

When Someone Dies.....

We try hard to keep in this leaflet accurate & up to date, but it is for guidance only & is not intended to be a precise & complete statement of the legal position.

Please note that Executor is used to mean executor(s) or trustee(s) & he to mean he, her or they.

PROFESSIONAL EXECUTORS & TRUSTEES

PLEASE NOTE THAT WE STRONGLY RECOMMEND THAT YOU APPOINT PROFESSIONAL EXECUTORS/TRUSTEES. IF YOU CHOOSE NOT TO DO THIS WE STRONGLY RECOMMEND THAT YOUR EXECUTORS/TRUSTEES TAKE PROFESSIONAL ADVICE BOTH BEFORE TAKING UP THEIR DUTIES AND IN DISCHARGING THEIR DUTIES. EVEN IN SEEMINGLY SIMPLE SITUATIONS A FAILURE TO TAKE APPROPRIATE DECISIONS & AT THE RIGHT TIME CAN RESULT IN A HIGHER TAX LIABILITY.

Executors & Trustees Duties

County Wills feels it is our duty to offer you an idea of what those responsibilities might be. You don't have to do all the work yourself; you are free to ask other members of the family & friends to help or to seek professional help and County Wills can also help if you wish. We will use 'the Executor', 'the Trustee' & 'he' to cover all possibilities.

The Executor

The Executor is responsible for dealing with the Willmaker's affairs from the moment of death & for ensuring that what the Will asks for comes about. The Executor has full authority from the moment of the Willmaker's death even though no Grant of Probate has yet been made as the law demands. The Grant of Probate confirms & makes official the powers of the Executor.

A Will must appoint at least one Executor; two or more joint Executors may be appointed. A maximum of four Executors can act at any time.

Where joint Executors are appointed it is ESSENTIAL that everything done in connection with the Will has the full agreement of all the Executors.

There is no legal restriction on the Executor inheriting or benefiting from the Will providing that this is allowed under the terms of the Will.

No one can be forced to act as an Executor. It is a responsibility that must be accepted & may be put down at any time, should the nominated Executor decide, before the Executor starts to act. On the other hand, an Executor cannot be forced to give up his appointment unless he is proved guilty of misconduct.

Executor's duties may involve considerable work & responsibility.

The Executor is of course; free to seek help & guidance, on an informal basis, from family & friends. Alternatively, he could completely delegate the task but he would then still remain responsible for its correct completion.

The Executor is not normally expected to finance his duties himself & all the expenses arising from performing his duties can be taken from the estate unless the Will does not allow this.

The Executors duties include the following: -

- 1 The Executor is the person entitled to possession of the deceased's body & he will make or oversee the funeral arrangements usually in consultation with the family of the deceased. The Executor would normally follow the deceased's request as to the funeral arrangements but, in law, the Executor may do as he wishes & may disregard both the deceased's wishes & those of his family. The estate normally pays the costs of the funeral unless the Will does not allow this. If the death has been reported to the Coroner then his permission will be needed before the funeral takes place.
- 2 If the deceased wanted parts of his body used for medical purposes then the relevant medical authorities must be notified as soon as possible.
- 3 Notifying the death to family members & friends.
- 4 Making the assets of the deceased, the estate, secure, as the Executor is responsible for the estate. Ensure that the utility services (gas, water, electricity etc) are made safe & the suppliers are notified of the death.
- 5 Obtaining the will & contacting any other Executors & agreeing who will do what.
- 6 The notification of the death to the Registrar of Births, Deaths & Marriages & obtaining the Death Certificate & a Certificate for Burial or Cremation. Additional official copies of the Death Certificate will prove useful, as many institutions will ask to see a copy.

