

Guide for Executors

Roles and Responsibilities

Dealing with the estate of a loved one can be a daunting task. Executors are under certain legal duties and obligations and there are strict timescales that must be met. This guide sets out information to help the executors and highlights where further advice would be beneficial.

What is an executor?

An executor(s) is the person or people named in the Will who are responsible for dealing with the estate of the person who has died. If the Will contains ongoing trusts the executor may also be a trustee of those trusts.

Executors receive their powers from the Will and are authorised to act on behalf of the person immediately following their death.

Once an executor has accepted their role they cannot retire. They are also liable for any mistakes made with the administration of the estate. It is therefore vital that you consider your role and what it involves before undertaking any work in relation to the estate.

The executors' responsibilities...

- Registering the death
- Organising the funeral
- Obtaining details of all assets owned
- Calculating all debts/liabilities
- Calculating and submitting income tax and capital gains tax returns up to date of death
- Calculating and submitting tax returns for period up to completion of the administration
- Calculating and submitting inheritance tax (IHT) returns
- Arranging payment of all taxes
- Obtaining Grant of Probate
- Obtaining confirmation from HMRC that all taxes are paid and their file is closed
- Collecting and distributing the assets

Assets and Liabilities

The executors must obtain details of all assets including, balances in bank and building society accounts as at the date of death and valuations of any stocks, shares, properties and personal effects owned by the person who has died. Cash balances must include any accrued interest to the date of death. Share valuations have to be carried out according to a strict set of rules and must include dividends declared before death but not yet paid.

The executors must also clarify and calculate any liabilities. This includes pension overpayments, funeral expenses, mortgages, any credit or store card balances, other loans and any other unpaid bills such as utility bills.

Taxation

The executor is responsible for the preparation and submission of income tax and capital gains tax returns covering both the period up to the death and the period when the executor is administering the estate.

The executors must complete an IHT return regardless of whether tax will be payable. Any IHT due on the estate must be paid within six months after the end of the month in which death occurs otherwise interest is payable. The IHT relating to certain property has to be paid before a Grant of Probate can be obtained. Other

assets where IHT is due, including land, houses and business property, may qualify for IHT to be paid by instalments. The instalments are usually over ten years with interest payable on any unpaid instalments.

There are a number of IHT reliefs that can reduce the tax payable including Business Property Relief, Agricultural Property Relief and Spouse Relief including the transferable nil rate band. These can be complicated areas and care should be taken to ensure reliefs are maximised.

Grant of Probate

Generally, depending on the size and assets of the estate and the beneficiaries named in the Will, the executors will need to make an application for a Grant of Probate. The Grant of Probate is proof of the executors' entitlement to administer the estate and will be required to deal with any of the assets. Before the application for the Grant can be made the executors must swear an Oath setting out certain information about the person's Will and the extent of their estate. They must also deal with the IHT return and payment of IHT.

Collection in and distribution of assets

The Grant of Probate allows the executors to collect in the assets in the estate and distribute them in line with the terms of the Will. The timescale to deal with the distribution of an estate depends on the size and nature of it and the beneficiaries named in the Will. However, typically it will take between 3 to 12 months.

Before the estate can be distributed the executors may have to deal with the sale of assets such as stocks, shares, property etc. Alternatively, the executors may choose to keep those assets and transfer them directly to the entitled beneficiaries. Where necessary, the executors will need to retain funds to cover future instalments of IHT and future bills etc. It is essential to ensure that all debts and liabilities are paid before distributing the estate and this may involve the executors ensuring that they are protected from liability by advertising for creditors or claimants in a manner set out by law. The executors also need to ensure that all income tax liabilities have been settled and that there is no prospect of a claim arising from overpayment of State benefits during the person's lifetime.

More complicated estates and ways to save tax

An estate will be more complex for the executors to deal with if it contains assets such as foreign property, business or agricultural assets. In addition, if the Will creates ongoing trusts the executors will either need to link in with the trustees of those trusts or, if the executors are also the named trustees, the executors will need to ensure that they are acting both in the best interests of the estate and also in the best interests of the beneficiaries of the trust.

There may be opportunities to reduce the IHT payable on an estate perhaps through claiming reliefs or by varying the terms of the Will within two years of the death. If a property or shares are sold at a lower value than that in force at the time of death it may be advantageous, for example, to claim a relief that will substitute the lower sale value for the date of death value, provided certain conditions are met.

Delegation of responsibility

Although once an executor has accepted their role they cannot retire without a court order, an executor can choose to delegate some or most of their responsibilities to a professional if they wish. It is advisable, if using a professional, that you choose somebody who is a member of the Society of Trust and Estate Practitioners (STEP) as they are the most qualified in this area of work.

Should you decide to seek help Pavilion Row offers an efficient, sensitive probate service. Our fees are capped and calculated based only on the work that needs to be done. We don't charge a percentage of the estate.

Please contact Angus Houston TEP on angus.houston@pavilionrow.com if you would like further information.