

Removing an Executor from post. Can you, Should you?

Our Private Client Solicitors are specialists in dealing with Probate and we aim to offer an economic, personal and compassionate service to our clients.

Being an Executor is an important role both for ensuring that the wishes of the person who died are carried out but also for ensuring that all the administration associated with dealing with someone's estate is correctly managed. It is a job that is often given to close family and friends who may also be significant beneficiaries as well. It is precisely because of these things that problems can occur. Sometimes those problems need legal intervention.

The sole Executor appointed in the Will may now be quite elderly; or live abroad, or be in poor health but still determined to fulfil the obligation given to them when the Will was made many years ago. Note – review your own Will from time to time to make sure it is all still relevant.

If that Executor is not coping with the job but refuses to accept that problems are escalating, a beneficiary can make an application to the Court for them to be replaced. The procedure differs depending on whether the Grant of Probate has been obtained or not.

If the Grant has not yet been obtained the application is to the Probate Registry or a Judge at the Principal Registry requesting that someone other than the person entitled be appointed. The Court can only appoint someone else if "special circumstances" can be shown. This includes situations where the party entitled under the Will is considered unfit or inappropriate to act, and would put the estate at risk, due to e.g. poor previous financial dealings, mental health problems, bankruptcy etc.

If the Grant has been obtained then the application is

sent to the Chancery Division of the High Court and must include evidence of what the executor is doing improperly/not doing properly along with details of who you want to take over, their consent to take over and evidence of their fitness to do so. There is a detailed list of information which must be provided and these are only some of them.

These procedures can also be used when you have two or more Executors at deadlock. This is unfortunately not an uncommon situation when adult siblings are appointed and have very different views about what should happen to assets. In such circumstances it is likely a Court will decide to remove all the deadlocked executors and appoint professional executors in their place.

Even if the Executors have appointed Solicitors to deal with the administration of the Estate, problems can and do occur. The Solicitors have to take instructions from the Executors and if they are in disagreement or completely deadlocked, the Solicitor cannot choose which of them seems more reasonable. Unless the instructions are the same, the Solicitor will have to refuse to act on them. Beneficiaries often get very frustrated about this and demand the Solicitor to go ahead disregarding the "unreasonable person". That cannot be done, and in serious cases it falls on one or more of the beneficiaries to apply to the Court to get the deadlocked Executors removed.

Sometimes the dispute between co-Executors or between Executor and beneficiaries is limited to a particular issue. It is possible to bring that one issue to the attention of the Court and ask the Court for directions on that issue. This can include e.g. asking the Court to determine the method of investment of a particular asset; whether a claim against the Estate should be settled in a certain manner; whether a doubtful debt should be paid etc.



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The overriding point is that the Court will always expect people to behave reasonably and if it has to get involved there will be additional costs. Those costs may be ordered to be paid out of the Estate, thereby reducing the shares the beneficiaries receive. However if the Court decides one party has been wholly unreasonable, it may order that individual to pay the costs incurred in getting the matter determined by the Court.

Applications to remove an Executor should not be undertaken lightly. It will inevitably increase costs and delay the distribution of the Estate to beneficiaries. Obtaining legal advice before any precipitous steps are taken is essential. Normally the warring parties are family members and relationships rarely survive the raw emotion and allegations that these sorts of disputes produce.

For further information, contact one of our Family Law Specialists on 0118 977 4045.



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