



KINGS COURT TRUST
YOUR PARTNER THROUGH PROBATE

The **Executor** guide

Understanding your role



Introduction

A substantial number of people act as an Executor every year, however, many people are still unaware of the responsibilities that come with the role.

This guide aims to explain what it means to be an Executor, as well as what tasks could be involved. It will also share the risks you'll face in the role, and inform you of your options when it comes to acting as an Executor.

In this guide, we will cover:

- You've been named as an Executor: what does this mean? **Page 3**
 - > How do you know if you've been named as an Executor? **Page 3**
 - > Understanding the role of an Executor **Page 3**
- Your responsibilities as an Executor **Page 4**
 - > Case study: How to avoid a hefty Inheritance Tax bill **Page 5**
- The estate administration tasks and responsibilities required of the Executor **Page 6**
- Your options as an Executor **Page 7**
 - > Do-it-yourself (DIY) **Page 7**
 - > Instructing a professional **Page 8**
- How Kings Court Trust can help **Page 9**
- Glossary **Page 11**



You've been named as an **Executor**: what does this mean?

If you've been named as an Executor in someone's Will, you are responsible for handling that person's affairs when they die. You will be required to carry out the instructions in their Will and take care of all the legal and financial affairs that need to be handled after death.

This means dealing with all their assets (such as property, shares and personal possessions), paying debts, paying any Inheritance Tax and Income Tax and transferring the inheritance to the beneficiaries (those who are inheriting from the estate). The process of dealing with the affairs of someone who has died is estate administration.

How do you know if you're an Executor?

When someone creates a Will, they will typically inform their Executor(s) that they have chosen them. However, there are no legal requirements for the creator of a Will to inform the Executor(s).

This means that although many people are aware that they will be taking on the role of Executor in advance, there is a chance that you could find out after the person has died.

When the Will is retrieved, it may be discovered that you have been nominated for the role.

Understanding the role of an Executor

The role of an Executor is not one to be taken lightly as you are financially and legally responsible for administering the estate of the person who has died. This means that an Executor can be held accountable for any mistakes, such as distributing the inheritance incorrectly or paying the wrong amount of Inheritance Tax. The role of an Executor is an unpaid role but you may be able to claim for reasonably incurred expenses. Any expenses should be paid from the estate before distributing funds to the beneficiaries.

An Executor may also be referred to as a Personal Representative, which is the collective term for Executors and Administrators. An Administrator is an equivalent role to an Executor when someone dies without a Will.

You might not be the only Executor as up to four people can be named as Executor in a Will. It's advisable to name two Executors in a Will as one may be unable to act when the time comes. If there are multiple Executors named in the Will and more than one of you are willing to act, you can share the responsibility and handle the estate administration together. Additionally, you have the right to instruct professionals to help. This could be just to help in a specific specialist area (i.e. selling a property or obtaining the Grant of Probate) or you can pass the responsibility to a professional estate administration provider who can take care of everything.

Your responsibilities as an Executor

As an Executor, you have many responsibilities which come with a number of risks due to the legal liability associated with the role. Your responsibilities include:



Maximising the estate for the beneficiaries.



The correct distribution of the estate. This includes making sure that all beneficiaries receive their rightful inheritance.



Ensuring that all assets and debts of the deceased are identified and dealt with. Debts must be settled before distributing the inheritance to beneficiaries.



Applying for the Grant of Probate, if required.



Paying any Inheritance Tax due on the estate within the appropriate timeframes. If there are any errors on the Inheritance Tax return, the Executor(s) are personally liable and may face a fine for errors or late submission.



Ensuring that the Income Tax position of the deceased is finalised, up to the date of death and for the period post-death until payments are made to the beneficiaries.

Estate administration can be incredibly complex and these additional responsibilities can cause unnecessary stress at an already difficult time. It's important to consider the risks and responsibilities before accepting the role. You are not obliged to take on the responsibility and can renounce the role if you wish. On page 7, we explore the options available to you.

Case study: How to avoid a hefty Inheritance Tax bill



A case reported by The Telegraph revealed how a Personal Representative was left with a staggering Inheritance Tax (IHT) bill of £341,278 when he was administering a £1.2 million estate. Mr Harris misguidedly distributed the assets to the beneficiaries before all of the Inheritance Tax had been paid. He did this with the understanding that one beneficiary (who received the majority of the estate) would pay any Inheritance Tax that was still owed. However, this did not happen as the beneficiary left the country without paying, leaving Mr Harris to foot the bill.



In this case, Mr Harris was personally liable for paying any Inheritance Tax that was due on the estate, as he had taken on the financial and legal responsibility for the estate when he became the Administrator. When a Will has been left, a chosen Executor is stated and if they choose to accept the role, they will have this same financial and legal responsibility.



