

EXECUTRIES

AN EXECUTRY — THE ADMINISTRATION OF A DECEASED PERSON'S ESTATE

IS THERE A WILL?

A WILL

is a written document in which the person granting the document – “the **testator**” - nominates executors and gives them instructions as to how they are to deal with the person's estate after his or her death.

When someone dies it is important to find out as quickly as possible if there is a **WILL**. Not only may it contain specific instructions regarding the funeral arrangements but the question of whether or not there is a Will will affect both the administration of the deceased person's estate and the question of inheritance. Normally when a solicitor makes a Will for a client the document is kept by the solicitor for safety and the client is given a copy. The copy, or the envelope it is kept in, is likely to state

the name of the solicitor's firm, who should then be contacted. Alternatively, a Will may be held by the deceased's bank, so it is as well to check there if no Will can be found.

WHAT HAPPENS IF THERE IS NO WILL?

Parliament, through its legislation over the years, has provided a set of laws to decide how **the estate** is to be divided if a person dies in Scotland without leaving a Will. This situation is referred to as **intestacy**.

THE ESTATE

is the term used to describe all the property, monies, investments and so on belonging to the person at the time of his or her death, taking into account all debts, and monies due, such as a mortgage.

Where the deceased is survived by his or her spouse, the widow or widower is entitled to **prior rights**. These are rights to inherit the home (where owned) and its contents up to a certain value in each case together with cash up to a maximum sum. The maximum values of these and other rights connected with executries are altered by Parliament from time to time, but your solicitor will know the up-to-date figures. In most cases where there is a surviving spouse and children, the

whole estate will be divided among them in accordance with the Rules of Intestacy. If there is no widow or widower or descendants, the estate will be divided among the nearest relatives. If there are no relatives traceable the estate passes to the Crown.

EXECUTOR

(or in the case of a woman, "Executrix") is the name given to the person appointed to deal with the administration of the estate. Executors have the responsibility for ensuring that the estate is dealt with in terms of the law and where appropriate any Will.

Except in small, simple estates, an **executor** will have to be appointed by a special application to the court. Where there is no Will the executor is called an **executor dative**. (Where there is a Will the executor is called an **executor nominate**.)

WHAT IF THERE IS A WILL?

The Will usually specifies the person or persons entitled to act as **executors** and will set out the deceased's instructions.

Even where there is a Will there are special laws in Scotland which entitle certain very close relatives (principally spouses and children) to claim **legal rights** — a sum of money — if they have been left nothing in the Will or as an alternative if they are not satisfied with what they have been left.

This does not mean that those relatives will invariably claim their legal rights, but these will require to be taken account of in the administration of the estate. There can be tax implications for those not claiming their legal rights if the matter is not dealt with officially within a specific period of time.

WHAT DO EXECUTORS DO?

The executors are the only persons legally entitled to deal with the money, goods or other property of someone who has died. It is often the case that more than one executor is appointed, in which event they will have to take joint decisions with regard to the estate from time to time. It is possible for executors to resign and for new executors or trustees to be appointed should that be necessary.

Being an executor can be a time consuming task and it is usually advisable and common for the executors to appoint a firm of solicitors to deal with the day-to-day administration of the estate, including the following duties:

...AT THE OUTSET?

It is often the executor who deals with the registration of the death with the Registrar of Births, Deaths and Marriages and makes the necessary funeral arrangements.

Although it is very rare indeed to have a formal reading of the Will, it is normal for the solicitor who is administering the estate on behalf of the executors to write and inform those to whom something has been left in the Will. The executors would normally be provided with a copy of the Will as will those who have been left a share in the whole estate.

Where a solicitor is to be involved it is best to contact the solicitor as quickly as possible. Quite apart from any practical assistance that the solicitor can provide in relation to these early stages, the involvement of the solicitor will help to ensure that the administration of the estate is dealt with properly and without unnecessary delays.

... TO FIND OUT WHAT HAS BEEN LEFT?

This may be fairly simple if the deceased kept his or her papers together and up to date, but it is much more usual to find that it is necessary to examine all personal papers and consult with bank managers, building societies, accountants, solicitors, stock brokers and others.

Savings/

Savings and passbooks must be collected and submitted to the appropriate bank, building society or the like to be written up to the date of death. It is usually necessary to produce a Death Certificate and the Will before banks or professional advisers are willing to disclose what is confidential information. Life insurance policies require to be dealt with in a similar manner.

It is usual to arrange for specialist valuers to estimate the worth of property such as a house or objects such as antiques and jewellery, while the local garage may be able to give the value for a car.

Where there are stocks and shares it may take some time to make certain that all the deceased's investments have been identified. In this connection and in relation to the administration as a whole it is generally useful to check all mail addressed to the deceased for anything up to a year after the date of death. Any bank statements, interest warrants, dividend vouchers, or the like should be passed to the solicitor without delay.

...TO FIND WHAT'S OWED?

