How to be an executor

Inheritance tax and trusts



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Lauren Marlow provides a simple guide setting out how to be an executor, tackling the main concerns for those who have not undertaken the role before

Key Points

What is the issue?

An executor is someone named in a will who is under a duty to properly administer the estate of the deceased. Ten of the most typical questions relating to the undertaking are set out in this article.

What does it mean for me?

The role of an executor involves, but is not limited to, locating assets and liabilities, submitting details of the estate to HMRC, paying any tax due, obtaining the grant of probate and distributing the estate in accordance with the terms of the will.

What can I take away?

An executor takes on a number of responsibilities, including applying for a grant of probate or grant of letters of administration, paying any necessary inheritance tax, settling liabilities and making payments or transferring assets to beneficiaries.

If you are appointed as an executor when the appointment is unexpected or you have not carried out the role before, it is likely you will have a lot of questions. Ten of the most typical questions that I am asked are set out below with my response to provide a simple guide on how to be an executor. As each administration can differ greatly, this guide is not a substitute for legal advice on your specific circumstances.

1. What is an executor?

An executor is someone named in a will who is under a duty to properly administer the estate of the deceased. Their role involves, but is not limited to, locating assets and liabilities, submitting details of the estate to HMRC, paying any tax due, obtaining the grant of probate and distributing the estate in accordance with the

terms of the will. The appointment usually lasts six to 12 months for a relatively straightforward matter but may last several years if the estate is complex.

2. Who can be an executor?

An executor must be 18 years or over and have mental capacity.

You can still benefit under a will if you are appointed as the executor. It is quite common for people to name their spouse, children or other family members. It is also possible to name professional executors, such as solicitors or accountants. This may be done where the estate is complex, the family dynamic is complicated or the testator simply does not want to burden family members with the responsibility.

A maximum of four executors can be named on the grant of probate. Having more than four executors named in the will can complicate the administration, but in the event that happens the executors need to agree amongst them who will make the application.

3. How do I become an executor?

An executor’s powers derive from the will and are confirmed by the court when the grant of probate is issued.
If there is no will (or no valid appointment of executors within a will), then an administrator will be appointed by the court under the succession regulations. An administrator’s powers do not exist until the grant of letters of administration has been issued.

4. Do I have to act?

Simply, no. Just because you have been named as an executor does not mean you have to act; however, there are a few options that you should consider.

You do not have to deal with the administration on your own. You can instruct a solicitor to deal with the administration for you. As the executor, you will need to approve and sign all the documents but the solicitor can complete all of the work on your behalf.

By reserving powers, an executor can refrain from playing an active role in the administration of the estate but can be reappointed in the future if required. This option may be used when someone doesn’t want to act or for practical reasons; for example, if one of the executors lives abroad and does not want to cause any

unnecessary delays obtaining signatures.

By renouncing powers, an executor is completely removed as if he or she had never been appointed. In the event that the acting executor loses capacity or dies during the administration period, the executor that had renounced would not be able to take up the position to finalise the administration.

You can appoint an attorney to obtain the grant on your behalf. This is a less common option but can be adopted, usually for practical reasons. If only one executor is named, for example, then reserving or renouncing may not give a desired outcome. By appointing an attorney, you can retain some involvement and control whilst not having to complete the process yourself. You should be careful about carrying out any actions before you have thought through whether you want to accept the position. If you ‘intermeddle’ in the deceased’s estate, you will not be able to renounce.

5. Who is entitled to a copy of the will?

Once the grant is issued, the will (and codicils, if any) becomes a matter of public record. Until that point, the disclosure of the will is at the sole discretion of the executor.

6. Can I be paid?

A lay executor cannot charge for their time incurred in administering an estate. They are, however, entitled to be reimbursed for reasonable costs incurred, such as mileage for visiting a probate property or the cost of obtaining the death certificates.

Unlike a lay executor, a professional executor can charge for their time. The professional executor will have ensured that the will contains a specific clause allowing them to charge for their services.

7. What is a grant?

Generally, to liquidate or transfer assets to the beneficiaries, you will need to apply for a grant of probate or grant of letters of administration. (The type of grant depends on whether or not there is a will.) This is a formal document confirming your authority to collect in all of the assets, to pay outstanding liabilities and tax due, and to distribute the estate in accordance with the terms of the will or

intestacy.

8. What are my responsibilities?

Pre-grant

To administer an estate, you must first obtain information about the value of all of the assets and liabilities in the estate as at the date of death, including any gifts made in the seven years (or potentially 14 years in certain circumstances) before their death.

It will be necessary to contact each financial provider and instruct professional valuers where necessary for assets such as properties, personal possessions and business. If any of the assets are income producing, not only will you require the capital value of the asset, but also the value of any interest accrued but not credited. You will also need to ensure that a final income tax return is prepared from 6 April last to the date of death.

