



## CORNERSTONE WILLS

### **BRIEFING NOTE – THE ROLE OF AN EXECUTOR**

This Briefing Note is not a full textbook on how to administer a person's estate. It contains reasons why a professional Executor should be named within the Will and also gives an outline of how one should handle the deceased's affairs and administer the estate. It does not deal with the large number of technical matters that can arise. **The best guidance, if you are in any doubt, must be to seek professional advice.**

#### **Prepare in advance**

If possible, you should ask to familiarise yourself with the Will before death. For example, there might be statements on which you are unclear and guidance would be helpful. The Will may express specific wishes about organ donation, burial or cremation and the funeral service and people may need to be aware of issues like this as a matter of urgency. However, since a Will is a private document until death, such details might not be made readily available to you for personal reasons.

You should ensure that you know where the original Will is kept. **Cornerstone Wills always recommends that Wills should be kept in secure and insured Will storage with Kings Court Trust Corporation.**

If a new and later Will is made, in which you are not named as Executor, your appointment in the earlier Will does not take effect.

#### **Key stages**

##### **1. Communication of the death and arrangement of the funeral.**

The first thing to do is to make sure that news of the death is passed on to members of the family and friends. It makes sense to enlist the help of other family members in this task so that the inevitable emotional distress is shared. If appropriate, you might announce news of the death in the local newspaper.

Another early task to be performed is arranging for the registration of the death and the funeral service. In straightforward cases, the doctor who certifies death will issue a Medical Cause of Death Certificate. This must be taken to the local Registrar of Births, Deaths and Marriages.

The Registrar will issue a Death Certificate and a Certificate of Burial or Cremation. Obtain sufficient extra copies of the Death Certificate at that time, as you will need these to give official notification of the death to a number of companies, organisations and Government departments.

Check if there is a pre-paid funeral plan in place. You may need to employ the services of a funeral director. He will collect the Certificate of Burial or Cremation and will help you to make the funeral arrangements. You will need to ensure the time and place of the funeral are communicated properly to all those who might wish to attend. If the deceased had not expressed any wishes as to the sending of flowers, consult with the family to see if they want to limit the giving of flowers, or encourage charitable donations in their place.

##### **2. Identifying and securing assets.**

This stage starts immediately you hear of the death and will involve a large number of different activities. Most obviously, it involves the physical assets owned by the deceased such as the house and the contents.

If the deceased lived alone, you should ensure that the property is locked and secure. Identify the number of house key holders and if there are too many to ensure adequate security, you might have to change the locks. If the property is likely to be empty for some time, you might decide to turn off the electricity, gas and water at the mains. Do not forget to ensure that the water and central heating systems are drained.

Be aware of the new rule whereby Local Authorities are expressing an interest in any property that is left unoccupied for more than 6 months and may challenge you to let them take over the property for sale or letting. Probate often takes longer than this period, so professional advice will be required to rebut any claim. You should therefore protect your own position by taking advice from a body such as Kings Court Trust Corporation who have acknowledged expertise in this area.

You must check that any requirements of the property insurance are complied with. You should take extra precautions to secure any valuable items and you may be allowed to remove them to a more secure place, subject to the Insurance Company's recommendation, and written agreement of other Executors/Trustees.

It is important to examine the deceased's personal papers and records to identify the assets and investments that form part of the estate and the liabilities that need to be discharged. Remember, you can do some detective work on the basis of bank statements and cheque stubs. This may help you to track down regular savings such as direct debit payments for savings policies or building society investments.

It is not possible to compile a full list of the assets that may be found in an estate. However, there may be some less obvious assets such as salary earned but not yet paid, State benefits that are due but not yet claimed and benefits from an employer's pension scheme. Similarly, you should identify the deceased's liabilities. Bank statements may also indicate hire purchase payments and regular loan repayments.

Do not overlook practical matters such as stopping newspapers and milk deliveries and obtaining all unpaid bills for such services.

At this time, write to all of the companies and organisations with whom the individual had investments or savings, those to whom debts were owed and to various official bodies. Send a copy of the Death Certificate to those holding assets on behalf of the deceased so they can note the death in their records.

