



1) What Is an Executor of a Will?

When a person signs a will, they name someone they trust to be the executor of their estate. Executors are responsible for everything from filing the will with the probate court to litigating, if the interests of the estate are at stake. They are bound by the terms of the will and have little discretion in determining who gets what.

While almost anyone can be named as the executor of an estate, it is usually a trusted family member, a friend of the decedent or a professional third party.

2) What Is an Administrator of the Estate?

In situations where a decedent dies without having signed a valid will, a will fails to nominate an executor, or the individuals designated as executors are unable or unwilling to serve, the court will appoint a responsible party known as an "administrator." The role of an administrator of an estate is the same as that of an executor, despite their different titles.

Only certain persons identified by statute – typically, the decedent’s surviving spouse or another close family member of the decedent – can act as the administrator of an estate. If there are multiple parties vying for an appointment as administrator, statutes may govern priority of appointment.

While the differences between executors and administrators are subtle, they are important to keep in mind if you have been appointed to either of these roles.

	Executors	Administrators
Method of Appointment	Executors of estates are named by decedents in their wills.	Administrators of estates are appointed by the court when a decedent dies without having executed a valid will or where an existing will does not name an executor.
Making Distributions	When making distributions, executors must distribute the assets to the named beneficiaries of the will, so long as the will is valid.	If the decedent died intestate (without a will), administrators must distribute the decedent’s assets to the decedent’s heirs, who are identified by intestate succession statutes.
Place of Residence	Executors can reside practically anywhere.	The court is unlikely to appoint an administrator of the estate who lives outside the United States.

3) Executor vs. Trustee

Executors deal in wills and manage estate assets, while trustees deal in trusts and manage trust assets. It’s as simple as that.

Sometimes, decedents die with a unified estate plan consisting of both a will and trust. Unless there are disputes about which assets belong to the estate and which belong to the trust, there will be little to no overlap between the two roles, even if the executor and trustee are the same person.

Other key distinctions between executors and trustees to keep in mind include:

- The job of an executor ends once the property held by the estate has been distributed.
- The job of a trustee may be ongoing, depending on the terms of the trust.
- The job of an executor starts once the creator of the will dies.
- The job of a trustee can start while the creator of the trust is living or after they have passed.

4) Duties of Executors and Administrators of Estates

It is crucial for administrators and executors of estates to have a firm understanding of what is required of them. Failing to complete any duties or completing them improperly could have serious financial consequences, especially if their mistake – regardless of whether or not it was intentional – caused damage to the estate.

Administrator and executor attorneys can help ensure the administration process progresses smoothly. If any disputes arise, they can help resolve them through litigation or other means.

5) What Are the Responsibilities of Administrators and Executors of Estates?

The most important duty of executors and administrators is their fiduciary duty to beneficiaries. This means that every action they take on behalf of the estate – whether it be selling property or litigating – must align with the beneficiaries’ best interests.

Other duties of executors and administrators of estates may include:

- Making funeral arrangements for the decedent
- Determining whether probate is necessary
- Obtaining a copy of the will to submit to probate court
- Notifying beneficiaries, creditors and other interested parties about the decedent’s death
- Creating an inventory of the estate’s assets
- Marshalling and managing a decedent’s assets

- Providing accountings to beneficiaries
- Paying the decedent's taxes and debts, and addressing creditor's claims
- Distributing the decedent's property to beneficiaries
- Litigating on behalf of the estate (if it becomes necessary to do so)

Depending on the size and overall complexity of an estate, an executor or administrator's job can range from being relatively easy to extraordinarily difficult.

6) Powers of Executors and Administrators of Estates

Administrators and executors must walk a fine line between taking decisive actions to benefit the estate and overstepping their boundaries. An administrator and executor lawyer can counsel executors and administrators about what they can and cannot do to ensure their decisions regarding the estate don't come back to bite them later.

7) What Is an Administrator or Executor of the Estate Permitted to Do?

