

Being an Executor

Acting as an Executor (or as an Administrator if the deceased left no Will) can be an extremely onerous task, which in large part is dependent upon the nature and complexity of the deceased's affairs, and how well they were organised prior to death, and may therefore require a great deal of time and knowledge in order to effectively fulfill the role.

YOUR DUTIES AS AN EXECUTOR

The moment a person who has appointed you as an Executor dies, you become responsible for all their affairs. If there is more than one Executor the responsibility is shared equally and all decisions have to be unanimous. Here we briefly summarise your main duties and legal responsibilities so that you may more easily identify how to proceed and when to seek professional help.

No obligation

Whilst you are not obliged to take up the appointment, if you do wish to resign you must do so before you take any steps to deal with the business or financial affairs of the deceased. Once you have become involved in these matters you can be held personally liable to pay any debts or money owed by the deceased, even if you have difficulty afterwards in recovering the money from their estate. The first thing you need to do, therefore, is to check whether the value of everything that the deceased owned is sufficient to cover the money owed.

Find out what you can

Provided you are prepared to act as an Executor you can take the next step, which is to find out as much as you can about the affairs of the deceased, what they owned and how much was owed to anyone (not forgetting the Taxman). If someone else has not already done so, you need to register the death with the local Registrar of Births and Deaths and to see an undertaker to arrange the funeral (don't forget to check whether any special wishes about this are given in the Will, if one exists). In addition, if the deceased owned a Pre-Paid or Guaranteed Funeral Plan, the arrangements for the funeral will already have been stipulated and paid for, which will often mean that a particular Funeral Director has also been nominated.

Form-filling and officialdom

Unfortunately, just being someone's Executor is not enough to enable you to deal with assets such as Bank and Building Society accounts, stocks and shares and land. Before the bank, for example, will let you have access to money you will need to prove that you really are the authorised Executor. To do this you need to apply to the High Court for a **Grant of Probate** - and this is where it can get complicated. Special forms giving details of everything that the deceased owned and owed have to be completed and an oath sworn to the effect that the information given in the forms is true, and that you will administer the estate properly and in accordance with the Law. Furthermore, if the net value of everything, after deducting the amounts owed (including the cost of the funeral) is more than £325,000, (at April 2012), Inheritance Tax at 40% of the excess over that amount may have to be paid.

Borrowing from the bank

You can delay paying Inheritance Tax on certain assets, such as houses and land, for a while but tax on everything else has to be paid before the Grant of Probate will be issued – in other words, before you can access estate monies. This can present something of a problem if you do not have enough money yourself to pay the tax in the first instance, and you may need to go to the bank to borrow it. This is known as *Bridging Finance* or a *Probate Loan*. Provided you can satisfy the bank that you have enough security to pay the money back once you have obtained the Grant of Probate there should be no problem. But the bank will hold you personally responsible, and if anything should go wrong you would have to pay them back out of your own pocket and then recover the money as best you can from the estate assets. It is also important to understand that

such loans attract a much higher rate of interest than general borrowing, so any unforeseen delay in obtaining the Grant can be costly.

Act impartially

Once you have obtained the Grant of Probate, you can proceed with the administration of the estate. You can use the money at the bank to pay any liabilities and to pay yourself back for anything that you have meanwhile had to pay out on behalf of the estate. You can also sell any other assets or transfer them into the names of the beneficiaries (the people who benefit under the terms of the Will). You must be very careful to treat all beneficiaries fairly and not to favour one more than another, for if you did you could be sued by the one who had been unfairly treated. You must, therefore, be quite sure that you understand exactly what the Will says, and if you are in any doubt it is essential that you seek professional advice from a lawyer who specialises in Wills and Probate. Remember, words in legal documents can sometimes have special meanings that are quite different from their meaning in everyday use.

No personal gain

Unless the deceased specified within their Will that Executors should be paid, you are not entitled to make any personal gain from your special position as an Executor; so, if you are also a beneficiary take especial care to ensure that you only receive exactly what the Will gives you. You can reimburse yourself out of the estate for any expenses properly incurred in carrying out your duties, including fees paid to professional advisers, but you cannot charge anything for your time. This is so even if you are not a beneficiary.

Keep accounts

As an Executor you must keep accurate records of all money received and paid out, and of exactly what you have done with every asset. At the end you might be asked by the beneficiaries to produce some accounts showing how you have dealt with everything. They are legally entitled to ask for this, and if there is any dispute the Court can also ask for accounts.

Get the tax right!

You also have a legal responsibility to make sure that all tax owed by the deceased has been paid, and to make tax returns in respect of any income (e.g. bank interest, dividends, etc.) received between the date of death and the time when everything has been wound up. There are special tax reliefs which Executors can claim but the Inland Revenue will not always allow these without being asked.

Ask for professional help

It is not an easy task, and it can take up a great deal of time. Many people prefer to consult a professional individual or firm with experience of these matters and to pay for the work to be carried out. Such fees can legitimately be paid out of the estate, and very often the savings that can be made from good tax and financial advice will more than cover them.

In summary, as an Executor you are obliged to: -

1. Ascertain the nature and value of the Assets in the Estate. You can do this by reading the Will and, where necessary, obtaining professional valuations. You may need to approach the deceased's bank, or other institutions, for up to date details, in which case you will have to write enclosing a certified copy of the Death Certificate;
2. Ascertain details of any debts. You should be able to tell from the deceased's papers if there are likely to be any, but in order to avoid personal liability for any unknown debts, it is essential to advertise for creditors in the London Gazette (P.O. Box 7923, London, SE1 5ZH, telephone 0207-873 8300) and also in a newspaper local to where the deceased owned real property;
3. Prepare a detailed account of the Estate and of its debts, (a complete list of Assets and Liabilities) in order to assess any Inheritance Tax liability. If, after payment of all outstanding liabilities, the Estate is big enough, Inheritance Tax may be payable. The Inland Revenue will be able to provide you with details of the then current Inheritance Tax threshold and rules;

4. Calculate any such liability and establish an immediate line of credit in order to satisfy it, as any Inheritance Tax due must be paid before you can be issued with the Grant of Probate and thereby gain access to Estate monies. Banks will usually be prepared to provide a Bridging Loan in these circumstances, although such finance can be expensive;
5. Prepare and lodge the documents required by the Inland Revenue and Probate Registry. Both organisations will tell you what forms you will need to complete and provide helpful information on how to do so;
6. Swear the papers leading to a Grant of Probate. A Solicitor or a Notary Public will do this;
7. Pay the Inheritance Tax bill (if relevant);
8. Receive the Grant of Probate (or Letters of Administration if the Deceased died Intestate) with the Will annexed;
9. Send an Official Copy of the Grant to the bank, building society, insurance companies and other asset holders requesting the assets that belong to the Estate. You may be asked to supply other evidence such as an Official Copy of the Death Certificate;
10. Sell any property. You have an obligation to obtain the best possible price given the market conditions prevailing at the time. The Beneficiaries may want a say in how quickly assets are sold;
11. Pay any debts;
12. Complete the deceased's personal tax return, calculate the Income Tax and Capital Gains Tax liabilities, if any, from the date of death and pay them. The deceased's Inspector of Taxes will be able to help you with these calculations, or you may engage the services of a suitably experienced Accountant or Probate Practitioner;
13. Pay any Legacies. The Will lists the Legatees;
14. Hand over any Bequests. The Will sets out who are the Beneficiaries;
15. Distribute or invest any Residue. This simply means that you divide any remaining assets between those named in the Will or, if stipulated by the Will, invest any remaining assets for the benefit of the Beneficiaries or Legatees.

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