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Legal & Associates

EXECUTORS DUTIES

WHAT YOU NEED TO KNOW



When making a will, many people turn to friends or family members to be their executors, but it is also possible to appoint probate professionals, such as APS Legal & Associates, or even lay and professional executors to be appointed to act jointly. This brochure is intended to offer guidance for lay executors by outlining the liabilities that come with some of the main responsibilities of the role and how to avoid potential pitfalls.

SECURING ASSETS AND PROPERTIES

One of the first and most frequently neglected duties of an executor is the securing and maintenance of the estate. Executors are responsible for the safekeeping of any properties included in the deceased's estate, and since home insurance often lapses on death, it is vital that executors act quickly to ensure that they are covered in case of any loss or damages to properties. It is important, for instance, to ensure that properties are properly heated during winter months to prevent pipes freezing; it might also be necessary to change locks or otherwise secure properties, since an executor who causes losses to the estate for any reason (including negligence of these duties) will be liable to refund these to beneficiaries.

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ESTATE DEBTS AND LIABILITIES

Executors are charged with settling any outstanding debts incurred by the deceased. For this reason, it is important to ensure that every possible effort to locate potential creditors has been made before distributing the estate. If a creditor comes to light after the executor has distributed assets to beneficiaries, then it will fall upon the executors to either recover these distributions or, failing that, to settle the debts themselves. To reduce this issue, giving notice in newspapers local to any properties of the deceased and in *The Gazette* (formerly *The London Gazette*) in advance of any distribution of assets is advised. Note that any creditors who miss the two month period usually given in such notices can still pursue the beneficiaries to whom assets have been distributed.

If the deceased was a tenant or lessee of premises for either personal or business reasons, then executors are also liable to pay any rent or charges incurred under the lease during the period of estate administration. Executors will usually be able to pay this from the estate, unless they have entered possession of the premises (for example, if the executor is also a partner in the business in question, in which case they will automatically acquire personal liability for these costs).



CORRECT SETTLEMENT OF INHERITANCE TAX AND INCOME TAX

Most executors recognise their duty to make arrangements for the payment of inheritance tax, but there are some important details surrounding this that are often forgotten. Properties might need to be professionally valued, and debts and liabilities relating to loans, credit cards, and mortgages need to be taken into account, alongside any savings and investments held by the deceased.

If the deceased has made any significant gifts within a period of seven years before their death, then executors will also need to make efforts to ascertain their nature and value. The amount of inheritance tax payable might be affected by any substantial gifts; if executors cannot evidence their attempts to determine the existence of such gifts then they could be held liable by the Inland Revenue in the future.

Beyond inheritance tax, executors are also responsible for the submission of any self-assessment tax returns required during the period of estate administration (or in the case where the deceased's tax returns were not kept up-to-date). Delays in submitting these forms or paying these liabilities, or resulting errors in the declaration of income and gains, can lead to significant penalties for which the executor may also be personally liable.

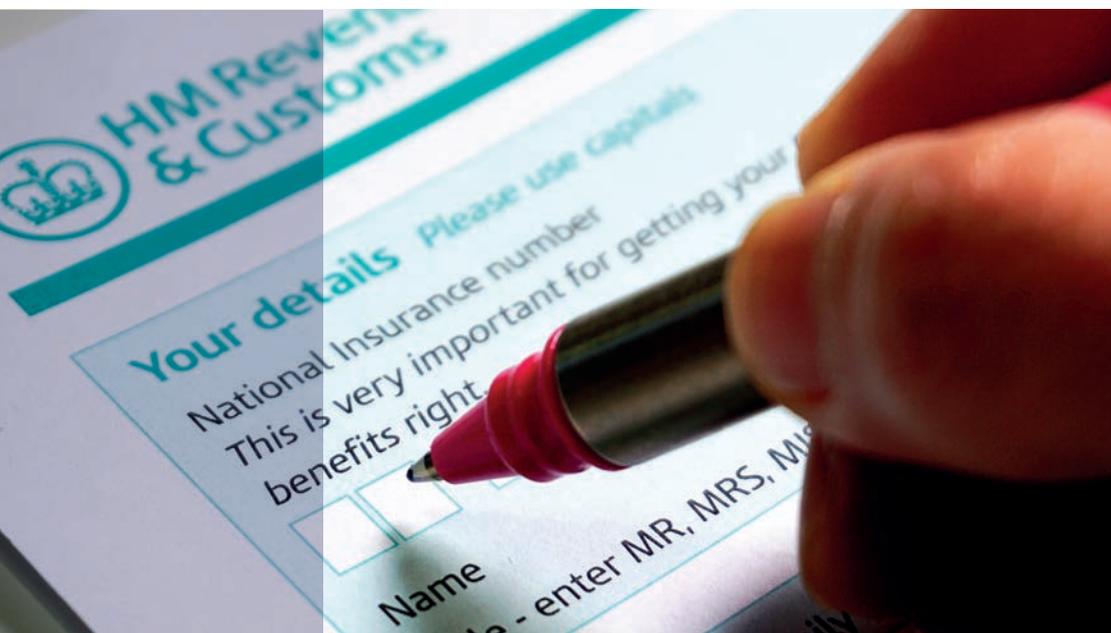
DISTRIBUTING GIFTS AND LEGACIES TO BENEFICIARIES

Executors can be held liable by any beneficiary who has been disadvantaged through an oversight relating to estate administration. If a will is incorrectly interpreted, for example, and a larger sum of money than intended is therefore gifted to a particular individual, then all other beneficiaries may suffer a loss for which the executor may be accountable.

Executors may also be liable to the creditors of a bankrupt beneficiary to whom they accidentally distribute assets. For this reason, it is wise to conduct bankruptcy searches against beneficiaries, particularly in the case of substantial legacies.

Recovering overpayments or early distributions to beneficiaries is often difficult; in many instances, it is the executors themselves who end up personally responsible for these oversights.

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ESTATE ACCOUNTS AND FURTHER LIABILITIES

The keeping of clear and accurate estate accounts is required of executors. In instances where an individual does not have experience of preparing accounts, it is necessary that the executor delegates this to a competent individual, since the court can demand that accounts are produced, if required. In any case, accurate accounting is an important way of protecting yourself as an executor.

A further, albeit less common liability is that of ‘wilful default’, where an executor is reckless or negligent concerning the actions or omissions of any co-executors. In normal circumstances, however, an executor can only be held responsible for his or her own conduct, so observing the points of best practice outlined in this brochure will help to keep you beyond reproach.

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FURTHER COVER

As has been suggested, it is crucial that executors are properly prepared for the role, and that they conduct themselves with due care and attention throughout the process of estate administration. Where liabilities are incurred from the executors’ acting in a management role regarding estate administration, it is likely that they will be able to recover these from the value of the estate (provided that the costs do not exceed the estate’s net value). If the liability is otherwise incurred, however – particularly through oversight or mismanagement on behalf of estate administrators – then executors can be held personally liable.

For further peace of mind, it is worth noting that executors’ insurance is available, as is support from professional probate companies.

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