

Choosing Executors, Trustees and Attorneys

1. Executors

What is an Executor?

An Executor is a legal term referring to a person nominated by the Testator (the person making the Will), to carry out the directions of the Will. Their duties include distributing property or money to the beneficiaries, obtaining information of potential heirs, collecting and arranging for payment of debts and taxes, and approving or disapproving creditors' claims.

An Executor has to calculate any estate taxes such as Inheritance Tax or outstanding Income Tax, complete the necessary forms and make tax payments if any. In most circumstances, the Executor is the representative of the estate for all purposes, and has the ability to sue or be sued on behalf of the estate. The Executor holds legal title to the estate property, but may not use the title or property for his/her own benefit, unless otherwise permitted by the terms of the Will.

In most cases, you should appoint two Executors and at least one replacement should your main choice be unable or unwilling to act.

Who can I choose as my Executors?

Anyone over the age of 18, of sound mind and not in prison, can be an Executor. Your children can be appointed as Executors, but they cannot act until they are 18 years old. Your Beneficiaries can also be Executors. In most cases, people appoint their spouse, partner, children or siblings.

You need to be practical and try to appoint people who are younger than you and live within a reasonable distance, although neither of these points should get in the way of appointing people who you trust. Unless your affairs are particularly complex or you are excluding people who might think that they have a claim on your estate, then in general terms there is no need to appoint a professional adviser such as an accountant or solicitor. If your executors need help, they can always ask for it at the time.

2. Trustees

What is a Trustee?

A Trustee is someone who is given legal responsibility to hold property in the best interest of or for the benefit of someone else. As the name implies the Trustee acts under a "Trust" to do what is best and to act in the interests of others (the beneficiaries) and not themselves.

What are their Powers?

Trustee Powers are set out in the Trustee Act 2000 and provide the framework within which Trustees must act. The main purpose of the Act is to restrict the powers, but in many areas, the statutory powers can be extended or the restrictions reduced.

Trustees are appointed both privately and by law. For example, Trustees will be appointed to look after any money belonging to a person unable to look after it for themselves - through old age, or injury or infancy say, as well as having to wind up the estate.

Who can I choose as my Trustees?

In almost every case, the Trustees and Executors are the same people, although sometimes Testators appoint a different set of people to be Trustees; for example, when considering a Discretionary Trust for grandchildren say or those with special needs or a disability.

You need to name at least two Trustees, but can name up to four, and again, we would recommend that you name at least one reserve Trustee in case your first choice is unable or unwilling to act.

All named Trustees must be over 18. Again, unless your affairs are particularly complex, then in general terms there is no need to appoint a professional adviser such as an accountant or solicitor. If your Trustees need help, they can always ask for it at the time.

3. Attorneys

What is an Attorney?

Being an Attorney is an important role. If you ever lost mental capacity, your Attorney would make decisions on your behalf, so again, it is important that your Attorney is someone you trust. You need to be sure that the person you choose knows you well enough to make decisions on your behalf that are in your best interests. You must make sure that they are happy to take on the role. You may wish to name different attorneys for your business assets and your personal assets, or for your property and finance dealings and your health and welfare.

Who can I choose as my Attorneys?

Your Attorney(s) can be anyone aged 18 or over, for example: - a family member, a friend, your spouse, partner, or civil partner. In most cases, your Attorney(s) will also be your Executors and Trustees.

You cannot choose anyone who is under the age of 18, lacks mental capacity or is an undischarged bankrupt. If an Attorney becomes bankrupt after the Power of Attorney has been registered, they will not be able to act and the Power of Attorney may be cancelled.

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