It is just as important to find out what debts and expenses will have to be paid from the estate. In addition to bank or building society loans and mortgages, debts can include consumer credit or home improvement loans, rent, income and other taxes, telephone, gas and electricity bills, hire purchase agreements and credit card outstanding balances. The undertaker's account for the funeral is also met from the estate.

Where it is suspected that there are outstanding debts that cannot be easily traced it may be necessary to put advertisements in local newspapers. Advertisements should always be put in trade journals if the deceased person was in business.

...ABOUT DEATH DUTIES?

When money or property passes on the death of one person to another there is always the likelihood that some form of tax will be payable to the Inland Revenue. At the time of going to print this tax is called **Inheritance Tax**, but it has been known in the past by different names: Death Duty, Estate Duty or Capital Transfer Tax.

INHERITANCE TAX

From April 2009, tax is payable if the estate exceeds £325,000. Generally, no tax is payable in respect of any inheritance, no matter how much, by a spouse from the deceased husband or wife.

The exemptions, limits and rates of these taxes change frequently and can often take account of property that not only passes in death, but which was gifted during the lifetime of the deceased, particularly if the gift was within seven years of the date of death.

Any Inheritance Tax or Death Duty will be calculated on the basis of the information given by the executor in a special form, often called **the Inventory**. The form lists all the estate and contains a large number of questions about the family of the deceased and any gifts before death and other matters.

THE INVENTORY

Is the Inland Revenue form used for the preliminary calculation of any death duties and for the application for confirmation of the executors. It is a formal document, and must be completed even where no tax will be payable. There are legal penalties in the event of falsehood.

Since the Tax requires to be paid at the outset of the administration it may be calculated on estimated figures. For example, the value of a house may be a matter of opinion. The question of estimated values is referred to the Government's Valuation Department and enquiries regarding these and other aspects of the calculation of the value of the estate may be raised over a period of time. It may be necessary for the solicitor

on behalf of the executors to negotiate values with the district valuer and also to agree the final amount of tax payable with the Inland Revenue's Capital Taxes Office. It is not uncommon for these negotiations to take many months, or even longer.

...ABOUT TAXATION?

Quite apart from the question of Inheritance Tax, the administration of the estate may involve a number of questions relating to tax.

It may be necessary to finalise questions of income tax relating to income paid or due to the deceased person up to the date of death. There is then the question of any income paid after the date of death from an item of estate; e.g. interest on a building society account. Until such time as the estate item is cashed or made over to a beneficiary any income may have to be shared by the beneficiaries entitled to the residue. The person administering the estate will require to provide the Inland Revenue with full details and to supply certificates to each of the beneficiaries receiving the income, specifying whether or not tax has been deducted.

Although there is no Capital Gains Tax payable in respect of the estate at date of death, if a beneficiary sells at a later date an item inherited from the estate, Capital Gains Tax may be payable.

As in all matters to do with taxes, duties and the like, it is sensible to obtain professional advice from your solicitor.

...TO GET CONFIRMATION?

Until such time as the executor receives formal authority from the court — **Confirmation** — an executor has no authority to collect in the estate, sell whatever is necessary or actually deal with the estate in any formal way.

CONFIRMATION

(similar to Probate in England and Wales) is the formal term given to the granting of the Court's authority to the executors to deal with the deceased's estate

The first step is to complete the Inland Revenue's **Inventory** form for Death Duties.

Where the estate is under a particular value set by the Government you do not have to employ a solicitor. The Clerk of the local Sheriff Court (Commissary Office Section) will assist. Even in these cases, however, the help of a solicitor is often beneficial.

Where there is no Will, it is frequently necessary for the executor to have to take out a special insurance bond in relation to the administration of the estate.

The Inventory with the appropriate fee is submitted to the Sheriff Court and, if everything is in order, the Sheriff will issue **Confirmation**. Separate certificates can be obtained in respect of individual items of the estate and this is often useful in order to avoid unnecessary delays when coming to ingather the estate.

...ABOUT COLLECTING IN THE ESTATE?

Banks, building societies, insurance companies, company registrars and others will each require to see a Certificate of Confirmation confirming the right of the Executors to instruct the sale or collect in the estate item. In many cases this is reasonably straight forward, although it can take a surprising length of time. Where it is necessary to sell or transfer property such as a house, land, or items which are of special interest or value, it will be necessary to consider how best to market these and the actual sales transactions may take some time.

...ABOUT PAYING EXPENSES AND DEBTS?

Once/

Once funds start to come in from the estate, the funeral expenses will be met and any overdraft required in connection with the Confirmation or Inheritance Tax will be repaid. Thereafter the debts and accounts due by the deceased will be paid together with any additional outlays and expenses which may have arisen in connection with the estate and the administration since the date of death.

It is necessary to keep a strict record of all these items and transactions. Income Tax will be payable on income arising in respect of the estate since the date of death and the information may also be required in connection with the final adjustment of any Inheritance Tax or other Death Duty.

...ABOUT LEGACIES AND BEQUESTS?

