

WILL & EXECUTRY FAQS

Fergusson Law

WHAT IS AN EXECUTRY?

- In Scots law, 'executry' refers to the office or activities of an executor or the estate of a deceased person.
- The Executry process refers to the winding up of a person's estate after they have died.
- An estate consists of assets such as property and money.

WHAT IS AN EXECUTOR?

- An executor is a person or institution with the legal authority to wind up your estate after you die.
- In Scotland, an Executor can be any mentally capable person aged 18 or over.
- The named Executor in a Will can appoint a [solicitor](#) as the Executor to make the process less stressful for the deceased's family.

WHAT DOES AN EXECUTOR OF A WILL HAVE TO DO?

- In simple terms, an executor is a representative of the deceased person.
- The executor must pay off any outstanding debts or taxes due by the deceased, and then distribute any remaining assets to the beneficiaries of the Will.

HOW LONG DOES AN EXECUTOR HAVE TO SETTLE AN ESTATE IN SCOTLAND?

- An Estate in Scotland cannot be distributed before 6 months have elapsed from the date of death.
- In total, from the date of death it normally takes around 1 year to complete depending on the complexity of the Will.
- There is no set time limit to complete this process.
- The Estate cannot be settled during the first 6 months to leave plenty of time to ensure that all debts have been settled and all beneficiaries have been located.

WHAT IS A CERTIFICATE OF CONFIRMATION?

- A Certificate of Confirmation is the legal document obtained from the Sheriff Court that proves you, the Executor, have the right to access the assets of the deceased.
- The named executor in the Will is normally the person who applies for the Certificate of Confirmation. An executor can request a solicitor to act on their behalf.

HOW LONG DOES IT TAKE TO GET A CERTIFICATION OF CONFIRMATION?

- If all forms have been completed correctly, accompanying documents supplied and fees paid to the Sheriff Court, the certificate should arrive within **10 working days**.

ARE EXECUTORS PERSONALLY LIABLE FOR DEBTS IN SCOTLAND?

- There are circumstances where an Executor can become liable for the deceased's debts.
 - If the Executor winding up an Estate distributes it before paying outstanding debts, they can become personally liable for the debt up to the value of the money distributed. This is one instance in Scots Law when liability for a debt can transfer from one person to another person.
 - If an Executor realises the Estate is insolvent and cannot pay all the outstanding debts, they must make the Estate bankrupt. If this is not done they can be held personally liable to the creditors.

CAN THE EXECUTOR OF A WILL BE THE BENEFICIARY?

- Yes, and this is often the case.
- As the person you trust the most is usually appointed as the Executor, they are also usually someone you want to inherit some or all of your Estate.

DOES AN ENGLISH WILL APPLY IN SCOTLAND?

- Yes, it is valid but some aspects of Scots Law are different from the laws in England and Wales.
- It is wise to get a Solicitor to review your Will and often this may lead to writing a new updated Will under Scots Law.

WHO CAN WITNESS A WILL IN SCOTLAND?

- Anyone over the age of 16 who is mentally capable and is not the spouse of the person writing the Will or is a beneficiary of the Will.

DO YOU NEED A LAWYER TO SETTLE AN ESTATE IN SCOTLAND?

- No, the Executor can settle the estate without the need of a lawyer.
- However, if the Estate is large or complex it is advisable to seek out legal advice from a specialist [executory solicitor](#).

FURTHER QUESTIONS ABOUT WILLS OR EXECUTRY

- The [solicitors](#) at Fergusson Law in Edinburgh would be delighted to answer any further questions you may have regarding [Wills](#) and the [Executry](#) process in Scotland.

CONTACT US

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