



# Executor in a will plays a vital role even after death

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The appointment of an executor is an important provision of a Will. An executor is appointed under a Will to effectuate the wishes of the testator (one who writes the Will) as mentioned in his Will with respect to the distribution of his estate after the demise of the testator.

Although under the provisions of The Indian Succession Act, 1925 ("Act"), it is not mandatory to appoint an executor of a Will, nevertheless it is advisable to appoint an executor of a Will as he acts as a legal representative of the testator and is duty bound to implement the Will after the demise of the testator.

An executor is entrusted with the duty to carry out the instructions of the testator with respect to the mode and manner of the distribution of his estate/ assets/ properties after his demise.

An executor under the Will may either be expressly appointed or be appointed by implication. Generally, the executor is appointed by the name in the Will.

However, sometimes an executor can also be appointed by the implication where it appears that the particular person has been appointed to perform the duties of the executor.

To illustrate with the help of an example, 'A' mentions in his Will that 'B' shall be the executor of his Will if C is not. Here, 'B' is the executor by express appointment and 'C' is an executor by implication.

Under the Act, the probate of a Will is granted only to an executor. Probate means a document issued under the seal of a court of competent jurisdiction with the grant of the administration to the estate of the testator. It is legal process whereby the Will is proved.

There is no restriction under the Act to appoint a beneficiary



■ A testator is one who writes a will

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## AN EXECUTOR UNDER THE WILL MAY EITHER BE EXPRESSLY APPOINTED OR BE APPOINTED BY IMPLICATION

under a Will, as an executor of the Will.

The executor's role is vital as it ensures that even after the death of the testator, a testator can act through him. There can be single or several executors appointed in a Will. When a testator appoints several executors, the normal inference is that he expects all of them to act together.

In such cases, the opinion of the testator is implicit in the appointment being that he expects his Will, would be full and properly executed when all executors appointed by him act together.

In cases where the Will directs that the several executors are to act jointly then no act can be done/ carried out by a single executor.

To illustrate with an example, if A and B are appointed joint executors for a Will and if it is directed in the Will that A and B have to act jointly then no act can be done by a single executor. However, if in the Will the testator has mentioned that the exec-

utors can act jointly or severally, then the power can be exercised by any one of the executors.

It is also important to mention here that no one is bound to act as an executor against his/ her wish. An executor has the option to renounce his executorship. Under the provisions of the Act, the renunciation may be made orally in the presence of judge or by a writing signed by person renouncing.

It is pertinent to mention here that in cases where one of the joint executor has neither renounced the executorship nor is willing to act as a joint executor and has taken an interest hostile to the estate then that such a person by his or her conduct disqualifies and disentitles himself from the executorship.

To conclude, it is advisable that a trustworthy person is appointed as an executor by the testator while writing a Will, in order to ensure that after his demise the distribution of his estate/ assets/ properties is carried out by the executor in accordance with the wishes of the testator.

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