

What to do if you are unhappy with an Executor

An executor is the person appointed by a 'testator' in a 'testamentary document' (usually a Will) and charged with carrying out the administration of the estate on his or her death.

Executors carry out the role if the deceased left a will behind. However, if no executor is appointed, or the deceased left no will (called an 'intestacy'), the person who takes legal responsibility for administering the estate is termed an 'administrator'. In this article we refer to 'executors' throughout, but the principles are also generally applicable to 'administrators'.

The role of the executor is an important and challenging one. Difficulties often arise during the course of an estate administration due to a lack of understanding on the part of the executor as to his or her role and responsibilities. This is particularly the case with lay executors and where the estate is complex. Personality clashes and family disputes, at what can already be an emotionally charged time, will further serve to make the executorship far from smooth.

Delay, obstruction, and a failure to act neutrally are just some of the common complaints made by beneficiaries of the estate, who rely on the executors to carry the deceased's wishes into effect. There can also be friction and dissatisfaction between co-executors resulting in them being unable to properly administer the estate together. It can be frustrating to be in this position, be it as a beneficiary, a co-executor, or another interested party, but it is important to realise that the appointment and actions of the executors can be reviewed, questioned and ultimately challenged if necessary.

This information sheet considers some of the options that may be available to you if you have concerns as to the ability of an executor to perform his or her duties.

Renunciation – the executor steps down

If, following the death of the testator, an executor decides he does not want to act, or knows that he will be unable to properly carry out the role, often the best way forward is for him to renounce (ie to not formally accept) the role. In doing so, he abandons his right to the grant of probate, which is the document that gives him official authority to administer the estate. This is a step that cannot be forced upon the executor; it must be done with his cooperation, and formally, through lodging a signed document at the Probate Registry.

If an executor has taken active steps in the estate, known as 'intermeddling', he cannot then renounce. Therefore if an executor is unsure whether to accept the role, any actions in relation to the estate should be kept to those absolutely necessary and left to others where possible.

Once a grant of probate has been obtained in the name of an executor he cannot simply step down. Alternative routes must therefore then be utilised to deal with an unsuitable executor.

Citation - spur the executor into action

Where an executor unduly delays in taking out probate, an application for a 'citation' can be made to either prompt him into action or else permit another person (usually the next entitled according to the

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law) to be appointed. An executor can be compelled by the Court to take up the role, but more frequently, he or she will be replaced by the person next entitled.

Where a citation application is made, a 'caveat' should first be lodged with the Probate Registry. This puts a bar on a grant of probate being obtained, therefore preventing any other interested parties obtaining the grant, and can be removed once the issue is resolved.

Section 116 Senior Courts Act 1981 - 'Pass over' the executor

If it known from the outset that an executor is unsuitable for the role, a 'passing over' application may well be preferable to a citation which could result in an inadequate executor being compelled to act.

Under **Section 116 of the Senior Courts Act 1981**, in special circumstances the Court may appoint someone other than the nominated executor to administer the estate where it is thought necessary or expedient to do so, for instance where nominated executors are in dispute with each other or have a conflict of interest, the court may 'pass over' their entitlement in favour of someone independent.

In this situation the Court has complete discretion in selecting the appropriate person to take the grant.

Provision of accounts/ordering other steps to be taken

Issues about the adequacy of the executors might only materialise after they have been appointed and started work on administering the estate. If so, there are

alternative legal options you may wish to consider.

If you have concerns about an executor, as a starting point it may be useful to request a copy of the estate accounts. This should demonstrate how the executors have been dealing with the estate and provide clarification as to whether there are any further steps that you would need to take.

If the executors delay unreasonably or refuse to provide accounts you can make a formal application to Court for these to be provided.

This can be a helpful first step in enabling questions to be answered and potential issues diffused. However, the Court has other powers too, for example directing that an interim distribution be made.

Ultimately though, where there are major problems with the executor it may be preferable to take the more significant step of applying for their removal, either straight away or following the provision of an account.

Removal and/or replacement of the executor

Where an unsuitable executor has been appointed and will not or cannot step aside, an interested party can ask the Court to intervene and remove and/or replace them.

This is a serious step that the Court will not take lightly. However, unlike with the 'passing over' procedure as described above, if the process under **Section 50 of the Administration of Justice Act 1985** is used then there is no requirement for special circumstances, or to show that it is

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necessary or expedient to appoint an independent administrator.

The overriding principle to which the Court will have regard on such an application is whether an estate can be properly administered with that executor in place. The interests of the beneficiaries of the estate will be a key consideration. It is important to note that there does not need to have been any wrongdoing on the part of the executor. A complete breakdown of the relationship between executor and beneficiaries can be sufficient for a removal application to succeed.

Claims against an executor personally

If you discover that an executor has not been administering the estate properly and this has caused a loss to the estate, you may wish to consider proceedings against the executor personally. Broadly speaking, the claim would be on the basis that the executor has not fulfilled his duties to administer the estate and/or act in the best interests of the beneficiaries. If found liable, the executor would need to make good any loss caused to the estate.

Examples of executor breaches include:

- Selling property in the estate at an undervalue;
- Failing to dispose of wasting assets before they lose value;
- Paying out to the wrong beneficiaries or in the wrong amounts;
- Failure to act impartially between beneficiaries;

- Failure to protect the assets in the estate or investing incorrectly or inappropriately.
- Legal advice is usually required as to whether such a claim is appropriate in your circumstances and whether there are any alternative or prior actions that you should take.

Conclusion

In summary, there are various ways of ensuring an unsuitable executor does not take up or continue with his or her role. We have the expertise to guide you as to the relevant steps to take in your situation.

In many cases, potential difficulties and disagreements can be resolved through a greater level of transparency and understanding as between co-executors and between executors and beneficiaries, and we can assist in creating and developing this for you. Should more formal action be required, we can advise you on the most appropriate route and the steps that may need to be taken.

This information sheet provides an introduction to the various legal routes that may be available, however it does not constitute formal professional advice. For more comprehensive and specific guidance please contact Nicholas Horton or Amy Wilford in our Contentious Probate team on 01892 510000 or by email at:

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