



Duties & Guidance for Executors



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The law places many obligations on a person appointed as a Personal Representative; whether they have been appointed as an Executor under a Will or as an Administrator where the deceased died without a Will. Being a Personal Representative is a legally binding role, you should therefore think very carefully about whether you want to take up the role and whether you are able to undertake it without professional guidance. Personal Representatives are personally liable to make good from their own funds any losses if a beneficiary suffers because of any breach of their obligations.

Act in accordance with the Intestacy Rules or Will

The duties are the same irrespective of whether the person died leaving a Will or intestate (without a Will). When there is a Will however, the Executor can start administering the estate immediately, regardless of whether a Grant of Probate has been obtained or not; whereas if the deceased has died intestate the Administrator cannot start to administer the estate until Letters of Administration have been obtained. We use the word “estate” to mean the deceased’s assets and liabilities at the date of their death.

Responsibilities

Immediately following the death Personal Representatives are responsible for registering the death and organising the funeral if no member of the family is willing to do so. The person arranging the funeral becomes personally liable for the funeral costs, though they have the first call on the deceased’s assets to be reimbursed for any reasonable costs incurred. They will also be responsible for encashing all of the assets, settling the liabilities and distributing the estate in accordance with the Will or the Intestacy Rules.

Act prudently, honestly and responsibly

The duty of a Personal Representative is to use the reasonable care a prudent person would exercise in relation to their own finances and property; including obtaining appropriate professional advice on matters outside their personal experience or knowledge. Personal Representatives should record all the decisions they take and the reasons behind them, as these could be challenged in court by a beneficiary years later. A Personal Representative must always act in the best interests of the beneficiaries as a whole and must override any personal, family, business, religious or ethical interests or beliefs they may hold. If a conflict of interest arises then the Personal Representative should excuse themselves from voting on any decision or follow the independent professional advice sought.

So what does the role actually entail?

Pre Grant of Probate Steps (or Letters of Administration for intestate estates)

A Personal Representative has to arrange for the assets of the deceased to be valued and to obtain as much detail as possible of the deceased’s debts and liabilities, so that a calculation can be made as to the size of the estate and whether Inheritance Tax will be payable. Except in small estates (usually under £10,000) a detailed account has to be rendered to the Inland Revenue as part of the application for the Grant. If the estate is taxable when applying for the Grant, an initial instalment of tax may also have to be paid. If there are insufficient funds in the deceased’s bank account a Personal Representative may have to raise the money personally and be reimbursed by the estate.

Post Grant of Probate Steps (or Letters of Administration for intestate estates)

Once the Grant has been issued, a Personal Representative's duty is to transfer to the beneficiary any item specifically left to them (if there was a Will) and realise the assets to pay the deceased's debts, including income tax and the balance of any Inheritance Tax due.

The duty of a Personal Representatives is to then divide the balance in accordance with any Will or in accordance with the Intestacy Rules. With the agreement of all beneficiaries, assets can be transferred direct to a beneficiary without being sold in settlement of their entitlement. Personal Representatives must inform beneficiaries or their parents or carers (if they are under 18 or disabled) as to their entitlement. The Personal Representatives are required to provide accounts to all beneficiaries as to the value of the estate, detailing transactions made during the administration. We call these accounts "Estate Accounts".



HMRC

The Personal Representatives must ensure tax returns are prepared for the deceased's last tax year and also for all tax years covering the administrative period. They must also ensure all tax is paid on any assets paying gross interest during the administration period. The Personal Representatives remain personally liable to ensure all debts and taxes are paid.

Instructing solicitors to deal with the administration on their behalf enables the Personal Representatives to ensure that the estate is properly administered in accordance with the law and they are not at risk of being sued at any time in the future for failing to administer the estate properly or failing to pay all the debts due.



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Our service

We deal with all aspects of Private Client work including Wills, Lasting Powers of Attorney and Probate. The nature of the work we do requires an empathetic and understanding approach to the needs of our clients, many of whom are elderly or bereaved.

Our dedicated team will provide you with the support and the legal advice that you need.

Our other services

Family Law • Conveyancing
Civil Litigation • Commercial Property

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