

What shall we do with the **wayward executor?**

A role not to be taken lightly. By **Debi Godwin**, Director - Independent Executor & Trust.



One of the more frequent issues on which I have recently been consulted is the problem executor. This can range from the overwhelmed executor who is innocently delaying the administration of the estate to the more troubling cases where one suspects deliberate subterfuge.

An executor is a person placed in a position of trust and control by a testator. They are given the responsibility of dealing with a person's estate after they have passed away. This will normally require them to apply for Letters Of Executorship; submit any tax returns and pay any tax due; gather in the deceased's assets (perhaps selling shares or property in the process); pay the deceased's debts; and then to distribute the estate in accordance with the terms of the will. The role of an executor is, therefore, not one to be taken lightly. If not done properly, it can attract a personal liability to make good any loss to the estate.

Each administration is different and timescales depend on a multitude of factors. Communication is key. In an ideal world, an executor will keep beneficiaries informed of progress and be transparent. If an estate administration seems to be taking too long, as a first step consider approaching the executor to ask the reason behind the delays; there may be an innocent explanation. However, in a minority of cases, there are those who refuse to correspond with beneficiaries, answer their questions, or deal with the estate administration as they should. In those circumstances, a beneficiary will understandably want to take some steps to ensure matters are

properly progressed.

There are also some cases in which the executor is up to no good, perhaps benefitting himself from the estate or siphoning off assets. The good news is that there options available to the beneficiary dealing with a wayward executor. The court has the jurisdiction to intervene and make orders compelling an executor to take certain steps, or desist from taking a particular step. This can be enough to allow the estate administration to be finalised. An alternative option is to apply to have the problem executor removed and replaced with a more suitable candidate. Again, the court has the discretion to do so and will consider the facts of each individual case to determine whether such a step is appropriate.

Where a beneficiary suffers a loss as a result of an executor's improper conduct, steps can be taken to seek to recover that loss. However, the above options involve litigation and the attendant costs and risks. It is therefore important to obtain specialist legal advice when considering taking steps to deal with an ineffective, difficult or obstructive executor to ensure that the course of action is appropriate for the individual circumstances. ⊕



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