

A GUIDE FOR EXECUTORS

The Executor's Role

This is a general guide for non-professional executors.

The death of a close relative is probably one of the most stressful events in anyone's life. Leaving a Will doesn't change that but it does give the deceased the opportunity to determine how their estate will be distributed and to appoint one or more people to be responsible for administering the estate. Those people, the executors, have a very important role to play. They may or may not be close relatives but they are certainly people who will become a central pillar of emotional support for those who are left behind.

We understand the importance of being an executor and although we at Willrite have entitled this 'A Guide for Executors' it goes beyond that and gives an outline of some of the wider-ranging functions which need to be performed when someone dies. It isn't designed to be the textbook on how to administer a person's estate but we hope that it will outline some of the key practical matters which should be considered and so give you extra confidence in taking on this very important and sometimes time-consuming role.

As soon as you know you have been, or are going to be, appointed as an executor in someone's Will, you should read through this Guide and speak to the testator (the person whose Will it is) to discuss any issues which need to be addressed. It would be sensible to ask the testator if you can see, and keep, a copy of the Will: hopefully you will not need to take up your duties as an executor for many years but, sadly, that may not be the case, so it is advisable to be prepared.

During the Testator's Lifetime

If possible, you should be familiar with the testator's Will before their death. For example, the Will might contain things on which you are unclear and where the testator's guidance might be helpful. Alternatively, the Will may express specific wishes of the testator in respect of burial or cremation, the funeral service, or in respect of organ donation: people may need to be aware of things like this as a matter of urgency.

You should also try to be aware of where the original Will is kept and that the testator will contact you if this changes or, indeed if they prepare a new Will. Your appointment as an executor only comes into force on the testator's death. If a new will is signed, subsequently the old Will becomes void and therefore your appointment in the earlier Will will also be void. However, you may have been appointed again as executor in the new Will, in which case you must ensure you are working with the latest Will.

There is one other technical point which is worth being aware of: if you are appointed executor to someone who is an executor at the time of their death, you cannot take on the executorship to which you have been appointed without taking on the executorship duties being fulfilled by the deceased. In view of the fact that becoming an executor is a responsible and time-consuming job, most people are only prepared to take it on for relatives or close friends. If there is the possibility of you having to take on the testator's executorship, you should give this careful consideration.

Key Steps to Follow

There are, broadly, five stages which need to be gone through, starting with an individual's death and ending with the completion of the administration of the estate. The first stage involves communication of the death and arranging the burial, the second is securing the deceased's assets, the third concerns the completion of the necessary forms to obtain probate, the fourth is the collection of all the estate assets, and the fifth is the distribution of the estate to the beneficiaries.

1. Communication of the death and arranging for burial

This stage follows immediately after death of the testator and usually lasts for no more than a couple of weeks. Strictly speaking, not all of the functions that need to be performed are the responsibility of the executor. But even if you are not a close family member, your selection as an executor is likely to give you a central supporting role in respect of the rest of the deceased's family.

The first thing to do is to make sure news of the death is passed on to members of the family and friends of the deceased. It makes sense to enlist the help of other family members in this task so the inevitable emotional stress is shared. If appropriate, news of the death might be advertised in the local or national newspapers.

Another early task to be performed is arranging for the registration of the death and the burial. In straightforward cases, the doctor who certifies death will issue a Medical Cause of Death Certificate which must be taken to the local Registrar of Births, Deaths and marriages. If you are unsure where to find the registrar's office, you can obtain the address from the doctor, hospital, or the internet.

The registrar registers the death and will issue a Death Certificate and a Certificate of Burial or Cremation. It is usually a good idea to obtain one or two extra copies of the Death Certificate at that time (a charge is made for each copy), as you will need these to give official notification of death to a number of companies, organizations and Government departments. Copies can be obtained subsequently but will be more expensive.

Having familiarized yourself with the terms of the Will and any funeral directions it contains, you will need to employ the services of a funeral director. It is possible that the deceased might have indicated the firm you should instruct but otherwise ask members of the family for their opinion.

The funeral director will take the Certificate of Burial or Cremation and will help you make the funeral arrangements. You will need to ensure that the time and the place of the funeral are communicated properly to all those who might want to attend. If the deceased has not expressed any wishes as to the sending of flowers, consult with the family to see if they want to limit the giving of flowers, or encourage the making of charitable donations in their place.

2. Identifying and securing the assets

The second stage is identifying and securing the assets of the estate. It starts immediately you hear of the death and might involve a large number of different activities.

Most obviously, it involves the physical assets owned by the deceased such as the house and contents. In particular, if the deceased lived alone, it is essential that the property is locked and secure. You should identify the number of key holders and, if there are too many to ensure

adequate security, locks might have to be changed. If the property is likely to be empty for some time, you might decide to turn off the electricity, gas and water at the mains, but especially in the winter, don't forget to ensure that the water and central heating systems are drained. It is wise to check that any requirements of the property insurance are complied with, in respect of the property remaining unoccupied: you should also remove any items of value to a more secure place.