Where there is a direction to make over a legacy of fixed amounts of money, e.g. £500 to one person and £200 to another, these legacies will be paid once sufficient funds have been ingathered to ensure that all the debts have been paid and that there are sufficient monies to meet the payments.

LEGACIES & BEQUESTS

are the general names given to the gifts or monies to go to the beneficiaries

Where the direction is for a bequest of a particular item, e.g. a piece of jewellery, to go to a certain individual, this may have already been passed to that individual, if it was certain that the item would not require to be sold in order to meet all the debts and expenses.

...ABOUT THE RESIDUE?

Once everything has been gathered in and all the debts and expenses have been paid and individual legacies and bequests dealt with, an Account should be drawn up showing exactly what has been done and how **the residue** is to be dealt with.

THE RESIDUE

is all of the estate that is left over after all other matters including all expenses etc have been dealt with.

Where a solicitor is dealing with the administration, the solicitor will prepare the account and submit it to the executors for approval. The Account will show the various items of the deceased's estate and the debts and expenses. It will deal with any income such as

building society interest or dividends received since the date of death and detail the legacies and bequests. It will show the amount of Inheritance Tax and other taxes paid or payable and specify any money or items of estate still in hand.

It is usual for the beneficiaries entitled to share in the residue to receive a copy of the Account.

Once the executor approves the Account, it will be possible for the solicitor to arrange for payment of the appropriate share of the residue to each residuary beneficiary. Interim payments may have been made during the course of the administration of the estate and these will be detailed in the Account. Where tax has been deducted from income due to a residuary beneficiary, a certificate showing the amount received and tax deducted will also be sent so that the beneficiaries can include these details in their own income tax returns.

The solicitor dealing with the administration will often arrange for the residuary beneficiaries to sign a Discharge - a document in which they acknowledge that the executor has completed the administration properly:- as a protection against later allegations. An Executor receives no payment from the Estate for the work and responsibility involved, unless a Will specifically provides otherwise. This is most common where a Bank or commercial organisation has been appointed executor, in which case charges are normally a percentage of the estate assets.

...ABOUT CONTINUING TRUSTS

The/

The Will may provide for a Trust for a special beneficiary, e.g. for the spouse or partner to remain in the home during his or her lifetime and then for the property to pass to another person or persons. (This type of Trust is called a “**Liferent**” Trust.

<p style="text-align: center;">TRUSTS</p> <p>exist when property or money is held by the executors or trustees over a period of time —usually a number of years —</p>

Where this happens the executors will usually be the trustees appointed to administer the Trust estate. They will have to know and understand what powers the Will gives them to make payments out of the estate during the Trust, when the Trust estate is to be paid out and their powers if any of investment while they are waiting for that time to arrive. They will also require to take advice on the kind of investments which would be suitable.

When a trust is involved it is almost always the case that a solicitor should be instructed in order to provide proper protection for the trustees.

EXECUTRIES - THE KEY STEPS

Registering the death - The death must be registered with the Registrar of Births, Deaths and Marriages within eight days by a relative, executor, solicitor or any other person possessing the necessary information. You require a certificate of cause of death from a doctor and if the death is sudden or accidental the local Procurator Fiscal has to be informed. The Registrar will issue a Certificate of Registration of Death (usually referred to as the “Death Certificate”) and it is helpful if the estate is of any size to obtain at this stage additional copies.

Arranging the funeral - Undertakers can usually make all the necessary arrangements in consultation with the family, including arranging death notices in the papers, flowers and a clergyman to officiate at the service. You must check to see if the deceased left specific instructions in a Will or other document regarding the arrangements. You can normally arrange for the funeral account, which will be paid from the estate, to be sent to the solicitor dealing with the administration. Travelling expenses of executors, family or mourners are not normally paid from the estate.

Is there a Will? - It is absolutely vital to establish whether or not there is a Will. If not, it is likely to be necessary to petition the court to appoint an executor, usually the surviving spouse, but it can be an adult son or daughter or another person entitled to inherit from the estate.

Applying for Confirmation:- This involves identifying and valuing the estate of deceased including all property, investments and assets together with all loans, debts and other liabilities. If death taxes are payable it is necessary to pay these at this stage, before making the formal application to the court for the Confirmation of the executor or executors to the estate.

The Administration - Once Confirmation has been granted the administration of most estates involves ingathering of property and money, paying off loans and debts, delivering legacies and bequests, preparing proper accounts, dealing with the Inland Revenue, and settling with those beneficiaries entitled to share in the remainder of the estate.

Even in an estate of quite moderate size, the amount of work involved can be considerable and complex. Your solicitor can assist and deal with every stage of the administration, from registering the death through to obtaining final discharges from the Inland Revenue and beneficiaries to protect the executors. The cost and length of time involved will vary from estate to estate but it is normally unwise to conclude and pay out any estate within six months of the date of death.

IT'S NEVER TOO EARLY TO CALL YOUR SOLICITOR - Solicitors have been trained to take account of all the practical, as well as the legal matters, difficulties and complications which can arise in any estate. Solicitors are also familiar with, and can understand, the grief and concerns of those close to someone who has died.