

# How many executors does it take to change a light bulb?

And who should that be?



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## The power of one

It's the same answer to the question about the number of persons needed as an executor: ONE.

For centuries courts have been required to answer this question. It arises where a deceased leaves a will but does not appoint an executor. Or the appointed executor is dead or incapacitated. A similar issue arises where there is no will, and the court has to appoint the person who administers the deceased's estate.

In all these instances, the court must appoint a person to administer the deceased's estate. For more than a century courts have almost always answered it in the same way: ONE.

1  
one

There are many examples. There is John Parsons' estate. His will did not appoint an executor. He had two children. He left the majority of his assets to his daughter, Elizabeth, and the rest to his son, William. Both applied to the Probate Court to be appointed administrator. It would have been simple enough for the Court to appoint both. Instead the court appointed one. (Because he applied first the Court appointed William.)

With Esther Legh's estate two brothers were willing to act but the court appointed only one. (The one appointed was the person preferred by the beneficiaries.) With Mary Arden's estate both the surviving husband and the deceased's son (by a

previous marriage) sought appointment. The court preferred the son rather than have the two appointed.

With John Harries' estate, both mother and daughter applied jointly to be appointed as administrators. The judge remarked: "The court generally declines to appoint joint administrators" and "I do not dissent from the general view that has been stated that it is inconvenient to grant a joint administration".



## Why is it so?

Why is it that a court prefers one administrator over two or more? In deciding the administrator of John Harries' estate, the judge said that it was "inconvenient" to appoint more than one person. This was because one person was more likely to advance the true and proper administration of the estate.



Which begs the question: Why is one person better for the administration of the estate? The answer lies in a consideration of an executor's responsibilities. In summary, these are:

1. deciding how the deceased's remains are dealt with (being burial or cremation)
2. organising the funeral arrangements
3. ascertaining if the deceased had a will, and,



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- if so, taking possession of the last will
- 4. ascertaining the nature and extent of the deceased's assets and liabilities
- 5. locating and obtaining details of beneficiaries
- 6. considering if there is any doubt about the effectiveness of the will (eg if the deceased married after making the will, or divorced after that date)
- 7. obtaining Probate, if required to enable the estate to be finalised
- 8. selling or otherwise dealing with the deceased's assets so that debts and expenses may be paid, including funeral expenses
- 9. defending and resolving legal proceedings involving the deceased or the deceased's estate (such as family provision claims or claims by creditors)
- 10. preserving (which may include insuring) and investing the assets pending the distribution of the estate
- 11. paying him or her self commission if the executor seeks it and the court allows it
- 12. accounting to either the court or beneficiaries for the executor's financial transactions, and
- 13. distributing the estate to the beneficiaries who are so entitled.



These are all functions that ONE *competent* person can do. On the other hand, two persons are likely to slow the process and create the possibility of conflict (which means paralysis in the administration of the estate). In other words: one is enough, two can be a hindrance.

## Getting the right executor

There are other factors that are important to the choice of an executor. These include:

- a person's competency,
- a person's proximity,
- his or her relationship with beneficiaries,
- the likelihood of family disputes,
- remuneration of the executor, and
- the relevance of business and/or investment experience.

The case of *McGrath -v- Troy* highlights the importance of these factors. The deceased's mother was appointed the administrator of the estate. She could not bring herself to accept that the deceased, her son, had fathered a child. The child should have received the whole of the estate. But because of her mindset, the deceased's mother administered the estate without regard to the child's entitlement.



The estate was distributed to other relatives, including the deceased's father and sister.

When the Court learnt of the true situation the mother was removed as the administrator, an impartial administrator (NSW Trustee and Guardian) was appointed and an order was made that the mother reimburse the estate for all the funds that had been wrongly distributed.

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