Typically, you will need to contact banks, building societies, life assurance companies, company registrars, the Local Authority, the Department of National Savings, the Department of Social Security, the deceased's employer, the Inland Revenue, solicitor if used, accountants, local utility companies, the Passport Office and the DVLA. There will probably be others. When writing these letters requesting the value of investments or the debt at the date of death you should include an original copy of the Death Certificate. This information will be needed for the next stage.

Those to whom money is owed will usually understand that the death will delay payment and will be prepared to wait for a reasonable time while you obtain probate. Some debts might have life assurance associated with them, so make sure you check this too.

You should check the deceased's incoming post regularly, and possibly arrange redirection of the mail. Letters may well reveal further assets or liabilities that you have not previously identified.

### **3. Applying for Probate.**

The Grant of Probate is the official confirmation of your power, as Executor, to administer the estate. While banks and building societies will usually be happy to register the death in their records by production of the Death Certificate, they will not part with any of the deceased's savings or investments without seeing the Grant of Probate itself (or an official copy which you can obtain when the original is issued). Only in the case of very small estates (£5,000 or less) will it not be necessary to obtain a Grant of Probate. Even then, depending on their policy, some institutions can still insist on a Grant.

You can obtain the papers necessary to apply for probate from your local Probate Registry, who should give you guidance on how to complete them. If you apply in person you will need to attend at the Probate Registry for an interview, which is not to everyone's liking. Before probate can be granted, you will also have to deal with the estate's liability for any inheritance tax and an Inland Revenue form will be required to be completed. There are penalties for incorrect information being given.

This involves completion of a lengthy and complicated Inland Revenue account which requires details of the value at the date of death of all the assets and investments owned by the deceased (including the house, contents, car and personal affects) and of the amounts owed by or to the deceased. You may also need to include details of gifts made by the deceased in his or her lifetime, where these gifts were substantial and may have been outside the present legal lifetime gifting allowances.

In general, any inheritance tax liability on the value of things other than land has to be paid before the Grant of Probate can be issued. **It may be necessary for you to borrow so you can pay the tax.** Banks are usually prepared to provide finance for this purpose and although **the debt will be your personal liability**, it will, in due course, be repaid out of the remaining assets of the estate. Kings Court Trust Corporation offer a very competitively priced Probate service so please contact Cornerstone Wills for further details.

#### 4. Calling in the Assets.

Once probate has been granted, you are in a position to call in the assets of the estate, which means bringing the assets and investments under your control by transferring them into your name or into a bank account that you have opened for the purpose. However, you must not mix the deceased's money and assets with your own. When dealing with the estate, you should transfer assets into the name of "Executor of (name of the deceased)" and open a bank account for the estate in the same name.

Exactly how you deal with the deceased's assets will depend on a number of factors, including their nature, the way in which they will ultimately be distributed and how long it is likely to take to administer the estate. For example, it may be appropriate to have shares or unit trusts owned by the deceased transferred into your name, as Executor, or to sell them and put the proceeds into the estate's bank account.

At this stage, you should be in a position to be able to pay any debts owing by the deceased and any liabilities that have arisen during the course of the administration. You should ensure the debts are valid and that you have calculated the correct amounts for payment. You should also make sure that you obtain receipts for all payments made.

#### 5. Distributing the estate.

**You should be very careful to ensure that you have identified and paid all debts before distributing the estate. You are liable for the debts of the estate and you might have difficulty in recovering money from beneficiaries once you have passed it to them. You will need to complete tax returns for the deceased up to the date of death.**

You should also make sure that you have resolved all of the tax matters concerning the estate before you make any distributions from it. If circumstances have changed (for example, you have discovered new assets or liabilities) since you completed the original Inland Revenue account, you will need to prepare and submit a corrective account.

Once you have called in all of the assets and paid the tax and the debts, you can distribute the estate to those entitled under the deceased's Will. Entitlements may be of different types, for example, there may be gifts of specific assets (such as furniture, personal belongings or jewellery). There may be cash legacies and there should be a gift of "residue", which is everything in the estate, after the specific gifts and legacies have been discharged and liabilities and tax paid.

Once you have administered the estate, it is wise to prepare full accounts showing all receipts, payments and the distribution of the estate. Keep all records that prove the account entries.

