



An executor's guide

A brief guide to what your executors need to know



The information contained in this leaflet is only an outline – for detailed guidance on carrying out your duties as an executor, please seek legal advice.

What is an executor?

An executor is a person who is charged with dealing with the finances and possessions of a person who has died (the deceased), as stated in their Will and in accordance with the law. These finances and possessions are collectively known as the estate. The executor has the legal authority and responsibility to administer the estate and is ultimately liable for any mistakes made. An executor can also be appointed by the Sheriff Court where a person dies without a Will.

Who can be an executor?

You can act as an executor even if you stand to inherit something from the Will. However, an executor cannot be a witness to a Will. The person making the Will can appoint an unlimited number of executors but, for practical purposes, no more than three would be advised (the standard is two), so you may be sharing the responsibility with other people. It is sensible for a person to appoint more than one executor in case an executor dies first or becomes unable to act as an executor. Any executor must be over 16 years of age.

Why me?

If you have been asked and agreed to be an executor, you will have been named as such in the Will of the deceased. Where there is no Will, the person is said to have died intestate and someone (usually a family member) will have to apply to the Sheriff Court to be appointed executor dative – see the Glossary at the end of this leaflet.

Can I decline to be an executor?

If you do not want to be named as an executor to a Will, you can refuse when asked. You can also refuse to act after the person has died, providing you make the decision before any work has started. Anyone named as executor, including any professional organisations, can decide not to administer the estate of the deceased. If your resignation would mean there is no executor, you would first need to appoint an executor (such as a firm of solicitors), then resign. If none of the named executors is willing or able to administer the estate, the court will need to appoint someone to do so. If you are an executor dative – see Glossary – you cannot resign or appoint someone to act in your place. A new application would have to be made to the Sheriff Court for another executor to be appointed.

Can I change my mind?

If you have accepted the role but change your mind, talk to the person who has appointed you about your decision as they will need to change their Will. If you change your mind after the person has died, you should tell any other named executor and any solicitor involved in administering the estate. If your decision means that no-one is willing to be an executor, you would first need to appoint an executor (such as a firm of solicitors), then resign. The court can also appoint someone to be executor.



What is involved in being an executor?

Executors are responsible for administering the property, money and possessions of the deceased in line with their wishes and the law. They are responsible for everything they do, or fail to do, in relation to the estate. This responsibility lasts for the duration of the administration of the estate and any ongoing trust created.

Some estates are more complicated than others, but it pays to be organised and file and store information and correspondence where you can easily find it.

Your role as an executor falls roughly into four areas:

Investigation; Applying for Confirmation; Gathering in the Estate; and Distributing the Estate.

Investigation

This stage will involve accessing and gathering a lot of paperwork. A useful first stage can be done at the time the person's death is registered. Many registrar's offices offer the 'Tell Us Once' scheme (see Useful Contacts section) which is a one stop shop for telling a range of government agencies including the DVLA, Passport Office and the Council Tax office, as well as the Department for Work and Pensions, about a person's death.

You need to find out what debts the person owed and what money was due to them at the time they died, as well as details of their assets such as money in the bank, shares, property and valuables, as well any joint assets (for example joint bank accounts or jointly owned property).

You will need access to paperwork such as a copy of the Will, bank statements, title deeds, insurance policies, and hire purchase or loan agreements. If the person received pensions, state benefits or any other regular income, you need to contact the relevant organisations. You will also need to suspend bank and credit card accounts, mortgage payments, and utility company accounts, although you may need to keep up insurance payments for property. A supply of official copies of the Death Certificate will be needed when you write to organisations such as banks or utility companies.

This stage of the work will allow you to compile a detailed inventory of all the estate's assets including property, savings and investments, life assurance policies, vehicles and all items of value. You may need to have some assets independently valued.

This stage allows the total estate to be valued and any liability for Inheritance Tax calculated. Any Inheritance Tax due must be paid before applying for Confirmation.

