

Administering an estate



A guide for executors, administrators and beneficiaries.

At a glance

- When someone dies, it is crucial to find the will promptly and identify the executors
- Executors administer the estate
- They gather details of the estate's assets and liabilities, pay the liabilities and distribute the assets to the beneficiaries
- It may take a year or more to complete the administration of an estate

What happens when someone dies?

Registering a death and arranging the funeral are the first priorities. It is usually advisable to obtain several copies of the death certificate from the registrar because photocopies are not acceptable. The funeral expenses count as a liability of the estate and they are paid before any other liability.

Finding the will and identifying the executors

Wills and codicils are frequently held for safe keeping by a solicitor, but a copy is usually kept with the personal records of the deceased. A solicitor will not release a will except on production of the death certificate and written instructions from all of the executors. If a will cannot be found, family members will need to make extensive enquiries to find out whether a will has been made. If a copy of a will is found, it may be possible to use this in certain circumstances.

Executors named in a will are not always known to members of the family and it is advisable to make contact at the earliest opportunity. If the executors are described as members of a firm of solicitors, the firm will usually nominate one or two partners to "prove the will" – i.e., to take out the grant of probate – on behalf of the partnership. The maximum number of executors is four.

If there is no will, the estate will be distributed in accordance with the intestacy rules and it will be necessary to establish the family relationships to determine who is entitled to the estate. This is not always easy and it should be remembered that children born of unmarried relationships rank equally with legitimate children. One or more of the class of beneficiaries may apply for letters of administration (a legal document enabling the executors to administer the estate), and special rules apply if there is a widow or minor beneficiaries.

Deed of variation

Also called a deed of family arrangement, this is a very useful tax-planning tool that can be used to "rewrite" part of the deceased person's will or the distribution on intestacy. It can save large amounts of inheritance tax for the next generation and can be used to pass assets to beneficiaries not named in the will or in different proportions to those set out in the will.

Executors' duties

The main duty of the executors is to prove the will and administer the estate in accordance with the law. Professional executors may be paid for their time, while other executors are not entitled to payment (unless the will authorises it), although they can be reimbursed for reasonable expenses. If a person is appointed as an executor, they are not obliged to carry out any executors' duties if they are unwilling or unable to do so. If all of the executors are dead or unwilling or unable to act, the will may be proved by one or more of the beneficiaries named in the will. If there is no will, the estate is administered by the people who are entitled to inherit the estate, according to intestacy rules. They are referred to as administrators, rather than as executors. The term "personal representatives" covers both executors and administrators.

One of the first and most urgent duties of an executor is to secure the assets. This may involve removing valuables from an unoccupied property, informing the property's insurers and complying with any specific requirements that they impose. If the house is empty, it is also usual to redirect the post.

Obtaining a grant of probate

In most cases, it is necessary to obtain a grant of probate – the right to deal with the deceased person's assets – or letters of administration, in the case of someone who has died without leaving a will. In every case, it is necessary to obtain full details of the assets and liabilities of the estate. If a solicitor is appointed to act for the personal representatives, he will require all original documents relating to the assets, such as property title deeds, share certificates, bank or building society passbooks, insurance policies or bonds, National Savings certificates and bank statements. The solicitor will also require other official documents, such as the deceased's passport, driving licence and death certificate.

Cash held by the deceased or found in their property should be handed to the relevant solicitor, if the amount is substantial. If it is a small amount it can be used to pay expenses, provided that a record is kept by the executor.

The solicitor will usually arrange for any property or possessions to be valued, unless the executor prefers to make the necessary arrangements. The safe custody of smaller valuable items such as pieces of jewellery, silver or paintings can be a problem and if there is any doubt about their security it is usually possible to arrange for the valuer to hold them until they can be distributed. Household insurers will not usually cover such items in an empty house. If an executor wishes to be involved in confirming balances or obtaining valuations, they should liaise closely with the solicitor as there are specific valuation requirements.

The executor will be asked to hand over any bills or details of liabilities so that the solicitor can acknowledge them and ensure they are paid during the course of the administration. Once the assets have been traced and valued, the next step is to prepare an inventory for HM Revenue & Customs (HMRC). If the estate exceeds the "nil rate band" – currently £325,000 – and is not left to a spouse or charity or is not eligible for reliefs such as agricultural or business property relief, the excess will be liable to inheritance tax at 40 per cent.

