

The Role of Executors – Lastingpost.com

Introduction

The Executor is the legal term for the person, but usually persons, chosen by the deceased to act as their representative(s) after their death. They must be named in the Will.

The main role of the Executors is an administrative one. They are responsible for gathering in the deceased's assets, paying off any debts and settling any Inheritance Tax liability before distributing the balance of the assets to those entitled under the terms of the Will.

Number of Executors

Any number of Executors can be named in the Will but the maximum number who may be appointed to act by the Probate Registry at any one time is four.

Sometimes, people only appoint one Executor. This is acceptable especially when the estate is very straightforward. However, it is advisable to appoint at least two. This ensures the avoidance of a problem if one of the Executors is unable to act through ill health or for some other reason.

Who Should be Appointed?

Executors will often be the deceased's Next of Kin. If a person's affairs are in any way complicated it makes good sense to appoint a mix of family, trusted friends and professionals such as a Solicitor.

Potential Executors will be reassured to hear that they can be a beneficiary under the Will.

The people chosen to be the Executors should confirm that they are willing to act before they are appointed in the Will. They should be aged eighteen or over and realistically it is sensible for a person to choose people of their age or younger rather than an older generation.

Accepting the Appointment

An Executor is not obliged to accept the appointment. If a person is appointed as an Executor in the Will but then feels unable to act for whatever reason after the person's death, they can decline to act by writing to the Probate Registry confirming that they are standing down. However, once the appointment is accepted, they cannot subsequently change their mind except for a serious reason such as ill health.

Are Executors Paid?

Unless specified in the Will, a private individual acting as an Executor cannot charge a fee. However, they will be able to charge any expenses incurred while carrying out their duties. A professional person appointed as one of the Executors will be able to charge a fee and this should be met by the estate.

Executors' Responsibility

Executors become personally responsible for the deceased's estate when they accept the appointment. When there is more than one Executor, this responsibility is shared and all decisions must be unanimous.

Thereafter they could be sued personally, for example, by a creditor. Likewise, if the amount of Inheritance Tax is calculated incorrectly, they could become personally liable for the balance at a later date.

How Long will it Take?

As each estate is different, it is difficult to predict with any certainty how long it will take to firstly obtain the Grant of Probate and to then administer the estate. As a rough guide, it should take six to nine months for an estate that includes property.

Specific Tasks

There are specific tasks that the Executors must carry out to legally fulfil the obligations of their role. Their responsibilities which start from the date of death are as follows:

Following the Death

1. Help the Next of Kin notify family and friends.
2. Locate the last original Will. The original Will is an important legal document. The Executors should make a number of copies which can then be distributed to interested parties such as the beneficiaries and the Inland Revenue. They must ensure that the Will is not tampered with in any regard (no staples, paper clips, pins should be used) and it should be stored safely and securely.
3. Help the Next of Kin appoint a Funeral Director. The Executors are responsible for ensuring that the deceased's wishes and instructions regarding the funeral are complied with as far as possible. These wishes may well be set out in the Will.
4. The Next of Kin will usually register the death at the local Registry of Births, Deaths and Marriages. The Executors should ensure that the person who registers the death purchases at least six copies of the Death Certificate.
5. Notify the deceased's bank, building society, credit card companies and other financial companies by sending them each a copy of the Death Certificate.

Photocopies will not be acceptable. All the deceased's accounts will be automatically frozen on receipt of the copy certificate.

6. Inform the building and contents insurance companies that the policy holder has died. The Executors must ensure that ongoing insurance cover is in place as they will be personally liable. All property and other valuable items should be secured.

7. Make a public announcement of the death.

8. Inform all other organisations such as the Department for Works and Pensions, utility companies and the deceased's ex employers etc. The Executors should also put in place a change of address form with the Post Office so that post can be redirected to them.

Valuation of the Estate

9. Before the Executors can obtain the Grant of Probate (not required if the estate is small and contains only certain types of assets) that allows them to collect the deceased's assets for distribution to the beneficiaries, they will need to prepare an Inland Revenue Account.

10. To do this the Executors must produce a valuation of all the deceased's assets. This takes the form of an inventory (or list) of all the deceased's assets including money, furniture, savings, property and anything else that belonged to the deceased as well as any loans, mortgages, credit card balances and other domestic or business debt.

11. Pay any Inheritance Tax Liability due on the estate. Arrangements may need to be made to raise the money to pay the liability (e.g. by taking out a bank loan or selling some of the deceased's personal property). The Probate Registry will not make a Grant of Probate until any liability has been settled.

Grant of Probate

12. Swear an oath before a Solicitor confirming that they are appointed by the Will and that they will ensure that the estate will be distributed in accordance to the law and the terms of the Will.

13. Apply to the Probate Registry for a Grant of Probate. This is simply the process of proving the validity of the Will and obtaining the Grant (official confirmation) showing the authority of the Executors to carry out the Will. The Executors can apply in person or instruct a Solicitor to apply on their behalf. The application takes the form of a short interview.

14. Receive the Grant of Probate which entitles the Executors to administer the deceased's estate. Several official copies of the Grant should be requested.

Administration of the Estate

15. Notify all businesses by sending official copies of the Grant. The Executors must gather all documents relating to the estate and complete the list of assets, debts and liabilities.

16. Open an Executors' bank account for the administration of the estate. This avoids all confusion with the Executors' personal finances. All the money (including the sale proceeds of any asset) can be collected into this one account.

17. Pay off all the claims on the estate, liabilities and debts and also the funeral expenses.

18. Obtain final agreement from the Inland Revenue that all tax liabilities have been settled. These liabilities may include Income Tax from before the person died and from the administration period. Also, there may be additional Capital Gains Tax to be paid, if for example a property has been sold in the Administration period which has gone up in value since the date of death.

19. Apply to the Inland Revenue Capital Taxes Office which is in charge of the collection of Inheritance Tax for formal confirmation that all Inheritance Tax has been paid.

20. Draw up Estate Accounts. It is essential that accurate records of all financial transactions are kept during the administration stage as a beneficiary or the Court can ask for Estate Accounts which the Executors must be able to provide. A Statement of Administration should be sent to the beneficiaries who should give approval before the estate is distributed.

Distribution of the Estate

21. Distribute the estate to those entitled under the terms of the Will. Receipts should be obtained from the beneficiaries. The Executors will need to ensure that any distributions to persons under 18 are held for them in trust. When all cheques have cleared, close the Executors' bank account.

Appointing a Solicitor or Accountant

Unless the estate is small and straightforward, the Executors should consider appointing a Solicitor or other professional to assist them in carrying out their duties. The cost will be paid from the estate.

From the family's perspective this will mean they are not burdened with legal work at a time when they are grieving. The potential for conflicts between family members can also be reduced. The burden of Inheritance Tax is beginning to affect an increasing number of families. If there is a potential Inheritance Tax liability, professional help may be able to reduce the amount payable. In any event, if the estate includes trusts, business assets or foreign property, professional expertise will be essential.

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