- 7 Keeping full & comprehensive records, receipts & accounts of everything that is done in connection with the Will. It may be necessary to demonstrate that the Executors duties were discharged honestly & competently in full accord with what the Will asked for.
- 8 Dealing with the Probate Registry & the Inland Revenue about the taxation aspects of the Will & paying any Inheritance Tax due.
- 9 Taking the Will through the probate process including dealing with the Probate Registry.
- 10 Collecting, listing & valuing all the assets of the estate.
- 11 Paying all the debts, liabilities, taxes & dues that may be owed by the Willmaker at the time of his death or as a consequence of his death. It may be necessary to advertise in local & national newspapers asking that creditors & other claimants against the estate contact the Executor.
- 12 Paying from the estate the costs of the administration of the estate & other costs, for example, of the funeral providing the terms of the Will allow this.
- 13 Paying legacies of money to the nominated beneficiaries & transferring items of property to the nominated beneficiaries.
- 14 Any failure to carry out the Executors duties properly or acting against the terms of the Will would be a breach of trust for which the Executor may be held personally liable to the beneficiaries.

The Trustee

If the Will has set up a Trust, for example, to safeguard bequests to a minor, then normally the Executor would also be appointed as Trustee to administer the Trust. In this instance the Trustee would have the full duties of the Executor as set out above together with those of the Trustee as set out below.

A Trustee is a person to whom the Will gives money and/or property to be looked after for the benefit of another. Whilst the Trustee becomes the legal owner of the property he may derive no benefit from it & must look after the assets solely for the benefit of the beneficiary.

The Trustees duties include the following: -

- 1 Keeping full & comprehensive records, receipts & accounts of everything that is done in connection with the Trust. It may be necessary to demonstrate that the Trustees duties were discharged honestly & competently in full accord with what the Will & the law requires.
- 2 Collecting, listing & possibly valuing all the assets of the Trust.
- 3 Managing & investing the assets in the Trust so as to maximise the eventual return to the beneficiaries.
- 4 Dealing with the Inland Revenue with respect to the taxation aspects of the Trust.
- 5 Paying from the Trust the costs of the administration of the Trust providing the terms of the Trust allow this.
- 6 Making sure that the bequests from the Trust as directed by the Will are made & actually reach the intended beneficiary.
- 7 Any failure to carry out the Trustees duties properly or acting against the terms of the Trust would be a breach of the Trust for which the Trustee may be held personally liable to the beneficiaries.

Probate

Registering the Death

Someone, either from the family or the Executor, must register each & every death.

The Wigan office is: The Registrar of Births, Deaths & Marriages
The Town Hall Library Street Wigan Lancashire WN1 1YD Telephone 01942-705000

If you do not fall within the Wigan area, then they will, of course, supply you with the appropriate details of the office covering your locality. The Registrar will provide the Death Certificate, which will be needed together with the Certificate for Burial or Cremation before the funeral, takes place. It is very useful (and cheap) to get plenty (we suggest at least 3) of certified copies of the Death Certificate as, potentially, many organisations will ask to see one.

What is Probate?

Probate is the legal term for the process that confirms that the person nominated by the Will can act as Executor and, where appropriate, as Trustee. The document obtained from the Probate Registry, an office of the High Court, is called the Grant of Probate & is proof to the world that all is in order with the will & with the appointment of the Executors.

Do you need to apply for Probate?

If the property left is held in joint names or consists only of cash & personal effects & the amount held by any one financial institution is less than £10,000, then no formal Grant of Probate may be needed. However, the financial institutions involved will need to see the Death Certificate & may require an indemnity before releasing any funds. You would need to approach the institutions to seek their guidance as to their own internal procedures. The Will must always be preserved in case there is a dispute later.

How do you apply for Probate?

