

Executor Guidance

Guidance Notes for Executors and Trustees for Estate Administration

The Role of 'Executor' in Estate Administration

What is an Executor?

The Executors of the Will have legal control of the Probate process. The general term "Probate" means the winding up of a deceased person's estate where there is a valid Will. It involves the administration of all of the terms of the Will and carrying out the wishes of the testator (the person who made the will).

What is Intestacy?

Where there is no valid Will, the process of administering a persons' estate is dealt with under the laws of Intestacy. There is a set order of priority as to who has the right to administer the estate (called "Administrators" rather than Executors), and who benefits from the estate.

"Personal Representative"

The term "personal representative" simply means either an Executor or Administrator and is a general term meaning the authorised person who deals with the administration of a deceased persons estate. If you are a named executor (or substitute executor) you will be the Personal Representative if you take up your appointment and proceed to administer the estate.

Duties and Responsibilities of An Executor

Each estate or trust administration is different in nature and circumstance, but the process of administering the estate of a deceased person usually includes the following:

1. Obtaining the original last Will of the deceased or conducting a search to ascertain if a Will exists.
2. Reviewing the terms contained in the Will (and any ancillary trusts). Organising a 'reading' of the Will where appropriate or informing the relevant parties (co-executors primarily and possibly beneficiaries or even creditors) at an early stage and setting out the plans for the smooth operation of the administration.
3. Valuing the assets in the Estate including any jointly owned property. Valuing any debts and liabilities. Values must be specific to the date of death and they form the basis of an Inheritance Tax return that the Executors need to sign off.
4. For all Estates, preparing an Inheritance Tax return or account confirming the valuation of the Estate and the overall Inheritance Tax (IHT) payable. Tax is generally payable over £325,000 of net assets at a rate of 40% (but please ask us for our notes on Inheritance Tax for more information). Arranging for the payment of any tax before the next stage.
5. Once any IHT is paid, preparing the Probate papers, comprising usually a sworn statement from for the Executors to accompany the original last Will to send to the Probate Registry of the High Court.
6. Applying to the appropriate Probate Registry for a document called the 'Grant of Probate' (or called 'Letters of Administration' where there is no Will) which document is a 'ticket' for the Executors to then collect in Estate assets, sell or transfer property and to settle Estate liabilities. Without the Grant, the Executors have little power to collect in any assets as they do not have the registration of their legal authority conferred from the Will, the "Administrators" have no power at all without the Grant.
7. Collecting in capital and cash assets, transferring or selling property, collecting in life policy entitlements, selling or transferring shares to beneficiaries.

8. Settling any Estate debts, costs and expenses.
9. Completing an Estate Income Tax return for the period up to the date of death (and for the period of administration if applicable).
10. Preparing a set of Estate accounts to confirm all assets received or transferred, all liabilities paid and to show the net sums or assets due to the beneficiaries.
11. IHT and care fees planning, including preparing of any Deed of Variation to protect the Estate passing to a spouse or beneficiary.
12. Distributing the final amounts and assets.
13. If there are beneficiaries that are under the stated age of inheritance (18,21 or 25 usually), then the role of Executor /Administrator may then become a trustee for the under-age beneficiary. This is a different function to an Executor or Administrator and has very specific duties and considerations.

Estate Planning

There are a vast number of side-issues associated with each of those actions listed above, on which advice should be sought to provide support and legal expertise. Such advice can also lead to money savings for Estates and families.

Examples:

1. Advising on appropriate decision-making on selling or keeping the family home or a property that is due to be passed to children of the deceased. Capital Gains Tax can be mitigated by advice on how to structure the ownership held by beneficiaries to maximise all allowances.
2. Advice as to other arrangements for the family home, in particular the best structure for a child to buy out the share of their sibling.
3. Protecting assets passing to the main beneficiary(ies). Inheritance Tax, care fees and protection from insolvency and divorce might be mitigated by the preparation of legal devices such as a Deed of Variation which varies the terms of the Will to protect the assets passing to beneficiaries.
4. Advice for beneficiaries who receive assets to then protect those via an amended Will to maybe include flexible Trusts.
5. Financial advice regarding retaining assets, cashing them in or splitting them between beneficiaries.
6. Valuing assets for Inheritance Tax purposes.

Do you have to take up your Executorship?

Generally, there is no requirement for you to take up an appointment as an Executor. You can retire before you have commenced the role (by signing a Deed of Renunciation) or you can elect to have Power Reserved if you have a co-executor who takes on the day-to-day responsibilities for you. If you are nominated as a trustee of a specific Trust, you will have to take up that appointment initially but it is common that you will be able to retire or appoint someone to act in your place.

Do I get paid for being an Executor?

Unless you are an executor in a professional capacity or undertake estate administration work as part of your business trading activities, you will not be entitled to charge the estate professionally for your time and conduct. You will be entitled to recover expenses you reasonably incur as part of your role but that is all.

Delegating your Executorship Duties

Take advice to help you discharge your duties

Being an executor or trustee is in theory and is very often in practice a very daunting task and often without remuneration (as set out above).

A death can be sudden and shocking. The executor may not be expecting to have to take up duties at that particular time. He or she may have a full-time job dealing with their own personal responsibilities in life or at work. Thus to have to take on further ones for someone else at that time and suddenly and with the added pressure of responsibility to beneficiaries and/or creditors to consider can be onerous and daunting.

Not only are the day-to-day administrative duties often considerable, but there can be a number of aspects (particularly the legal aspects) that are simply not within the knowledge of the lay-executor.

Therefore, delegating some or all of the roles to an experienced professional is not only reasonable but it is expected, and often is essential to ensure that everything is properly covered and the estate administered efficiently. A professional can be appointed to fully take over the role (and legal responsibility) for you and can also act under a personal application for the Grant.

Expertise can be valuable for Executors in dealing with Estate and trust administration, particularly in the ever-changing environment of Inheritance Tax.

Costs for delegated work by a professional acting personally on behalf of Executors or Trustees in the administration of estates and trusts are all (usually) paid from the Estate of the deceased or the Trust and are proper costs of delegated work that is part of the function of administration. Prior to instructing, ensure that the programme of work and associated costs are explained and are reasonable according to what is required to be undertaken.

Contact

If you would like further guidance or advice regarding Probate, Intestacy or Trusts or your role as Executor, Administrator or Trustees or would like to discuss these further in more detail then please contact me on:

Email: info@protrustconsulting.co.uk

Telephone: 0207 113 5760