Inheritance Tax is a tax payable on death. Any sum above the current limit of £325,000 is charged at 40%. If the total estate is worth less than this, then tax is not payable. Any transfers of money made in the seven years before death can also be added to the total estate, which can then be charged. If a transfer was made longer than seven years before death, then it is no longer included. There are numerous other exemptions to the seven year rule. Estates are exempt from Inheritance Tax where the sole beneficiaries are either a spouse or a registered charity.

Applying for Confirmation

The executor(s) of the estate must complete an inventory form showing the details of the deceased's assets and debts and submit it to the Sheriff Court to get Confirmation which formally appoints the executors and gives them the legal right to receive and administer money and other assets belonging to the deceased. The executor can also obtain certificates of Confirmation for individual items in the inventory. The Confirmation or certificates are then sent to the person or organisation who possesses or registers the item. The executor can then get it endorsed in their name, cashed, sold or get authority to transfer it to a beneficiary. Only once Confirmation has been granted can the executor distribute the estate to those entitled.

There are some situations where Confirmation is not needed and there are different tax forms to be completed depending on the value of the estate. This detail is beyond the scope of this leaflet – for detailed advice, consult a solicitor and visit www.gov.uk/topic/personal-tax/inheritance-tax.

Gathering in the Estate

The executor can now go ahead and open a bank account in the name of the executor(s) and contact all the institutions holding money belonging to the deceased to have them transfer funds into the new bank account. If you are using a solicitor, they will do this for you. Property or shares can be sold and the proceeds paid into the executor's account or directly transferred to beneficiaries if specified in the Will. Any debts and expenses can be paid including funeral expenses and an executry account prepared showing assets, payments to beneficiaries and creditors, taxes paid and expenses incurred. The executor is also responsible for reporting on income tax of the deceased and any income received during the course of administering the estate.

Distributing the Estate

The executor will distribute any individual legacies then divide the remainder between any residuary beneficiaries, according to the instructions in the Will or according to the laws of intestacy. In practice, there may not be enough money available to fulfil all the instructions in the Will. Individual legacies, tax liability and creditors must be paid first before other beneficiaries, including charities.

Before distributing the estate, the executor must find out if anyone plans to claim their legal rights to a fixed share of the deceased's moveable estate. These rights exist regardless of what the Will says, but not everyone will choose to exert their rights.

It is usual to wait for six months before making final payments in case any unexpected creditor comes forward or anyone decides to claim their legal rights. Legal rights only apply to a surviving spouse/civil partner and children (including adopted children).

Getting help

Solicitors and other advisers can help you to carry out your role as an executor. In Scotland, you can find a solicitor who specialises in this and other areas by contacting The Law Society of Scotland. See Useful Contacts on page 7.



Will it cost me time or money?

You need to think carefully before accepting the role of executor as it can and does commit you to spend time liaising with beneficiaries, debtors and solicitors (where appointed) of the deceased. You can, however, claim reasonable expenses for this work. Note that you do not need to use the solicitor who drew up the Will of the deceased.

Will I be legally bound or responsible for the Will?

An executor can be held personally financially liable for any loss resulting from a breach of their duty – even if the mistake is made in good faith.

Examples include:

- Failure to pay the debts and liabilities of the deceased
- Failure to settle the affairs of the deceased relating to Inheritance Tax, Income Tax and Capital Gains Tax.
- Failure to settle any claim against the estate
- Failure to identify and correctly distribute assets to the beneficiaries (including those initially not known about).



Useful Contacts

Tell Us Once

A service available in most local authorities across Scotland, which allows you to tell the government just once about a person's death in order for their documents to be cancelled and benefits to be stopped.

www.gov.uk/tell-us-once

Law Society of Scotland

The representative body for solicitors in Scotland. Contact them or use the 'find a solicitor' search tool on their website to find a solicitor.

www.lawscot.org.uk

Atria One, 144 Morrison Street, Edinburgh EH3 8EX Tel: 0131 226 7411.

HM Revenue and Customs (HMRC)

For information about taxes, including Income Tax and Capital Gains Tax, visit the HMRC website. www.hmrc.gov.uk. There is also a national Probate and Inheritance Tax Helpline for general information about dealing with taxes on an estate. Tel: 0300 123 1072.

