

Guidelines for executors

Those who inherit under a will (the beneficiaries) do not begin to own the money or property the moment death occurs. Ownership passes first to the executors of the will. They have the job of administering the estate – that is winding up the affairs of the person who has died. Only then does ownership transfer to the beneficiaries.

You have been named by someone in their will to act as his or her executor. Often, a solicitor is appointed to act jointly with a friend or relative. Where a solicitor has not been appointed in the will, the executors usually instruct one to act on their behalf in administering the estate.

These notes give a brief summary of what is involved in administering the estate, how we are able to help and what is expected of you in your role as executor.

What happens first?

Executors have an immediate responsibility to arrange the funeral, although in practice the family usually deals with the practicalities of this.

The estate then has to be valued. You may wish to handle some of the tasks yourself but we will be pleased to do anything you are not able or willing to take on. To avoid duplication, the division of responsibilities must be discussed and agreed between us at the outset. Depending on the circumstances, valuation of the estate may involve:

- entering and securing the property (if it has been left empty)
- taking any valuables into safekeeping (if they may be at risk)
- making a full inventory of all the property and possessions in the estate
- arranging for all the property and possessions to be valued
- listing and collecting paperwork on all the person's financial affairs eg bank, building society or other savings accounts, investments, insurance and pension policies etc.

A significant amount of administration is also involved, such as completion of forms, routine correspondence, advertising for creditors and often, preparation of the tax account for the Inland Revenue. Again, we will attend to these tasks.

What is 'probate'?

'Probate' comes from the Latin and literally means 'proof' that a will is valid. This official document can be shown to anyone who wants proof that you are authorised to act as an executor.

When the valuation of the estate has been completed, we will prepare the necessary application for probate. This involves sending off the right papers to the court. Unless some dispute has arisen, there's no need for a court hearing.

Part of the process is that the executors must swear an oath. It is a formal confirmation that you are entitled to probate and promise to do your job properly. It also states how much the estate is worth. We will prepare the document and arrange with you a suitable time when you can swear the oath.

How do you administer the estate?

At this stage, all the financial affairs of the deceased will be finalised. We will handle the process which might include:

- transferring or cashing in any investments
- settling any unpaid debts
- arranging to sell any property or possessions which are not wanted
- paying out legacies (specific sums left to named people in the will)
- when the overall financial picture is clear, reviewing the tax position to see if any adjustments are needed.

When do the assets get distributed?

We will arrange transfer of the assets to those who are entitled to them. Sometimes this can be done just by signing a cheque. Sometimes (in the case of a house, for example) a formal legal document is needed. If this is the case, we will draw up the appropriate documents to transfer ownership to the beneficiaries.

We will also prepare accounts to show all the financial transactions that have taken place during the administration.

Some property never comes to the executors but goes straight to the beneficiaries named in the will or co-owners of jointly-held property. These are some examples of where this happens:

- If the deceased was a co-owner of a house or flat or any other property, such as a joint bank account, his or her share will go automatically to the other co-owner(s).
- Certain kinds of property, like money in friendly societies and pension entitlements, may have been set up in such a way that, on death, they go automatically to the person nominated.
- If the deceased has a life insurance policy that is written in

trust for other people, the insurance money would go direct to the trustees of that trust.

How long does this take?

The process of winding up an estate can be completed quite quickly. But it can take longer and in the worst cases, can drag on for several years. For example time may have to be spent trying to trace 'missing' beneficiaries. A house may have to be sold and might remain on the market for some time or we may meet with delays from third parties, such as the Inland Revenue.

If the will is clear and up to date and contains accurate details of property and beneficiaries, then winding up could be completed in as little as a matter of months.

What are the main duties of an executor?

The law says an executor should carry out his or her task 'with due diligence'. Executors who act wrongly may have to pay compensation to beneficiaries out of their own money. For this reason, it is wise to protect yourself by having the professional help and advice of a solicitor.

The law expects executors:

- to put the interests of the beneficiaries before their own interests
- not make a profit from their position unless authorised
- to scrupulously account to the beneficiaries for all the money passing through their hands
- to act reasonably and prudently in relation to the estate property.

Must an executor act if appointed in a will?

No, you have a choice. Choosing not to act as executor is called 'renouncing'. If you do not wish to act, it is advisable to let us know at the outset. Once the administration of the estate has begun, you cannot drop out if, for example, you have a change of mind or if things turn out to be more difficult than expected. You could, however, apply to retire for a good reason such as ill health.

Do I have to pay for your help?

No. You are entitled to our help and the cost of administering the estate will be paid from the money in the estate. Our charges must be fair and reasonable having regard to all the circumstances and they can be checked.

It sounds like a heavy responsibility

It is. The law takes the executor's role very seriously, so much so that there are several Acts of Parliament and many other legal requirements dealing with their rights, duties and obligations.

It is not difficult to see why since executors may have control over large sums of other people's money.

However, many of the rules are designed to ensure that beneficiaries can get compensation if the executor turns out to be dishonest or careless. Most honest and conscientious executors regard them as common sense and highly desirable in the interests of the beneficiaries.

You have the additional safeguard of sharing the responsibility with a reputable firm of solicitors. In doing so, you are assured of professional assistance in the administration of the estate and advice on legal points and practicalities.

Can executors be beneficiaries too?

It is quite possible that you will be both an executor and a beneficiary. For example, a woman can appoint her husband as her executor and leave everything to him and vice versa.

This should not present problems but if you are in this position you need to be clear about your dual role. Your first duty is as executor. As such, you must act in the interests of the estate and must not put your own interests first. We will, of course, be able to advise if there is any difficulty to be resolved.

Contact

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