



Executors' duties

If you have been named as the Executor of someone's Will, you may decide not to take on the role. If you do decide to act as an Executor, you have certain responsibilities and duties which are imposed by law.

Immediate steps after a death

The death should be registered as soon as possible after death. This is not necessarily the Executor's responsibility (unless there is no one else who can do it) but you should ensure that you obtain the death certificate. The actual funeral arrangements are not an official responsibility unless the deceased's family ask you to deal with them. You should check the Will to see if the deceased expressed a preference in respect of their funeral, although if the preference is impossible or impractical you are not bound to it. If the funeral was not prepaid or covered by special insurance, the cost can be met from the deceased's assets. You will find that the deceased's bank or building society will arrange to pay the bill immediately provided there is enough money in the deceased's account.

Dealing with assets for which no grant is required.

Some assets may be dealt with without the need for a Grant of Probate. If the deceased had jointly owned property or accounts, these can usually be transferred to the surviving joint owner by producing the death certificate to the relevant organisation. If the deceased had life policies or death in service benefits these will usually be paid to the people named on the policies or nominated to the trustees on production of the death certificate. A life policy in favour of the deceased, or in favour of someone who has already died, will usually be paid to the deceased's estate and the Executor may need to produce a Grant of Probate.

Small bank or building society balances, National Savings certificates and Premium Bonds may also be cashed in without a Grant of Probate – check with each organisation.

The Will

You will need the original Will, even if you do not apply for a Grant of Probate. If a solicitor or bank is holding the Will, you will need to show them the death certificate to obtain the Will. If there is more than one Executor, the authority of all the Executors will be needed to release the Will to one of you.

The Deceased's Estate

The Executor is responsible for dealing with anything and everything owned by the deceased at the date of death. You will need to make sure that assets are preserved for the beneficiaries entitled to them. If the deceased left a house that is now empty you will need to contact the insurers to notify them of the death and to ensure that insurance for the building and the contents are continued. Again, the cost of the insurance can be taken from the deceased's estate.

You will need to ascertain exactly what property and money the deceased had when they died, along with any debts they owed. If the total comes to more than £325,000.00, you will need to complete Inheritance Tax forms and it is likely that the HM Revenue and Customs will want formal valuations of any land or property, personal belongings such as jewellery and furniture, and stocks and shares. The cost of the valuations will be an expense of the estate.

If the assets are worth less than £325,000 you may not need formal valuations, although you should bear in mind that the Probate Registry will need some indication of the value of the estate for their own records. Beneficiaries could ask you to obtain formal valuations if there is any dispute over their entitlement under the Will.

Debts

The Executor is responsible for making sure that outstanding debts left by the deceased are

paid BEFORE any money is paid to beneficiaries mentioned in the Will. Consider credit cards and the utilities bills: gas, electricity, council tax, water and sewerage, telephone. The deceased may also owe money to the Benefits Agency if state benefits were claimed, to their pension provider or employer, or to the Inland Revenue.

If there is not enough money in the estate to pay all the debts, the Executor will not be held personally liable, but you should be prepared to show that there is insufficient money available. In this case, the funeral and testamentary expenses are the first thing that should be paid. All other debts take second place to these.

If there is enough money to pay debts but not quite enough to pay the gifts mentioned in the Will there is a specific procedure which must be followed.

An Executor can be held personally liable if assets in an estate are distributed before all debts are paid. This can be avoided by placing statutory notices pursuant to the Trustee Act 1925, giving a deadline for creditors to contact the Executor to make a claim.

Grant of Probate

If the deceased owned assets worth more than £5,000 it is likely that a Grant of Probate will be necessary. A Grant of Probate is the document which proves that the Will is valid and that the Executor named on the Grant is entitled to deal with the deceased's property and distribute it as set out in the Will. The Executor will need to show the Grant or an official copy of it to close down bank accounts, authorise the transfer or sale of shares and other investments, and sell land or property.