Probate should be applied for as soon as possible; expenses will arise needing to be paid from the estate & this will be difficult without a Grant of Probate. The Executors should normally apply together although if necessary any one Executor can apply providing the others are notified. Firstly, you need to apply for the necessary paperwork from the appropriate office: -

Manchester area, with local offices at Bolton, Nelson, Oldham, Stockport, Wigan & Warrington
Opening Hours 9:30 am to 4:00 p.m. Mon -Fri

The Liverpool area, with local offices at Southport, St Helens & Wallasey
Opening Hours 9:30 am to 4:00 p.m. Mon -Fri

The District Probate Registry
9th Floor
Astley House
Quay Street
MANCHESTER M3 4AT
Phone: 0161-8344319

The District Probate Registry
3rd Floor
India Buildings
Water Street
LIVERPOOL L2 0QR
Phone 0151-236-8264/8265

If you do not fall within their areas, then they will supply you with the details of the appropriate office.

The local Registry will send you:

- 1 PA1; A Probate Application form, blue & white. This form asks for details of the deceased & you.
- 2 PA2; A blue leaflet, 'How to Obtain Probate-A Guide to the Applicant acting without a Solicitor'.
- 3 PA3; A List of local probate offices.
- 4 PA4; Personal Application Fees
- 5 PA5; A Spouses Contributions form, white. This form is used where a spouse claims part of the estate should be hers/his by virtue of contributing to its purchase or upkeep even though the deceased legally owned it. If accepted, this can reduce the probate fees payable.
- 6 IHT 205; Do you need to complete an Inland Revenue Account before probate? This form allows you to work out the likely inheritance tax liability. If the value of the estate does not exceed £125,000 then form IHT 37, 40 & 44 below will probably not be needed.
- 7 IHT 37; An Inland Revenue Capital Taxes Office Schedule of Real, Leasehold, Heritable & Immovable Property form, yellow & white.
- 8 IHT 40; An Inland Revenue Capital Taxes Office Schedule of stocks & shares etc. form.
- 9 IHT 44; A Return of the Whole Estate form, blue. This form asks for details of the estate to allow probate fees to be assessed & how much inheritance tax is payable. All capital values used should be those at the date of death. If tax is due an Inland Revenue Account will also be needed. The Registry will fill this in for you. You will need to check & sign it at the probate interview.

The relevant forms, (except for PA2, 3 & 4) need to be completed & returned to the District Probate Registry (NOT to a Local Office) with the original Death Certificate & the original Will. Keep copies for your own use & in case the originals are lost. The Registry will check the documentation & then invite you to attend an interview.

The Probate Interview

The purpose of the interview is to confirm the details you have supplied & answer any queries you may have. You can take someone to keep you company if you wish. The interview can be at a Local Office if this is more convenient. Probate fees due must be paid at the end of the interview, normally by cheque or cash. Credit cards cannot be used. Don't forget to say how many copies of the Grant of Probate you need; they only cost 25p each & they will be useful.

What does Probate cost?

A probate fee is & full details will be supplied with the paperwork. For estate valued at more than £5,000 the fee is £130.

What happens after the Probate Interview?

The formalities will be completed & the Grant of Probate document will be posted on. The estate of the deceased would then be released to you.

Finance

It is often helpful to open a bank account specifically to deal with the assets & liabilities of the estate. It may be necessary to obtain a bank loan to pay expenses payable by the estate before the assets of the estate can be realised particularly where Inheritance Tax is payable.

Inheritance Tax

If the total net estate (including the value or part of the value of certain gifts made within the preceding 7 years) exceeds the Inheritance Tax threshold ~£300,000 then you will need to discuss the tax liability with the Probate Office & the Inland Revenue. Tax due on personal property e.g. cash in the bank, must be paid before the Grant of Probate can be made. Any tax due on other property should be paid immediately the property is sold although it can be paid in 10 yearly payments whilst the property remains unsold. Interest will be charged on late payment. Inheritance Tax Discharge Certificates will need to be obtained once any tax due has been paid.

Settling Up

Before any distribution it is essential to make sure that all debts & taxes have been paid & no claims under the Inheritance Act or any other claims will be made. It is possible to hand over specific gifts & perhaps make part payment to the residual beneficiaries providing always that sufficient value is kept in the estate to be sure that taxes, debts & claims can be paid.