Executors and Administrators are by no means obliged to take on the responsibility. They have a choice of whether or not to accept the role, the right to seek advice from a professional, and can even ask a professional estate administrator to manage the estate on their behalf.



Mr Harris attempted to appeal his responsibility to pay the £341,278 owed to HM Revenue and Customs (HMRC) on the grounds that he no longer holds the estate's funds. Harris' attempt was unsuccessful as Judge Nicholas Aleksander rejected the tax appeal, stating that "Inheritance Tax is clear. It is the Personal Representatives of the deceased (in this case, Mr Harris as Administrator) who have the obligation to account for any Inheritance Tax arising in respect of the deemed transfer on death."



He added, "It is no defence to any Inheritance Tax determination that Mr Harris may have transferred the assets of the estate to a beneficiary on the basis that the beneficiary would be responsible for payment of the Inheritance Tax due. Nor is it a defence that Mr Harris was ignorant of his obligations, as a Personal Representative, to pay the Inheritance Tax owing."



This case highlights the lack of understanding amongst the public about what to do when someone dies and more specifically, the liability that is associated with administering an estate. Incorrectly distributing the assets or making mistakes whilst handling the deceased's affairs can be of great consequence, as highlighted in Mr Harris' case.

The **tasks** you could need to handle as an Executor

The role of an Executor or Administrator comes with a great amount of responsibility and takes a significant amount of time and resource. Every estate is different and the tasks that are involved in the estate administration process can vary in each case.

The list below outlines the tasks that you, in your role as an Executor, could need to handle:

Estate administration process:

- Register the death
- Arrange the funeral



If there is a property:

- Source specialist buildings insurance
 - Arrange clearance of the property
 - Contact utility companies
 - Obtain property valuation (if applicable)
 - Obtain contents valuation (if applicable)
 - Arrange postal redirection
 - Maintain the property to a high standard
 - Arrange to transfer the property into the name of the beneficiary(s) or, arrange the sale of the property
-
- Value the assets and debts
 - Recreate a family tree if needed, especially if there is no Will
 - Apply for the Grant of Probate (or Confirmation in Scotland)



Complete the relevant Tax forms:

- Complete relevant Inheritance Tax forms and any subsequent forms that may be required
 - Correctly calculate any Inheritance Tax that could be payable
 - Ensure the Inheritance Tax is paid within the HMRC guidelines
 - Complete Income Tax work for the year of death and for the period post-death
 - Review the estate for Capital Gains Tax
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- Set up any Trusts that may be in a Will
 - Sell or transfer shares
 - Settle all debts
 - Distribute funds to beneficiaries and obtain confirmation of funds received
 - Produce a set of accounts to confirm the values of assets and debts as at the date of death, any income received, and the amounts paid or transferred to the beneficiaries

As you can see from the list above, the role of an Executor can involve a vast number of tasks which need to be attended to and it can be a timely process administering an estate. On average, it takes around 12 months to complete the estate administration.

Your options as an Executor

If you've been named as an Executor, you are by no means obliged to take on the responsibility. You have a choice of whether or not to accept the role, the right to seek advice from a professional, and can even ask a professional estate administrator to manage the estate on their behalf. Let's take a look at your options...

① Do-it-yourself (DIY)

The first approach is to take on the responsibility of administering the estate yourself. This could mean completing the process by yourself or with other Executors.

With the DIY approach, there is potential for you to save estate money whilst remaining in full control. This method can suit those who have the time on their hands and understand the legal jargon.

However, this method has plenty of hindrances and risks. It can be time-consuming, it requires a large amount of paperwork, you're faced with the legal and financial responsibility for administering the estate correctly, expertise is required as it is not an easy task, and plenty of research is likely to be involved.

We would only advise you to take this approach if you were extremely confident about completing the necessary tasks.

② Instructing a professional estate administration provider

On the contrary, the next approach you can take is instructing a professional estate administration provider to take care of everything. You can put the estate in the hands of experts who are experienced in dealing with estate administration.

Professionals who offer an estate administration service may include solicitors, Will writers, financial advisers or companies that specialise in offering estate administration (including ourselves at Kings Court Trust).

Before instructing an estate administration provider, you should consider the price, service offering, regulation and who holds the legal and financial responsibility.

Instructing a **professional** estate administration provider



Price

There are three main charging methods that estate administration providers tend to use. They may provide you with a price for the service upfront, offer hourly rates or charge a percentage of the estate.

Hourly rates and a percentage of the estate can mean that the total price is unknown as you may not know how many hours it will take or what the estate value is. Make sure you understand the price you've been quoted – find out exactly what is and what is not included.



