

Removing an Executor

What is an executor?

An executor is a person or people appointed under the terms of a Will to administer a **deceased's estate**.

In broad terms, the executor will undertake tasks such as liquidating assets, transferring or selling property, discharging liabilities and arrange for the distribution of the estate.

Depending upon the nature of the estate the role of an executor may be straightforward or extremely complex.

Ideally, when a person is preparing their Will they will appoint somebody who can be trusted to administer the estate appropriately and in a timely manner. Unfortunately, this is not always the case. In this article, Sam Dale, an Inheritance and Estates Disputes expert, considers what options are available to beneficiaries of an estate when an executor is not acting appropriately.

The executor does not apply for a Grant of Probate

Often to administer an estate, the executors need to apply for a Grant of Probate (You can read about how to do this [here](#)). A Grant of Probate permits the executor(s) to deal **with the deceased's assets**.

If an executor has not applied for a Grant it should be ascertained whether they do not want to deal with the estate. If this is the case then the executor may be prepared to renounce probate. This will effectively bring their involvement to an end as executor allowing, for example, a substitute executor appointed in the Will to apply in the alternative.

If the executor does not apply for probate but also refuses to renounce then a beneficiary may want to look to remove said executor as detailed further below.

The executor is dealing with the estate inappropriately

Once an executor has obtained a Grant, a beneficiary may have concerns with regard to **said executor's conduct in dealing** with the estate.

In such circumstances it is possible for a beneficiary to apply to the Court to substitute or remove an executor. However, Court proceedings should be a last resort.

A Court will not typically remove an executor simply because there is disagreement between the executors and beneficiaries. The issues a beneficiary could raise in an application to the Court include:

- Disqualification of the executor – this would apply if the executor had been convicted of a crime and sent to prison;
- The executor is incapable of performing their duties – this might be due to a physical or mental disability;
- The executor is unsuitable for the position – for example if there had been serious misconduct on the part of the executor, if there was a conflict of interest or if the executor fails to keep accounting records.

How to remove an executor

The executor must first write to the executor. In the case of an executor not dealing with the estate appropriately after the Grant, this may be to ask them to justify their actions.

If a satisfactory response is not received, the aggrieved beneficiary can make an application to the court to remove or substitute the executor.

Any such application would be to the High Court and must include a witness statement setting out the reasons why the removal or substitution of the executor is being sought, a certified sealed copy of the Grant of Probate and a Witness Statement stating that the proposed executor is appropriate to act in their place (if applicable).

Costs of Court Proceedings

Beneficiaries may be concerned with the costs associated with bringing a claim to Court for the removal of an executor and, in particular, who would be liable for the costs the parties have incurred.

The Court has discretion as to whether costs are payable by one party to another, the amount of said costs and when they are to be paid.

If the Court makes an order for costs, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party. However, the Court has discretion to make a different order so this is not guaranteed.

Indeed, there are special provisions when dealing with costs of trustees and personal representatives (which includes executors). Said provisions state that the general rule is that an executor is entitled to be paid the costs of those proceedings, insofar as they are not recovered from or paid by any other person, out of the estate.

In summary, there is no guarantee that the executor would be personally responsible for the costs of any action to remove said executor albeit this is considered on a case by case basis.

How Butcher & Barlow can help?

The removal of an executor is a complex area of law and significant unnecessary costs can be incurred by parties if they fail to advance their claim in the correct manner and/or without merit.

It is therefore strongly advised that beneficiaries seek independent legal advice before taking any action to remove an executor.

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