It will be necessary to contact all the institutions that dealt with the deceased. Many will ask to see a copy of the Death Certificate. The following list is intended as a general guide: -

Financial adviser	Banks	Insurance companies	National Savings	Household Utilities
Mortgage Company	Accountant	Building Society	Post Office	Pension Company
Employers	Inland Revenue	Local Council	DVLC	Premium Bond Office

A bit of detective work may be necessary but most people tend to keep all their financial paperwork in one place in the home. The respective institutions will guide you as to their own formalities & will forward the necessary paperwork direct to you.

Claims under the Inheritance Act can potentially be made by anyone who was financially dependent in whole or in part on the deceased & who believes that the Will does not adequately provide for them. Any such claim must be made within 6 months of the Grant of Probate. Hence, waiting until the time has passed would make sure that the Executor couldn't be tripped up by such a claim.

If there is any possibility of any unknown creditors then the Executor must be very careful that he does not end up personally liable for paying such debts. If there may be unknown creditors then the Executor should place an advert in a newspaper local to the place of abode of the deceased & in the London Gazette. The advert must be in the following form: -

<p>JOHN SMITH DECEASED</p> <p>Notice is hereby given pursuant to Section 27 of the Trustee Act 1925 that all persons having claims against or an interest in the estate of JOHN SMITH deceased late of '1 High Street Anytown AB1 2CD' who died on the 1st November 2009 are hereby required to send particulars in writing of their respective claims or interests to the undersigned on or before the 5th February 2004 after which date the Executor will proceed to distribute the assets having regard only to valid claims or interests so notified.</p> <p style="text-align: center;">Dated 1st December 2009</p> <p style="text-align: center;">Ian Douglas 26 Tarnway Lowton Warrington Cheshire WA3 2QJ</p>
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The advert must give two clear months from the date the advert appears for creditors to come forward before the estate is distributed. Thereafter, the estate can be distributed & if any creditor then comes forward they may have a claim against the beneficiaries of the estate but not against the Executor. Of course, the costs of the advert will be paid from the estate.

You should get written confirmation from the Inland Revenue that either no income tax or capital gains tax is due or that the taxes due have been paid.

It is usually, although informally, held that Executors have one year to settle & distribute the estate. Once the year has elapsed interest becomes payable by the estate on distributed legacies.

You can now distribute the estate in accordance with the terms of the Will. Careful records & receipts of everything charged to the estate & everything distributed under the Will should be kept; formally for a period of 12 years. It is essential to supply the main beneficiaries (the 'Residual Beneficiaries') with a formal account of the estate detailing what was part of the estate & where it went & to obtain the Residual Beneficiaries written acceptance of the account.

Any gift that cannot be made because the intended beneficiary has died becomes part of the residue of the estate unless the Will makes other provisions. Exceptions may be gifts to children & grandchildren of the Willmaker who have died. These gifts pass on to the natural & adopted children of the intended beneficiary in equal shares. If the children are under 18 years old then the gifts will be held on trust for them until they are 18.

Specific items from the estate can be used to satisfy bequests stated in cash terms at the absolute discretion of the Executor & with the agreement of the beneficiary. However, any disagreement as to the value of the items would force the items to be sold & a cash bequest made.

Serious problems may arise if: -

- 1 The debts, expenses, taxes or dues owing exceed the assets in the estate, that is the estate is insolvent
- 2 There are not enough assets in the estate to make the bequests as directed in the Will

Generally in such cases, the debts, expenses, taxes or dues owing must be paid first, gifts of specific items made next, gifts of cash made next & the residue of the estate given to the residuary beneficiaries last. If there is not enough to go around the Inland Revenue always gets the first bite & the residuary beneficiaries always lose out. Professional advice should be sought in such a case; particularly where the estate is insolvent.

IF YOU HAVE ANY QUESTIONS OR PROBLEMS PLEASE DO NOT HESITATE TO CONTACT US

This leaflet was printed in-house & on non-glossy paper to avoid wasting resources & to help conserve the planet