

Appointing Executors and Trustees

Executors and Trustees carry out important legal roles in relation to Wills and trusts. With these roles come several significant powers and obligations. When making a Will, you will have to decide who to appoint as your Executor(s). This is a decision which deserves careful consideration. Your Executors will be a key part of the process by which your property is dealt with and passed on to your loved ones after you are gone.

Appointing Trustees may not be necessary for everyone. You will only need to do so if you create a trust during your lifetime, or if the terms of your Will creates any trusts. However, it is still crucial to appoint the right people as Trustees to correctly hold and manage the trust property and to ensure the trust operates effectively.

This help guide provides an overview of Executors and Trustees and gives guidance on how you can go about appointing the right people to fulfil these critical roles.

Executors

What does an Executor do?

Executors have two broad areas of responsibility. They must:

- Deal with your assets after you pass away; and
- Put the terms of your Will into effect.

Dealing with your estate

Your estate is formed from the assets you own when you pass away. There are detailed rules as to what will and will not be considered a part of your estate, but it will include your money, property, possessions, shares etc. In addition, your estate will include any debts and other liabilities which you owe at the time of your death.

It is your Executors' responsibility to collect and manage everything which makes up your estate. This will involve taking control of all your various assets, calculating any debts and liabilities, and assessing the total value of your estate. Your Executors must then submit this information to HMRC and arrange payment of any applicable tax, such as Inheritance Tax.

All of this can be an involved and time-consuming process, especially if your estate is large or contains various or 'complicated' assets.

'Executing' the terms of your Will

Once HMRC has been informed of the estate's value, your Executors can apply for a grant of probate. Only after they have received the grant can the Executors go about distributing your estate assets according to the terms of your Will.

Distribution of the estate will also mean settling the estate's debts. You should be aware that, in some circumstances, if an Executor does not do this correctly, they may be responsible for paying some estate liabilities personally. For example, if an Executor has distributed the estate completely but some Inheritance Tax remains owing, if they cannot recover the money from the beneficiaries, they will have to pay HMRC themselves.

Who can be appointed as an Executor?

There are only two restrictions upon who legally can be appointed as an Executor. They must be:

- Of sound mind; and
- Aged over 18.

There is nothing to prevent you from appointing someone who is also a beneficiary under your Will to be an Executor.

It is also possible to designate a corporate entity as your Executor; for example, [a firm of solicitors](#).

However, there are many other things to consider when choosing the right people to be your Executors. These are explored later in the help guide.

How do I appoint my Executors?

Your Executors are appointed by your Will. It is simply a case of stating specifically whom you wish to act as your Executors. As with all terms in a Will, it is important that these terms are very clear to avoid the appointment from failing due to uncertainty.

You can appoint a single Executor or more than one Executor. That said, we don't usually recommend having more than four Executors for practical reasons. However, it is usual to appoint at least two as this avoids any difficulties which may arise if a single appointed Executor is unable to carry out their duties.

It can also be a good idea to specify a 'backup' Executor or Executors if your first choice(s) should be unable to take on the role. For example, your intended Executors might die before you or be unable to conduct their duties due to health reasons.

Trustees

What does a Trustee do?

When you create a trust, either in your Will or during your lifetime, you will place assets into the trust (the trust property) to ultimately benefit the people you have chosen as beneficiaries.

Your trustees will have two general areas of responsibility:

- To hold the trust property and preserve its value; and
- To adhere to the terms of the trust – essentially ensuring that the trust fulfils its purpose.

There may be many different reasons for setting up a trust, and various kinds of trust exist to fulfil these different purposes. The specific powers and obligations which Trustees have may vary considerably between trusts.

Trusts are such a huge topic that they are beyond the scope of this help guide. However, more information can be found in our help guide on trusts.

Who can be appointed as a Trustee?

You can appoint anyone 'suitable' and over the age of 18 to act as a Trustee. You may also appoint a company or corporate entity as a Trustee if you wish.

Whilst there is no legal restriction on appointing a beneficiary as a Trustee, you should be careful when doing so. In some situations, this could render the trust's objectives invalid.

How do I appoint my Trustees?

Where your Will sets up a trust, or trusts, you must appoint the Trustees in your Will. These terms must clearly indicate who is to be appointed to avoid the appointment, and possibly the trust itself, from failing due to uncertainty.

For trusts set up during your lifetime, you will appoint your Trustees in the trust deed – the legal documentation which creates the trust. Deeds may also be executed to appoint or remove trustees whilst the trust is ongoing.

Ordinarily, a maximum of four Trustees can be appointed. A single Trustee can be appointed but it is usually recommended that you appoint at least two. Not only does

this avoid problems when a single Trustee is unable to conduct their duties, if the trust property includes any land, at least two Trustees will be needed for legal reasons.

Choosing your Executors or Trustees

The appointment of Executors and Trustees demands careful consideration. Unsuitable appointments could lead to disruption in the administration of your estate or the management of a trust. In rarer circumstances, mismanagement could result in costly legal disputes, reducing the value of your estate or the trust property that is passed on to the beneficiaries.

When looking at appointing an Executor or Trustee, it may help to follow these steps:

- **Consider who to appoint** – Think about all the people you could appoint and what positive or negative points there may be to choosing them. Some of the potential considerations are detailed below.
- **Discuss your intentions** – Making your chosen Executors or Trustees aware of your intentions and discussing it with them can make their appointment much easier. Firstly, they will not be surprised when they are called to take on the role, but they may also make you aware of positive or negative points which you did not know about. It is worth noting that Executors are free to renounce their appointment in writing if they do so before taking any action in relation to your estate, so it's worth checking with them first that they are happy to act.
- **Arrange the formalities** as soon as possible – An appointment will not take effect unless it is reflected in the right legal documentation. This step is vital in giving effect to your intentions. It could mean making a Will, changing an existing Will, making a trust deed or appointing a new Trustee to an existing trust.

Executors and Trustees

If you need to appoint both Executors and Trustees in your Will, it is common to appoint the same people to carry out both roles. This arrangement is often very practical and should not cause any difficulties. However, you could say that this makes your choice of who to appoint doubly important!

Who should I choose?

You should consider the personal qualities of the person you intend to appoint as an Executor or Trustee:

- Are they reliable and trustworthy?
- Do you think they would do a good job?

- Do they have the time, energy, and skills to carry out the administrative duties and other obligations which the role entails?

Perhaps less obvious, but still an important consideration, is the relationship of your Executor or Trustee to the beneficiaries of your Will or trust. If they are not on good terms, or their appointment itself may cause discord, it may be preferable to appoint someone else to avoid the possibility of dispute. Alternatively, you could appoint a professional (e.g. a solicitor) instead of, or as well as your other Executor(s), to act as a neutral third party.

You should also consider the complexity of your estate or the trust. A large estate or trust, containing many valuable assets – perhaps with some in different countries – will often represent a much greater administrative challenge. In these situations, it may be advisable to appoint a professional Executor or Trustee to assist.

It is recommended to appoint at least two people to act as Executors and/or Trustees. This brings with it the added consideration of whether your chosen Executors or Trustees will be able to work together effectively.

An ongoing decision

As with any part of your Will, you should keep your choice of Executors (and Trustees if you have them) updated to reflect changes in your life. If your circumstances have changed, your choice may no longer be as suitable as when you first made it.

Some life events may also render your choice invalid. For example, if you appointed your spouse or civil partner as an Executor and your marriage or civil partnership is later annulled or dissolved, the appointment will no longer take effect.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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