#### Some useful notes and suggestions

1. The appointment of an Executor is a personal one, in that the Executor cannot generally delegate their powers or duties to anyone else. However, an agent can be appointed to act on your behalf. Specialist companies are often appointed to handle the entire administration of the estate. Any costs are borne by the estate itself in these circumstances. Cornerstone Wills works with and recommends Kings Court Trust Corporation, which offers a full range of Probate and Trust services on a fixed fee basis. Please contact us if you wish to obtain a competitive quote for the services that you require.

If you are prepared to administer an estate yourself, you can nevertheless decide to seek professional advice on one or more aspects of the Will or the administration of the estate.

2. This Briefing Note contains only an outline of how you should handle the deceased's affairs and administer the estate. It does not deal with the large number of technical matters that can arise. The best guidance must be that, if you have any doubts, you should seek professional advice. **The sort of circumstances that suggest you should seek professional advice could include:**

- Cases where the testator has had a change of mind after the Will is drafted and has attempted to make alterations to it (which may or may not be valid);
- If the estate includes land or property. Perhaps the only exception to this is where the deceased was a part owner of a property held as "joint tenants", in which case, the deceased's share does not pass under his or her Will, but passes of right to the surviving joint tenant(s). In that case, all that needs to be done is to place the Death Certificate with the Deeds to the property. However, even here, it is wise to seek professional advice to determine exactly what the true position is;
- Cases where the deceased had an interest in a trust or owned unquoted shares (where both valuation and disposal may be difficult);

- It is sad to say that while death in the family brings out the best in many people, it can also bring out the worst in some. As an Executor, you may find yourself in a difficult position if family disputes develop. If this happens, you should consider protecting your own position by seeking professional advice, or by using professionals to act as agents in the administration of the estate;
  - Completing the Inland Revenue account and the probate forms can be complicated. The tax side of administration of the estate can seem bewildering. Issues it might concern include: income and capital gains taxes incurred before death, inheritance tax implications, taxation of income and gains of the estate, the need to take inheritance tax into account when distributing various legacies and bequests. If the estate is anything other than straightforward, seek professional advice;
  - For couples, when the first partner dies, if the value of joint assets comes to over the Inheritance Tax Nil Band Allowance, correct action might save the children a large amount of money when the second parent dies, **but the action must be taken when the first partner dies**;
  - Where there are Trusts within the Will.
3. Before dealing with the administration of the estate, consider whether you feel that the estate is solvent. If it seems likely that the liabilities are greater than the value of the assets, you may be advised not to accept your appointment to ensure that you do not acquire any personal liabilities.
  4. Some Wills appoint individuals as both Executor and Trustee. The Executor administers the estate and their role finishes on final distribution. Trusts may then come into existence, for example where part of the estate is held for the benefit of individuals under 18 years of age. If this is the case, it is important to ensure that the trust money is distributed to the Trustees and not to the beneficiaries of those trusts.
  5. Be meticulous in your record keeping. If at all possible, keep copies of all correspondence and full checklists of all of the assets and liabilities that you discover. This will ensure that nothing is overlooked and it will help you to complete Inland Revenue forms and the accounts of the estate.
  6. In general, you are able to claim reimbursement out of the estate for any direct expenses that you incur purely as a result of your role as Executor. You will not usually be able to charge for your time.
  7. Remember to keep in touch with the deceased's family as the administration of the estate progresses. Not only may they be able to help resolve some problems, such as tracking down investments or identifying liabilities, but the administration of an estate can take time. You can avoid friction by making sure that people know what is happening and what, if anything is causing delay.

**Being made an Executor is not a role to be taken lightly. You need to be fully prepared, and to know that you may call on appropriate professional services to guide you through and avoid the pitfalls. Particularly should there be a Trust involved within the Will, then Cornerstone Wills strongly recommends that, in the very first instance, you should contact us with a view to obtaining impartial professional advice from Kings Court Trust Corporation. The initial consultation is free of charge and ongoing advice costs, if any, can be borne by the estate.**

HMRC (Inland Revenue) practice and the laws relating to taxation are complex and subject to individual circumstances and changes which cannot be foreseen. This Note is therefore appropriate for use based on present circumstances. It is no way exclusive and should only be taken as an outline. Whilst every effort is made to ensure that this information is helpful, accurate and correct, it may change or may not apply to your own personal circumstances. Before taking any action, you should seek appropriate professional advice, as Cornerstone Wills cannot accept responsibility for any action taken on the basis of this information alone.

If in doubt, get professional advice – call us!

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