It is important to go through the deceased's personal papers and records to identify the assets and investments which form part of the estate and the liabilities which need to be discharged. Few people fail to keep some sort of record of savings and investments but you can do some detective work on the basis of statements, cheques stubs and online accounts, etc., in order to track down regular savings such as direct debit payments for savings policies or building society investments.

It isn't possible to compile a full list of the potential assets to be found in an estate but among those which may be less than obvious would be salary earned but not paid, State benefits which are due but not yet claimed and benefits from an employer's pension scheme.

In the same way, you should identify the deceased's liabilities. Bank statements, etc., might also indicate hire purchase payments and regular loan repayments.

Don't overlook practical matters such as stopping newspaper and milk deliveries and obtaining any unpaid bills of this nature.

At this time you should write to all of the companies and organizations with whom the individual had investments or savings and those to whom debts were owed and to the various official bodies involved, such as National Savings & Investments (NS&I), or Department of Work and Pensions (DWP). You should send a copy of the death certificate to those holding assets on behalf of the deceased so they can note the death in their records. This, for example, should freeze and secure the deceased's own-name bank accounts.

When writing these letters you should request the value of the investment or the debt at the date of death as this information will be necessary at the third stage, considered below. You should also ask institutions to return the copy of the Death Certificate being sent to them so that you can use copies more than once. Those to whom money is owed will usually understand that the death will delay payment and they will be prepared to wait for a reasonable time while probate is being obtained. Some debts might have life assurance associated with them and you should check this.

Typically, you will make contact with the following organizations, although this list is not exhaustive: banks, building societies (for savings and mortgages), life assurance companies, company registrars (for shareholdings), the Local Authority (concerning both rent and council tax), the NS&I, the DWP, the deceased's employer (and, perhaps, former employers pension scheme administrators are involved), the Inland Revenue (concerning tax already due or, perhaps, tax rebates), the deceased's solicitors and accountants, and the local utility companies.

You should check the deceased's incoming post regularly, as it may well reveal further assets or liabilities which you have not previously identified.

3. Applying for probate

The Grant of Probate is the official confirmation of your power, as executor, to administer the estate of the deceased. In general, although banks, building societies, etc. will be happy to register the death in their records by production of the death certificate, they won't actually be prepared to part with any of the deceased's saving or investments without sight of the Grant of Probate itself (or official certified copies which you can obtain when the original is issued). Only in the case of very small estates will it not be necessary to obtain Grant of Probate.

You can obtain the papers necessary to apply for the Grant of Probate from your local, or any, Probate Registry; the staff there will also give you guidance as to the completion of the forms. You can also get all the forms and guidance online at <https://www.gov.uk/applying-for-probate/apply-for-probate>. Before probate can be granted, you will also have to have dealt with the estate's possible liability to inheritance tax (IHT). This involves completion of an Inland Revenue account which gives details of the value, as at the date of death, of all the assets and investments owned by the deceased (including the house, contents, car and personal effects) and of the amounts owed by the deceased. You may also need to include details of gifts made by the deceased in his or her lifetime, where these gifts were substantial.

In general, any inheritance tax liability on the value of things other than land has to be paid before the Grant of Probate can be issued. It may be necessary for you to borrow in order to pay the tax. Banks are usually prepared to provide finance for this purpose and although the debt will be your personal responsibility, it will, in due course, be discharged out of the assets of the estate.

4. Calling in the assets

Once probate has been granted, you will be in a position to call in the assets of the estate, which means bringing the assets of the estate under your control by transferring them into your name or into a bank account opened by you for the purpose. However, you must not mix the deceased's money and assets with your own and so in dealing with the estate you should transfer assets into the name of 'Executor of XXX' and open a bank account for the estate in the same name.

Exactly how you deal with the deceased's assets will depend on a number of factors, including their nature, the way in which they will ultimately be distributed and how long it is likely to ultimately take to administer the estate. For example, it may be appropriate to have the shares or unit trusts owned by the deceased transferred into your own name, as executor, or to sell them and put them into the estates bank account.

At this stage you should be in a position to pay any debts owing by the deceased and any liabilities which have arisen during the course of the administration. You should ensure that the debts are valid and that you have ascertained the correct amount which needs to be paid. You should also make sure that you obtain receipts for all the payments made.

5. Distributing the estate

You should be very careful to ensure that you have identified and paid all the debts before distributing the estate. You are liable for the debts of the estate and might have difficulty in recovering money from the beneficiaries once you have passed it to them.

You should also make sure you have resolved all of the tax matters before you make any distributions from it. If circumstances have changed (for example, you have discovered new

assets or liabilities) since you completed the original Revenue account, you will need to prepare and submit a corrective account.

