

WHEN A WILL IS PROBATED
BUT THERE IS NO QUALIFICATION OF AN EXECUTOR
a/k/a
“PROBATE ONLY”

When someone dies in Virginia having a Last Will and Testament, it is often prudent to “probate” the decedent’s will, which is the judicial process by which a writing is established as a valid will and is given legal effect as a public document. The “proponent” is the person who presents the writing as the authentic will of the decedent, and pays the necessary probate fees.

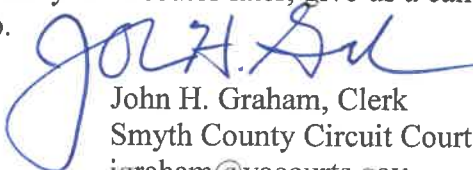
Most wills include the appointment of an executor, which is the title of a person who is named by the decedent to administer their estate property after their death. Some wills also name alternate executors, as well. Just because someone is named in a will as an executor, however, does not mean that the person has the legal authority to act as such. To gain authority and actually become an executor, a person must qualify in person in the Clerk’s Office, giving their bond and pledging to do the work to the best of their ability.

For many varied and valid reasons, people who are named as executors often choose not to qualify as such at the time of probate. Usually it is the case that there are simply insufficient estate assets to administer. Other times, the choice is a strategic one to avoid having to give bond or file an inventory or accounting reports with the court. Sometimes the person who is nominated simply declines to serve for personal reasons. Occasionally, the clerk declines to qualify someone because there are concerns about their abilities or suitability for the task.

If a person named as executor chooses not to qualify as such during probate, they may still later choose to seek qualification, provided that they have not executed a written waiver of qualification.

If you were named as the executor of an estate but have not qualified as such in the Clerk’s Office, then please know the following:

1. You have no legal authority to act as executor.*
2. You have no responsibility to file an inventory or an accounting. Inventories and accountings are only required to be filed by persons who actually qualify to administer estates, and they are only required to do so if estate assets have a value of \$25,000 or more. In a “probate only” situation, there is no person who is obligated to file such reports.
3. If you change your mind and want to qualify as executor later, give us a call to set up an appointment. We’ll be happy to help.


John H. Graham, Clerk
Smyth County Circuit Court
jgraham@vacourts.gov
(276) 782-4044

* This means you have no legal authority to act on behalf of the estate, lacking the authority to sign documents on behalf of the estate, sell estate property, negotiate or bind the estate, obtain an tax id (EIN) number for the estate, or any other matter on behalf of the deceased person’s estate.