

Alison Fielden & Co.

Solicitors & Notary Public

FACTSHEET

A Guide to the Responsibilities of Executors

The administration of an Estate following a death can be time-consuming, detailed and technical. This guide aims to give you a brief insight into the duties and responsibilities of an Executor's role.

1. The Will

Once the deceased's last Will has been located, it must be read carefully to establish who the Executors are and to see if any problems are envisaged with proving the Will – for example, if the signature is incomplete or something has been written on it after signature. The Will should be kept safely by the Executor until it is handed to the solicitor. **DO NOT** attach anything to the Will. In the event that the Will is stapled, **DO NOT** take out and replace the staple if photocopying. The Will should remain together at all times.

2. The Administration

Executors have authority immediately following the death. They must collect in all the assets, pay the debts and carry out the wishes of the deceased.

Executors must be meticulous in their accounting and must maximise the total value of the Estate. The law requires Executors to be responsible for their conduct and actions and their responsibility does not end when the administration has been completed.

The main duties for the Executors are set out in the Administration of Estates Act 1925.

3. Assets and Liabilities

To administer the Estate, all relevant documents must be found, such as bank statements, building society pass books, share certificates, tax returns, utility accounts and pension details.

All the organisations, with whom the deceased held assets or liabilities, must be contacted and professional valuations undertaken of assets, such as the deceased's home and contents and stocks and shares. It is very important to contact the deceased's tax office to ensure that the tax matters are completed correctly.

The deceased's debts must also be listed such as the funeral account, care accounts, nursing home fees, rent, rates, utility bills, credit cards. The accounts

will need to be settled as soon as the Grant of Probate has been obtained. If an Executor is not fully aware of the extent of the deceased's financial affairs, it is advisable to advertise for creditors in the local newspaper and the London Gazette.

4. Grant of Probate

If the Executor has not instructed solicitors and is therefore acting personally, they will need to arrange an appointment with the local Probate Registry. If a solicitor is appointed, they will prepare the documents necessary to obtain a Grant of Probate and a personal interview at the Probate Registry will not be necessary. The Grant of Probate shows the Executor's legal authority to deal with the affairs of the deceased. With small estates (under £5,000) a Grant of Probate is not required.

5. Inheritance Tax

There is no inheritance tax due on gifts passing between spouses and registered civil partners. In all other cases the Government allows a Tax Free amount known as the Nil Rate Band (currently £325,000). If the deceased's estate is worth over this figure, the rest of the estate will be taxed at 40%. If you are married or in a civil partnership it is possible to transfer the unused Nil Rate Band on the second death, potentially doubling the Nil Rate Band available at that time.

When calculating inheritance tax, gifts made up to seven years before death have to be declared to the Inland Revenue, together with gifts that have been made, where the deceased retained an interest in the items he had "given" away.

Tax on cash assets has to be paid before the Grant of Probate is obtained. Tax on the deceased's land and property can be paid in 10 annual instalments, the first being payable six months after death. If the land and properties are sold within the ten year period, any outstanding tax has to be paid at that point. Interest is charged on any unpaid inheritance tax from six months after the date of death.

The Executor's duty to return a detailed and accurate valuation of the estate for inheritance tax purposes is a heavy burden, and penalties may be issued by the Revenue, for which the Executors can be personally liable, if the Revenue establish that the inheritance tax account has not been completed accurately or truthfully.

6. Collecting in the assets

When probate has been granted, the assets must be encashed, giving each asset holder a sealed copy of the Grant of Probate. The Executors must keep detailed accounts. The deceased's property and land is usually sold at this point, or transferred in to the name of its new owner, if it has been specifically gifted in the Will to a particular person.

7. Paying the liabilities

Executors should pay the debts of the Estate as soon as possible after obtaining the Grant of Probate. Debts should always be paid quickly to stop interest accruing on them.

8. Income Tax

The Executors must complete an income tax return for the current tax year prior to death.

9. Capital Gains Tax

This tax is due when an individual disposes of an asset for more than it was valued. The probate valuation is taken as the base value and the Executors have one annual CGT allowance to offset against any gains made. Gains must be reported to the tax authorities by the Executors, and any tax liability arising from it must be paid.

10. Estate Accounts

When the Executors are sure that they have collected in all the assets, paid all the liabilities and completed the tax affairs, they will prepare Estate Accounts giving details of all of the assets, liabilities and taxes paid.

11. Final Distribution

When the Executors are satisfied that the Estate administration is complete, they can make a final distribution, according to the Will. The Executors will require receipts for cheques handed over and also for specific items.

12. Minor Children

It is important to note that children under the age of 18 cannot give a valid receipt for money received from the Estate. The money must either be held upon trust until the child reaches 18 or the Will may specifically allow an Executor to pay money to a child's parent, for the parent to invest until the child is 18.

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