Once you have called in all of the assets and paid the tax and the debts, you can distribute the estate to those who are entitled under the deceased's Will. Entitlements may be of different types, for example there may be gifts of specific assets (e.g. furniture, personal belongings, Jewellery), there may be cash legacies there should be a gift of 'residue', which is everything in the estate, after the specific gifts and legacies have been discharged and liabilities and tax paid.

Once you have administered the estate, it is wise to prepare full accounts showing all of the receipts, the payments and the distribution of the estate. You should also retain all of the records which prove the entries in those accounts.

Notes and Suggestions

1. The appointment of an executor is a personal one, in that the executor cannot generally delegate their powers or duties to anyone else. However, you can appoint an agent to act on your behalf, and an executor will often appoint a firm of solicitors to handle the entire administration of the estate on their behalf. Any solicitor's costs will be borne by the estate itself in these circumstances.

Until recently it was illegal for anyone other than a solicitor to charge for obtaining a Grant of Probate but now other bodies, such as some banks, provide the full service from applying for probate to the distribution of the estate.

Alternatively, an executor who is prepared to administer the estate might nevertheless decide to seek professional advice on one or more aspects of the Will or the administration of the estate.

2. This 'Guide for Executors' contains only an outline of how the deceased's affairs can be handled and the estate administered in general terms, in order to give you an idea of the general process involved. It isn't a text book and doesn't deal with the large number of technical matters which can arise.

The best guidance must be that, if there is any doubt whatsoever, you should seek professional advice.

The sort of circumstances which would, in particular, suggest that a solicitor or other suitable professional should be involved would include the following:

- There will be cases where the Will might not have been properly executed, where (especially if it 'home made') the words used are by no means clear as to who gets what, and there are cases where the testator has had a change of mind after the Will is drafted and attempts to make alterations to it (which may or may not be valid).
- If the estate includes land or property, you are likely to need the assistance of a solicitor or other appropriate professional at some stage. Perhaps the only exception to this is where the deceased was a part owner of a property held in 'joint tenancy', in which case the deceased's share of the property doesn't pass under his or her Will but passes of right to the surviving joint tenant(s).

In that case all that needs to be done is to place the Death Certificate with the Deeds to the property. However, even here it is wise to take professional advice to determine what exactly the true position is.

Other examples of the estate causing complications would include cases where the deceased has an interest in a trust of owned unquoted shares (where both valuation and disposal may be more difficult).

- It is sad to say that while a death in the family brings out the best in many people, it can bring out the worst in some. An executor can find him or herself in a very difficult position if family disputes develop. If such circumstances may arise you may consider protecting your own position by instructing solicitors or other professionals to act as your agents in the administration of the estate.
 - Completing the Inland Revenue account and the probate forms can be a little difficult. The tax side of the administration of the estate, in particular, can be quite bewildering in terms of dealing with income and capital gains taxes incurred prior to the individual's death, inheritance tax implications on the death, taxation on income and gains of the estate after the date of death and in determining whether you need to take inheritance tax into account when distributing various legacies, bequests, etc. Professional advice may be necessary in relation to any or all of these matters if the estate is anything other than very straight forward.
3. Before starting to deal with the administration of the estate, you should try to form a view as to whether the estate is solvent. If it seems the liabilities will exceed the value of the assets, you may be better advised not to accept your appointment as executor to ensure that you do not acquire any personal liabilities.
 4. Some Wills appoint people to be both executor and trustee. The executor administers the estate and the role finishes on its final distribution. Trusts may then come into existence, for example where part of the estate is to be held for the benefit of individuals under 18 or another specified age. If this is the case it is important to ensure that the trust money is distributed to the trustees, and not to the individual beneficiaries of those trusts.
 5. Be meticulous in your record keeping. If at all possible keep copies of letters and full checklists of all the assets and liabilities you discover. This will help to ensure that nothing is overlooked and ease completion of the various official Revenue forms and the accounts of the estate.
 6. In general you are able to claim reimbursement out of the estate for any direct expenses you incur purely as a result of your role as executor. In general, you won't be able to charge for your time although some testators leave small gifts to executors as a 'thank you' for taking on the role.
 7. Remember to keep in touch with the deceased's family as the administration of the estate progresses. Not only may they be able to help resolve some problems (for example; tracking down investments or identifying liabilities) but the administration of the estate can be a

lengthy process and you can often avoid friction by making sure people know what is happening and what, if anything, is causing delay.

Inland Revenue practice and the law relating to taxation are complex and subject to individual circumstances and changes which cannot be foreseen.

We have based this information on our understanding of the law and practice as at 1 October 2020. We make every effort to ensure this information is helpful, accurate and current but it may change or may not apply to your personal circumstances. Before taking any action you should always check with an appropriate advisor as we cannot accept any liability for any action taken on the basis of this information alone.