The Grant is obtained from the Probate Registry (or a District Office) and the Executor will have to swear an oath confirming their duties and the value of the estate. A fee will be payable. You may go to a solicitor who will obtain the Grant for you, or you can apply in person. In either case you will need to produce the original Will and the death certificate.

Distribution

Having collected in all the assets and dealt with all debts, including income tax, capital gains tax and inheritance tax, the Executor may distribute the estate according to the Will.

The Executor is not required to distribute any assets within one year of the date of the Grant of Probate although many estates may be dealt with more quickly. If distribution takes place within six months

of the date of the Grant, the Executor could be held personally liable if the Will is then challenged – perhaps by a beneficiary assumed to be dead, or by someone who feels they should have been provided for by the deceased.

Accounts

The Executor has a duty to the beneficiaries of the Will and should be prepared to justify how they have dealt with the estate. This is most easily done if accurate accounts are kept showing what money and property belonged to the deceased, what debts were outstanding, and what expenses arose during the administration of the estate. These may include solicitors fees, Probate Registry fees, estate agents fee for sale of a house, and the Executor's personal expenses such as postage and telephone calls. However, unless the Will specifically allows it, or unless the beneficiaries agree to it, the Executor cannot claim payment for their administration work.

Trusts

Wills often include gifts to children and may state that a gift will not take effect until a certain age is reached. In these cases, the Executor will usually be charged to hold the gift on trust until the child reaches 18 or the age mentioned in the gift.

The Executor as a Trustee will have further duties, powers and legal requirements until the trust is ended. The Will may give details of some of these and more are imposed by statute. If a Trustee acts or fails to act, in breach of these duties, the beneficiaries of the trust may be able to sue them personally. This is a complicated area of law and legal advice should be obtained if a Will creates a trust.

Varying the Will

It is possible to vary a Will and this is usually done for tax purposes although it can be done for other reasons. All the beneficiaries affected would need to agree to the Variation and a court order would be needed if any affected beneficiaries are minors or lack mental capacity. If the estate is taxable, the Variation must be registered with the Inland Revenue. We would recommend taking legal advice before attempting to do this. A valuation for tax purposes must be made two years from the date of death.

Challenges to the Will

If the deceased did not make adequate provision in their Will for close family members, or if there is any doubt over the validity of the Will, it is possible that the Will may be challenged or a claim under the Inheritance (Provision for Family and Dependants) Act 1975 may be made. Legal advice should be obtained if such a situation arises. The Executor's legal expenses can usually be deducted from the assets in the estate.

Intestate Estates

Where a person dies without a Will they die intestate. Statute dictates who can apply for a Grant. The Grant is known as a Grant of Letters of Administration. Statute also dictates who benefits from the deceased's estate. The duties of Administrators on appointment remain broadly the same as those of Executors

Glossary

Beneficiary – a person who benefits from a gift in a Will or from a trust.

Capital Gains Tax – a tax paid when capital assets (eg, shares, houses, land, unit trusts) are disposed of. Capital Gains tax may be payable on assets which are sold during the administration of a deceased's estate

Estate – the money, land, investments, personal belongings, owned by a person when they die.

Executor – a person named in a Will to carry out the instructions in the Will for distribution of the estate.

Grant of Probate – the document giving authority to a named Executor to collect the estate and distribute it as set out in the Will

Inheritance Tax – The tax payable on estates valued at more than £325,000. Inheritance tax forms must be completed for any estate with a gross value of more than £325,000. The Inheritance tax rate is currently 40%.

Trustee – a person named in a Will or other Trust document to hold money or assets for a specified period on behalf of beneficiaries. Executors are often also named as Trustees in Wills where money is to be held on behalf of children who are too young to inherit money directly.

For more information on Wills please follow the link wards.uk.com/wills-and-mental-capacity. Please feel free to contact Jenny Pierce, Solicitor and head of Wills & Probate on 01179 292811 or at jenny.pierce@wards.uk.com