Because executors of wills have a great deal of discretion in estate matters, it is important for testators to designate an executor whom they trust. There are many powers executors have that even beneficiaries can't take away.

The powers of executors and administrators of estates include, but are not limited to:

- The right to liquidate estate assets to pay debts, taxes and other expenses
- The right to use estate funds with prior court approval to hire third-party professionals (e.g., lawyers, financial advisers) to assist with duties
- The right to be reimbursed for any expenses personally incurred in relation to the estate
- The right to be compensated for the time and effort spent administering the estate
- The right to reject the appointment or to resign

8) What Is an Executor of the Estate Forbidden from Doing?

There are several things administrators and executors must remain mindful to never do, no matter the circumstances of the situation. A costly legal battle holding the executor of the will personally liable could result if any of these guidelines are breached.

An executor of estate can never:

- Alter the will instrument
- Sign the will for the testator
- Stop beneficiaries from contesting the will
- Execute the will before the testator has died

If any confusion exists as to what your rights are as an executor or administrator of an estate, it is crucial you consult with an administrator or executor attorney to be provided clarification.

9) When Are Executors and Administrators Required to Involve the Court?

If a decedent dies with a will, the person whom they designated to be the executor of their estate should submit their will for probate and petition the court to be. Besides these preliminary steps, executors and administrators may have to report to the court for the following:

- To obtain permission for selling a decedent's real estate
- To obtain permission for selling a decedent's property at less than market value
- To provide a final accounting and close the estate
- To compensate the estate's legal counsel from estate assets
- To compensate the executor or administrator from estate assets
- To address any estate disputes that arise

10) Are Administrators and Executors of Estates Entitled to Compensation?

Because it is hard work to be the executor or administrator of an estate, most states entitle executors and administrators to be paid for their time.

In California, administrators and executors are compensated for "ordinary" services (i.e., services that are generally required in estate administration) according to a statutory formula that is based on the value of the assets in the estate.

For "extraordinary" services rendered to an estate (i.e., services that go beyond those that are ordinarily required), such as litigation and the sale of real estate, the court has discretion to award additional fees, which are usually based on the time expended by the executor or administrator, the difficulty of the work performed and the result of the services rendered, among other factors.

11) Are Executors and Administrators Permitted to Sell the Decedent's Property?

Executors and administrators are generally permitted to sell a decedent's property as part of the administration process. In certain circumstances, the executor or administrator has common reasons for selling property include:

- The estate does not have sufficient funds to pay off the decedent's debts, taxes and other expenses.
- The terms of the will state that a certain piece of property is to be divided among beneficiaries and it is impossible or impractical to do so without selling the
- The terms of the will designate a certain piece of property for sale.

Executors and administrators should consult with an administrator or executor attorney before selling any of the decedent's property to ensure the sale is lawful and in

12) Can Executors and Administrators Reject Their Appointment or Resign After the Process Has Started?

Executors and administrators have a right to turn down their appointments or step down from their roles at any time.

If a proposed executor or administrator wants to decline to act prior to being appointed, they simply have to submit a form to the court stating their wish to not be named as the executor or administrator.

If an appointed administrator or executor seeks to step down from their role, they generally must petition the court in order to resign and have a new executor or administrator appointed.

If the executor resigns and the decedent had named an alternate executor in their will, that person will have the opportunity to step in. If an alternate executor has not been designated, the next of kin may be chosen to fill the role.

In the event no one is willing to take over as executor or administrator, the court may appoint a professional third party.

13) What Are Some Examples of Executor and Administrator Misconduct?

Executor and administrators can sometimes – intentionally or unintentionally – breach their duties. When this happens, and their actions (or lack of action) cause

Examples of executor or administrator misconduct include:

- Not keeping beneficiaries reasonably informed about the administration process
- Improperly withholding distribution of estate assets
- Failing to pay the decedent's creditors, taxes or other expenses
- Mismanaging, stealing or losing estate property or funds