If the individual predeceased their spouse, it may be possible to make a claim for the transfer of any unused proportion of the first spouse's nil rate band to the estate of the second spouse. This could bring the nil rate band available on the second death up to £650,000.

From 2017 estates may benefit from an additional residential nil-rate band (RNRB) of £100,000 (the RNRB is currently £175,000) where the deceased's residence is left to direct descendants, which includes children, step-children, adopted and foster children, their respective spouses and civil partners. This relief is in addition to the £325,000 nil-rate band already available.

If the main residence passes to a surviving spouse (which would mean that no inheritance tax is charged), who then leaves it on their death to their children or grandchildren, the un-used RNRB may be rolled over on the second death, alongside the transfer or the main nil-rate band. It is this provision that is behind the headlines that there will be a £1 million nil-rate band by 2020.

Where a person's whole estate is valued at over £2 million, there is a scaling back of the RNRB depending on how far over the £2 million threshold the estate comes, with no RNRB for estates worth more than £2.7 million.

Inheritance tax has to be paid before the grant of probate can be obtained. Inheritance tax on certain assets can be paid in instalments over ten years.

Raising cash to pay the initial inheritance tax liability can be a problem and the solicitor will make enquiries about obtaining advances from the cash held by banks or building societies at an early stage, as this procedure can be time consuming. If there are no cash assets or the banks will not agree to release them, it may be necessary for the executors to raise a loan.

To obtain a grant of probate or letters of administration the executor must sign a Legal Statement. This confirms that the will (and codicils, if there are any) is the last will and testament of the deceased, that the person signing the Legal Statement is named as an executor in the will, and that they will collect in and distribute the assets. Where there is no will (or no executor is appointed under the will), the administrator will sign the Legal Statement in similar terms, which confirms that they are the person with the right to administer the estate.

The Legal Statement, original will (if there is one) and receipt from HMRC confirming that any tax due has been paid are lodged with the Probate Registry with their fee (currently £155) and the grant of probate or letters of administration is issued. This process usually takes 20 days from receipt of the paperwork.

What can go wrong?

If the deceased was well known to his executors, their affairs were kept in good order and their will was prepared by a solicitor, the process should be relatively straightforward. Unfortunately, this is often not the case.

It is essential that the executors meet early on to decide whether all of them are going to act, and to instruct the solicitor. Executors should appreciate that administering an estate is quite an onerous duty and a good deal of time and paperwork will inevitably be involved. They should also remember that their function is to administer the estate according to the law, usually without pay, and any executor who is in conflict with a beneficiary or is unable or unwilling to devote sufficient time and energy to the process should consider renouncing probate or having power reserved to him.

If an executor takes no action after a death, a beneficiary can ask the court to compel them to take a grant or renounce their appointment. This is rare but not unknown and usually gives rise to a great deal of delay and ill feeling.

A defect in a will is a major problem and will inevitably delay the process. If the will was not executed properly, it may be necessary to trace the witnesses so that they can swear affidavits relating to the execution of the will. If the will was not signed before witnesses, it will be invalid. Sometimes the will is ambiguous or the names of the executors are not shown correctly, and again it may be necessary to obtain affidavits. Occasionally, part of the will may be declared invalid.

If the will cannot be found but there is no evidence that the deceased destroyed it, a grant can sometimes be obtained, using a copy of the will. Where there is a dispute over a will or its contents, a caveat may be lodged that delays the grant being issued until the dispute is resolved and/or the caveat is withdrawn. Inevitably, this takes time and adds to the administration costs.

What happens next?

Once the grant has been issued, the executors can proceed to collect in the assets. It is advisable to obtain professional advice from a stockbroker/investment manager in relation to any investments.

Collecting the assets may include the following:

- Transferring or selling the house.
- Closing building society or bank accounts.
- Selling or transferring shares, unit trusts and saving certificates.
- Claiming life assurance policy monies.
- Collecting pension arrears.
- Selling personal effects.

Executors can also deal with other more everyday considerations, such as:

- Refunds on season tickets.
- Cancelling subscriptions.
- Changing membership records.
- Cancelling the deceased's passport and driver's licence.
- Dealing with uncashed cheques.