Service

What is included within the service can vary between estate administration providers. Some providers will only obtain the Grant of Probate but others may take on more tasks. We advise asking exactly what tasks they will undertake and whether you'll be required to handle anything yourself.



Regulation

It is advisable to check whether the estate administration provider you are considering is regulated to provide estate administration services. Some regulated firms will inform you of what they are proposing to charge upfront as regulation rules require legal professionals to be transparent about the price.



Legal and financial responsibility

The legal and financial responsibility of estate administration usually falls to the Executor or Administrator. This means that if the estate was incorrectly distributed they would be personally liable. However, some estate administration providers may take on this responsibility. Find out if you would still be financially and legally liable if something was to go wrong.



How **Kings Court Trust** can help

Whether you want a professional to just take control of the probate application process or handle the entire estate administration process, Kings Court Trust has a variety of solutions to support you.

We specialise in providing probate and estate administration services to people all across the UK. We can take care of all the complicated matters after death so you can focus on life's important moments.

Four solutions for the probate and estate administration process:

1 Grant only

We can obtain the Grant of Probate on behalf of the named Executor or Administrator. This allows the Executor and Administrator to collect in funds, pay any outstanding debts and then distribute and/or transfer the assets to the beneficiaries.

2 Grant and assets

As well as obtaining the Grant of Probate, we can take on the task of dealing with a maximum of three assets (excluding property) that are held in the sole name of the deceased. We can collect in and pay, or transfer up to three assets to a maximum of two beneficiaries.

3 Grant, Trusts and property solutions

We can obtain the Grant of Probate as well as offering one of the following Trust and property solutions:

- **Transfer of property**
If the deceased's solely owned property and this is to be transferred to beneficiaries, we can assist by preparing the paperwork.
- **Trust of property**
If the deceased's Will contains a Trust of property, we can formalise the Trust to protect the interests of the ultimate beneficiaries.
- **Nil Rate Band Discretionary Trust**
If the deceased's Will contains a Nil Rate Band Discretionary Trust, we can formalise the Trust to protect the interests of the ultimate beneficiaries.

4 Full estate administration

Full estate administration is our most comprehensive solution where we'll take care of all the tasks associated with handling a person's affairs after they've died.

This includes dealing with all their assets (such as property, shares and personal possessions), paying debts, paying any Inheritance Tax and Income Tax and transferring the inheritance to the beneficiaries of the estate.

Kings Court Trust's full estate administration service is well-established and has been on offer to families since the company was founded in 2002. We've assisted on over 35,000 estates either by taking care of the entire estate administration process or providing their specialist services on complex estate administration cases.

This is the only option where Kings Court Trust will take the legal and financial responsibility off the Executor or Administrator's shoulders and put the onus on ourselves. This means that the Executor or Administrator will not be liable if anything was to go wrong.

“An excellent professional service which took the stress away from me and my brother by having a brilliant Personal Estate Manager to deal with our mum's estate. We were updated regularly on the progress of each stage that had to be completed, and all our emails were responded to quickly. They give you a fixed fee quote to carry out the work so you know exactly how much it will cost, and their fees are very reasonable. They completed all the work a lot quicker than we thought by finalising the estate accounts and distributing the funds in less than a year (nine months to be exact).”

M Snell, TrustPilot review, March 2019

Glossary

Administrator

A person (usually next of kin) who is authorised to deal with an estate when someone dies if they have left no Will

Beneficiary/Beneficiaries

A person or entity who benefits from the estate, Trust or Life Assurance policy

Capital Gains Tax

Capital Gains Tax is a tax on the profit when you sell (or 'dispose of') something (an 'asset') that's increased in value

Confirmation

The legal document in Scotland which is issued by the court to give the Executor(s) authority to administer the estate

Estate administration

The process of handling a person's legal and tax affairs after they have died

Executor

The person named in the Will who is appointed to deal with an estate when someone dies

Family tree

Genealogical data presenting the generational makeup of a family

Grant of Probate/Representation

A generic term for the document that the Probate Registry issues authorising the named Executor(s) or Administrator(s) to act on behalf of the estate

Income Tax

A tax imposed on individuals or entities that vary with respective income or profits and may be paid by the estate

Inheritance Tax

A tax on the estate (property, money and possessions) of someone who's died

Nil Rate Band Discretionary Trust

A Trust used in estate planning to reduce liability to Inheritance Tax on the death of a surviving joint proprietor

Personal Representative

The term used to describe both Executors and Administrators

Trust

The Trustees are the legal owners of the assets held in Trust. Their role is to deal with the assets according to the Trust Deed or the terms of the Trust that may be within a Will

Will (formally known as Last Will and Testament)

A legal document by which a person, the testator, expresses their wishes as to how their property and wealth are to be distributed at death

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 **KINGS COURT TRUST**