



THE ROLE AND DUTIES OF AN EXECUTOR/ADMINISTRATOR

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The role of an executor/executrix or administrator is a personal one, in that you are appointed either by a will or by the court to administer the estate of a deceased. A person appointed to this role under a will is called an executor or executrix, whereas if a person dies intestate i.e. dies without leaving a will, the Royal Court will appoint an administrator. The role and duties of an Executor and Administrator are identical, save for the fact that an Executor is appointed under a will.

Under Jersey law, an Executor is only required for your will of **movable estate** (personal estate): cash in your bank accounts, shares (including shares in a share transfer property), units in trusts, cars, jewellery etc) and not for your will of **immovable estate** (real estate): land, freehold property, leases of over nine years) as when you die, the will of immovable estate is simply registered in the Public Registry for it to take effect.

When a person dies testate i.e. with a will, and has appointed an Executor under his will, a grant of probate will be obtained. When a person dies intestate, a grant of letters of administration will be obtained.

Where an Executor is named in a will, he/she is entitled to prove the will before all others, including the heirs at law of the deceased. Under the Probate (Jersey) Law 1998, an Executor must apply to the Royal Court for probate of the deceased's will. In order to do so, the Executor will require the following:

1. original will of the deceased;
2. the death certificate; and
3. the value of the estate as stamp duty will need to be paid on the value estate.

Stamp duty is calculated by taking the gross value of the estate less any liabilities which may be due e.g. outstanding care fees, medical bills, tax etc.

In order for the Administrator to order to obtain letters of administration, he will require the following:

1. an affidavit confirming that he is the principal heir of the deceased and as such is the person entitled to administer the estate;
2. the death certificate; and
3. the value of the estate as outlined above.

Under Jersey law, an Executor is only required for your will of movable estate... not immovable estate

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Under the Law, the Executor swears that he will well and faithfully uphold and carry out the contents of the will, it therefore stands to reason that as acting as an Executor your duties are to the beneficiaries of the estate and the same applies to an Administrator.

Once probate/letters of administration has been obtained, it is the duty of an Executor/ Administrator to:

1. gather in the assets of the deceased; and
2. pay all outstanding liabilities that may be due.

Once this is complete, it is the duty of the Executor to divide the assets of the estate in accordance with the terms of the will, or in the case of an Administrator, in accordance with the provisions of the law.

Unlike in the UK, under Jersey law there is no provision for a small estates procedure therefore, for Jersey residents, a grant of probate or letters of administration will be required for any sums held by the deceased, including a Co-Op share account, personal allowance held by a care home or even to pay off debts due by the deceased. The one exception to this is where the assets of the deceased are held joint and for the survivor with another individual. In this case, and under the system of *ius accrescendi*, the assets will automatically pass to the surviving party however; this is subject to certain provisions of Jersey law e.g. *légitime* and *rapport* – please contact us for further advice on these matters.

Under Jersey law, the year and a day rule is important for the Executor, and there are certain aspects of the rule that an Administrator should be mindful of. There are several features to this rule:

- The period under which challenges can be brought against a will is a year and a day from the issue of the grant
- All legacies under the will should not be paid until a year and day after probate has been obtained as a will may be challenged during this time
- It is during the year and a day period that an Executor can apply to the court for directions in respect of the will e.g. if there is any ambiguity in the will
- Following the expiration of the year and a day, the Executor must distribute the estate in accordance with the will and give a good account of the estate to the beneficiaries.

Should any individual who is not the Executor or Administrator of the estate and who has not obtained probate or letters of administration take possession of, or deal with the estate of the deceased, he or she may be guilty of intermeddling which is an offence under the Law and may be liable to a fine and/or imprisonment.

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