Citizens Advice Bureaux

The national network of advice centres offering free, confidential, independent advice, face to face or by telephone. To find your local bureau, visit www.cas.org.uk and go to 'find your local bureau'.



Glossary of legal terms

Beneficiary – A person or organisation that will receive a legacy in your Will.

Bequest or Legacy – A legacy to an individual or organisation in your Will.

Codicil – An amendment or addition to your existing Will.

Confirmation – A document issued by the Sheriff Court which gives executors the authority to close bank accounts, sell property, etc. It is the Scottish equivalent of Probate.

Estate – Your possessions, property and money.

Executor – A responsible person (preferably two, up to a maximum of three) chosen, usually from family or friends, and named by the person making a Will, who will sort out their affairs and carry out the instructions in their Will after their death. This type of executor is an executor nominate. If a person dies without leaving a valid Will, someone needs to apply to the Sheriff Court to appoint an executor dative to administer the estate. The applicant will usually be the nearest relative over the age of 16.

Inheritance tax – All estates are required to be assessed for inheritance tax. The Inheritance Tax threshold is presently set at £325,000. Tax is payable at 40% on the amount over the threshold. People who leave 10 per cent or more of their net estate to charity are entitled to pay a reduced rate of Inheritance Tax of 36 %. Estates are exempt from Inheritance Tax where the sole beneficiaries are either a spouse or a registered charity. From April 2017, a Family Home Allowance of £100,000 per person will be added to the current Inheritance Tax threshold, increasing year on year.

Intestate – The state of dying without a Will or if a Will is not valid.

Liferent – Where a person has the use of an asset or property for the remainder of their lifetime. It is often referred to in tax legislation as an interest in possession.

Pecuniary bequest – A legacy of a fixed specific sum of money.

Power of Attorney – A written document that gives someone else legal authority to make decisions on your behalf. Anyone over 16 can make a Power of Attorney (PoA) and it lasts indefinitely unless you decide to terminate it or until the death of the person granting the PoA. There are three types of PoA. A Continuing PoA gives powers to deal with money and/or property; a Welfare PoA gives powers to make decisions around health or personal welfare matters; and a Combined PoA gives both continuing and welfare powers.

Residuary bequest - A legacy of what remains of your estate after paying all other bequests and costs.

Residue - The sum left from an estate when all debts, charges and gifts are deducted.

Specific bequest - A legacy of a particular item, such as an item of jewellery or property.

Trusts - Trusts can be created by Will or by deed. Where money or other assets are held by trustees on behalf of a person or group of people this is a trust, providing the following conditions apply:

- The person creating the trust must make their intention clear
- The money or assets to be held on trust must be clearly defined
- The person or group of people who are to benefit from the trust must be clear.

You might, for instance, use your Will to create a trust for your infant children. The executors and trustees of your Will would be the legal owners of the property or investments and, under the terms of the Will, would be obliged to look after the property or investments on behalf of the infant children until the children reached 16 (or other specified age such as 21 or 25), at which time the investments would be transferred to the children.

Another common type of trust established by Will is where the executors and trustees of the Will hold property or investments in trust and pay the income to a beneficiary for his or her lifetime (known as *liferent*), after which the capital is to be paid to other beneficiaries.

Discretionary trusts can also provide for a beneficiary who is unable to manage their own affairs through reduced capacity because of illness or severe disability.

They can also have the advantage of keeping the capital and income from the trust outwith the scope of means testing or financial assessments.

It is important to seek specialist legal advice when establishing a trust to make sure it fulfils your wishes and is the right kind of trust for what you wish to achieve for your beneficiaries.

Will - A legal document stating how you wish your estate to be distributed after your death.

If you would like to know more about the work of Alzheimer Scotland – Action on Dementia or leaving a legacy in your Will please please contact the Fundraising Department at Alzheimer Scotland on:

0131 243 1453 or email legacies@alzscot.org.

Alzheimer Scotland – Action on Dementia

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