

WILLS & PROBATE UNIT DEALING WITH A PERSON'S ESTATE AFTER DEATH

Having made a will, what happens on death?

A person who dies having made a valid will is said to have died 'testate'. Their assets will be distributed according to the terms of their will. They will have appointed 'executors' in their will. An executor is a person appointed by the deceased to gather in all the deceased's assets including money and property generally referred to as the deceased's estate. They then pay all your outstanding debts out of the estate and distribute the deceased's assets to the beneficiaries named in the will. Executors must apply to the District Probate Registry for a Grant of Probate. This is a document which authorises them to deal with your estate.

Role of Executor.

The function of an executor is to extract a Grant of Probate to the estate and to administer the estate of the deceased. As executor their powers and duties date from the death of the deceased. From the date of death the whole of the estate devolves or passes to the executor. They have very wide powers under general law, apart from any powers given to them under the will. An Executor may renounce the executorship but once they decide to take on the role of executor they cannot then renounce it at a later stage. An executor is also known as a personal representative. The duties of a Personal Representative last for life. The principal duties of an Executor are as follows:

1. The first duty of an executor is the disposal of the testator's body of which he has custody until burial. Effect should be given to any wishes of the deceased as to the disposal of his/her body (although these are not legally binding). The deceased should be buried in a manner suitable to the estate which he/she leaves behind him/her. In most instances in practice all of this will have already been arranged and dealt with by the deceased's family.
2. The next duty is to ascertain the precise value and extent of all of the deceased's assets. At this stage executor has the right to pay or take releases of debts owing from the estate. An executor may also sell or otherwise dispose at his discretion the goods and assets of the testator before the Grant of Probate. However, certainly in relation to assets such as land or stocks and shares it would be difficult to do so without the Grant and in practice sales of assets will usually occur after the Grant issues.
3. The executor must ensure that the assets of the estate are properly protected. It follows that there is a duty to insure all assets normally requiring insurance, such as a house or land or other valuable items – e. g. jewellery, house contents etc.. An executor must ascertain all outstanding debts, taxes etc.. and check that there are no claims outstanding against the estate. All of the beneficiaries must also be ascertained. An executor must make enquiries of all beneficiaries in relation to prior gifts/inheritances received by them as he or she will be secondarily liable for any Capital Acquisitions Tax not properly paid. In this instance also it is essential to obtain details of the beneficiaries PPS number.

When all enquiries have been made (and these can be numerous and complex) a schedule or list of all the assets and liabilities of the deceased must be prepared. This is an official document known as an Inland Revenue Affidavit and has to be sworn by the executor along with several other relevant documents and declarations.

4. When all the relevant papers have been lodged in the relevant Tax Offices, and then in the Probate Office, the Grant of Probate subsequently issues. The executor is then in a position to collect in all the deceased's assets. It is at this stage that assets not being specifically given to named beneficiaries will be sold.
5. The executor is obliged to pay the funeral expenses and all other outstanding debts of the deceased.
6. The executor is then required to distribute the assets to those entitled while ensuring that taxes are paid. These taxes include all taxes due by the deceased prior to his/her death, all taxes arising out of the administration of the estate itself and all Inheritance Taxes or Capital Taxes arising out of the distribution of assets. They must also ensure that all relevant clearance certificates are obtained prior to distribution.
7. Finally the executor must furnish an administration account wherein he accounts for all monies received and all monies distributed during the administration period. As previously mentioned the duties of the Personal Representative are for life. For example, if an asset is discovered after distribution is complete, it shall be the duty of the Personal Representative to dispose of that asset as per the Will/Intestacy. An executor is appointed under a will. Where there is no will in place then the deceased's next of kin can apply to administer their estate. They are known as an administrator. The function of an executor/administrator is to extract a Grant of Probate/Administration and administer the estate which includes the sale of all assets and the distribution of the proceeds thereof as per the terms of the will or, where there is no will, according to the rules of intestacy.

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