You will need to complete the Revenue account with the information ascertained. The form required will depend on the size and complexity of the estate. Typically, for small estates under £1 million where no inheritance tax is payable, the form IHT205 can be used. The form IHT400 should be used in all other situations, even if no tax is payable.

To apply for the grant, you will need to satisfy HMRC by completing the Revenue account. You must also to satisfy the Probate Registry by completing its process; typically, this involves completing form PA1 and signing a legal statement. The form sets out various details about you, the deceased and the size and nature of the estate. The form also identifies the will and codicils (if any) and confirms that you will perform your duties in accordance with the law and are accountable to the court.

Paying tax

Inheritance tax can broadly be split into two categories: tax payable immediately; and tax payable by instalments. Where inheritance tax is payable immediately, it must be paid in order to obtain the grant. HMRC has to send confirmation to the Probate Registry that any inheritance tax due has been settled before the Probate Registry will issue the grant. Certain types of assets can benefit from the option to

pay inheritance tax in 10 annual instalments.

Inheritance tax becomes due at the end of the sixth month after the month in which the deceased died. Interest will start to accrue from the first day of the seventh month. Interest will accrue on inheritance tax payable immediately if it is not paid in time, as well as on inheritance tax payable in instalments.

Certain institutions will release funds to settle inheritance tax. If there is insufficient liquidity in the estate or the assets are with providers unable to release in advance of receiving the grant, then you may need to obtain a loan to settle the tax. Inheritance tax is due on the worldwide estate of a UK domiciled individual. This may cause issues where there are insufficient assets in the UK to settle the tax liability for the worldwide estate. Cross-border estate administrations have added complication and professional advice is recommended.

If the estate is considered ‘complex’ by HMRC, then it will need to be registered. You must also pay any income tax or capital gains tax that arises during the administration process.

Post-grant

Once you have the grant, you will be able to collect in the assets and start to wind up the estate by settling liabilities and making payments or transferring assets to beneficiaries. An executor must produce a set of estate accounts detailing the administration’s full financial activity. The estate accounts are disclosable to the residuary beneficiaries. If any of the assets have increased in value between date of death and date of disposal, there will be a capital gains tax liability. You should consider ways to mitigate capital gains tax, such as appropriation.

If any further assets or liabilities have come to light since completing the Revenue account, then a corrective account should be filed with HMRC and any additional inheritance tax paid.

9. What am I liable for?

You are personally financially liable for any loss resulting from a breach of duty, even if the mistake was unintentional. The beneficiaries have the right to bring a claim against you to recover losses.

All liabilities must be met from the estate prior to beneficiaries' entitlement under the will being satisfied. You can be held liable for non-payment of debts if you distribute to beneficiaries and fail to satisfy all debts in full.

You have a duty to distribute the estate in accordance with the will. If you fail to correctly interpret the terms of the will, you may incorrectly distribute the will and therefore be liable to those who should have benefited.

A warning: you need to ensure that all inheritance tax is paid, even where you have chosen to pay by instalments before transferring assets to a beneficiary. In the recent case of Harris v HMRC [2018] UKFTT 204 (TC), it was found that the executor, Mr Harris, was liable for the remainder of the £340,000 inheritance tax liability even though he had transferred the assets to the beneficiary on the understanding that the beneficiary would be responsible for the annual instalments. The beneficiary promptly sold up and moved to Barbados and could not be contacted. HMRC successfully pursued Mr Harris when it was unable to pursue the beneficiary.

If the recipient of a lifetime gift on which inheritance tax becomes due fails to pay the tax after 12 months from the month the deceased died, HMRC may seek the unpaid tax and interest from you. Whilst you have the right of reimbursement from the recipient of the lifetime gift, there is no guarantee they will still have the funds to reimburse you, especially given they have failed to satisfy the tax liability.

10. Is there any protection available?

You have the option to use a statutory notice which should be placed in a local paper for each area that the deceased owned property, as well as the London Gazette, to inform any unknown creditors of the death.

By placing an advert in the relevant papers, you protect the executors from unknown creditors and beneficiaries, providing distribution is not made until the prescribed time has lapsed. If you do not place a notice and a creditor subsequently comes forward after the estate has been distributed, then you may have some personal liability for an unidentified debt. The notice will not prevent an unknown creditor from pursuing the residuary beneficiaries.

You also have the option to seek legal advice from a solicitor who specialises in the administration of estates in order to ensure that you carry out the process correctly.

As an executor, during the administration period you hold the estate on trust for the beneficiaries. You may also find that you have been named as a trustee of a will trust. The role of a trustee is different to that of an executor and I shall explore the role of a trustee in part 2 of this piece.