Collection of some assets may be more difficult. Advice may well be needed when dealing with shares or interests in a private company or family business, or with assets outside the UK.

It may be necessary to open an executors' bank account to hold the cash from the deceased's bank accounts and the proceeds of sales of assets until the executors are in a position to distribute the estate. The executors will repay any loans obtained to pay inheritance tax out of the first proceeds of the estate and settle the funeral account (unless it has been settled from the deceased's bank account) and any outstanding bills. The solicitor will also usually submit their first bill at this stage. The executors will submit a final income tax return for the deceased and pay any outstanding tax or obtain a rebate. This stage involves a great deal of signing and form filling.

If there is a property to be sold, it is usual to put it on the market promptly as empty properties are an unwelcome responsibility for executors.

Executors should be aware that any person who has a claim against the estate can make a claim during the six months following the issue of the grant of probate. Such claims are rare but they do occur and can be made by a spouse, former spouse, child or any other person who can show that they were financially dependent on the deceased. For this reason, a professional executor will not usually agree to make distributions from an estate until the six-month period has elapsed.

Creditors may also make claims against the estate. The executors and administrators must pay all outstanding debts. They may be personally liable for any unpaid debts if they distribute the estate without making sure that all creditors have been paid. For this reason, statutory advertisements are usually placed in newspapers with details of the death, inviting claims during a fixed period – usually of two months. If such advertisements are placed and a claim is made after the fixed period (and after the executor has distributed the assets), the executor is protected from claims by the creditor.

Once a will has been submitted for probate, it becomes a public document and anyone can obtain a copy. Sometimes you will see details of a deceased person's will in the newspaper. This is usually because the person was very wealthy or well known or their will is of particular interest, perhaps because it includes large gifts to charity. As the will is a public document, it is not possible to stop this kind of publication.

Distributing assets

The first distributions made from the estate after all of the liabilities have been paid are usually legacies. Specific legacies are frequently distributed before the six-month period has elapsed – particularly if there are storage or security issues – and executors often agree to pay small monetary legacies during this period as well. The recipient of a specific legacy is responsible for any costs of delivery that are not payable by the estate.

For example, an executor might be prepared to ignore a small amount of postage, but they might not accept significant transportation costs unless all of the beneficiaries agree to it. Once the legacies have been dealt with, the executors can start to distribute the remaining assets of the estate – known as the “residue”.

If there is still tax to pay or any undetermined liabilities, it is wise to keep substantial reserves – although equally, executors should not retain assets unnecessarily. When transferring shares to more than one beneficiary, it is advisable to transfer an appropriate proportion of each holding to each beneficiary to maintain parity between them.

Beneficiaries sometimes ask executors to sell their shares and give them cash instead. If shares are sold for less than the probate value within one year of death, the executors can claim inheritance tax relief. There is a similar provision for sales of properties within three years of death, but if a property is sold for more than the probate value, HMRC may substitute the sale proceeds for the original value, with a consequential increase in the inheritance tax liability. If a property is sold, all of the remaining inheritance tax has to be paid immediately.

Some assets take a significant amount of time to administer – particularly foreign assets, where it may be necessary to take out a second grant of probate in a foreign jurisdiction. The distribution of foreign assets may come under local jurisdiction rather than under the terms of the will or the English intestacy rules; these situations can be difficult and expensive to deal with.

What if the beneficiaries cannot be traced?

The executors and administrators must make every effort to trace the beneficiaries. If it proves impossible to trace any of the beneficiaries, or those responsible for the estate believe that there may be others entitled to share in the estate but they cannot locate them, an indemnity policy could be taken out to provide insurance cover. This enables the estate to be distributed among those beneficiaries who can be located.

The final winding up

The total administration period may take a year or more to complete, but during this time legacies will have been paid and interim distributions made. Eventually, the executors will reach a point where all of the administrative matters have been resolved and they will proceed towards the final winding up of the estate. The solicitor will prepare administration accounts that will detail all of the assets and liabilities of the estate and show how they have been dealt with. The solicitor will obtain clearance from the Capital Taxes Office, prepare income tax returns for the administration period and income tax certificates, and – once the accounts are approved – pay any balances due to the beneficiaries.

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