liabilities are based in other countries.
- If beneficiaries are based abroad.
- If some of the beneficiaries are pre-deceased, or difficult to locate.

Executor duties are ongoing for life. Executors are expected to act as carefully as an ordinary prudent person would take in their position. If Executors exercise due diligence and act in good faith, legal action is very unlikely to be taken against them.

An Executor is an important and often onerous role with the added complexity of mourning a loved one. It can be a lonely road, and the solicitor is there to guide and advise you on all matters in relation to the administration of the estate and will undertake all of your tasks in which they are able to undertake.

Emma Comyn, Partner at Comyn Kelleher Tobin (CKT) deals with peoples' estates from extremely complex to simple straight forward affairs every day. Emma assists clients to put their will in place.



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**Disclaimer: The information provided in this article is as a general guide only. You should contact a solicitor for legal advice specific to your situation.**

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