

Call Stoke-on-Trent (01782) 639716

Executors Duties (after a death)

A Guide provided by Rod Jones of Convenient Wills

1 Welcome

Thank you for requesting this guide. I hope you find it helpful and informative.

This guide must be regarded as a source of information to supplement your own knowledge. The guide's purpose is to equip you with information to help you undertake your duties as an executor of a Will, and to give you some hints and tips to make the task easier.

This guide is provided on that basis. We regret we cannot accept any responsibility or liability for any adverse outcomes for you or your family, no matter how caused. In addition, we do not accept any liability for any mistake, error, or omission from this guide.

This guide is one of a number of guides and reports available from our web site www.convenient-wills.co.uk; they cover a wide range of aspects dealing with estate planning in general, and making your Last Will & Testament and Lasting Powers of Attorney in particular.

All our downloadable guides and reports use hyperlink technology. This allows you, if you are reading the document direct from a computer with access to the Internet, to click on a hyperlink (indicated with blue, underlined text) and you will be taken through to the appropriate article.

If you require further information or clarification on any aspect of this guide then please do not hesitate to contact me. I will be only too pleased to help.

Rod Jones

Rod Jones A.C.I.B.
Proprietor of **Convenient Wills**

2 Overview

When a person dies their estate has to be sorted out, or 'wound-up' to use the more technical name. If the deceased made a valid Will that duty is the executor's responsibility.

People often accept the role of 'executor' unaware of what the role entails; as a result when a person dies there is a steep initial learning curve for the executor.

The purpose of this fact sheet is to give an executor an initial overview of their responsibilities, some hints and tips that may protect them financially, and to direct them to finding more information.

It is only an initial guide (i.e. It gives you guidance on what actions to take following a death and where to find additional information, as opposed to telling you how to complete a Probate or inheritance tax Return forms in detail) - but hopefully this guide will help you through the initial 'moments of panic' and point you in the right direction to find more information.

3 Glossary

- **Executor:** A person appointed in a Will to sort out a deceased person's estate. See below for their duties.
- **Administrator.** When a person dies without making a Will, or without making a valid Will, their estate still needs to be sorted out. The person responsible for that task is known as an 'administrator'. The role is similar to that of the 'executor' - but differences do exist as to what their actual powers are, and when they come into force.
- **Grant of Probate.** This is a legal document that formally grants power to the executor to sort out the deceased's estate. Where an administrator acts the equivalent document is 'Letters of Administration'.
- **Trustee.** This is the person or persons responsible for looking after any assets placed into a trust fund. The trustees do not benefit from the trust's assets in their capacity as trustee, though they may be stated [in the trust document] as a beneficiary of the trust.

Trusts are created automatically when a child (under the age of 18) inherits under the terms of a will. Trusts can be specifically created in a will. If you are inexperienced in dealing with trusts we recommend that you [the executor, and any trustee] seek professional advice as soon as is practical. It is too easy to make a mistake with financial consequences for you.

Our [website](#) explains a little more about trusts in Wills.

- **Guardian.** The person appointed to look after a minor child in the event of the death of their parents. Our [website](#) explains more about this role.

4 Facts about Probate

- One of the principal tasks of the executor is to obtain Probate for the estate of the deceased.
- For most people acting as an executor the task of obtaining Probate is not overly difficult. It requires a logical mind, discretion, and a determined approach to the task. It can be a time consuming role.
- It is possible to wind up an estate within three months. The more usual time is six months where no property is involved. Where a property is to be sold then the duration is often nearer two years. It can take longer than this.
- You can always renounce the position of executor. A solicitor can always be appointed to the role.
- If a lay executor (i.e. A non-professional person acts) obtains Probate then the total costs are likely to be in the region of £100 - assuming no professional help is sought. If a professional is involved obtaining Probate then the costs can vary from 1% up to 5% of the total value of the estate, often with minimum fees applying in some cases of £1000 plus.

5 Should You Accept the Role of Executor?

Although you may have been appointed executor in the deceased's Will you do not have to accept this responsibility. You can renounce your appointment after the testator has died.

Before doing so though, please remember that you were chosen by the now-deceased as someone they trusted, and that they believed in you that you would undertake the role.

That said, if the deceased is likely to be insolvent, or whose estate distribution is likely to be complex or troublesome then it may be a wise decision to let a professional (such as a solicitor or trust corporation) undertake the role. Yes, it will probably cost the deceased's estate more in fees than if you undertook the role yourself, but why should you expose yourself to the risk of breaching your duties, or receiving aggravation from other family members?

6 Initial Duties of an Executor

- **Locate the Will** Doing so will enable you to be confident that you have actually been appointed as 'executor' - as opposed to assuming that you have.

Be aware that it is possible for there to be two or more Wills (with different executors appointed in each one) -- so do not necessarily assume that the first Will that you find is the latest Will of the deceased. The latest Will should revoke all the previous Wills (unless the testator has property abroad and has made a Will specifically to cover that property).

If you cannot locate a misplaced or missing Will (but you know it was definitely made) then you will need to search for the will. Wills are typically stored

- **at home.** Many wills are stored at home, and in many circumstances this has advantages over the other options because this is the first place that many executors will look. There are risks though with storing a Will at home: fire, damage, unauthorised tampering, and accidental destruction -- which is why many Wills are stored at other locations.

'My important document box/drawer' is a common answer given by our clients when we ask 'Where are you going to store your will?'. So, did the deceased have a place where they store all of their important documents?

Some people store their wills in a safe, hidden in the floor or wall (or sometimes at work). Did the deceased have a safe?

While searching look out for copy wills too. Quite often a copy will shows who drafted the original and the will-drafter may be able to shed more light on where the will is stored.

- **with a family member.** There are advantages to giving an original Will to one of the executors to keep. Where this happens the testator would normally keep a copy in their own home -- which in theory you should be able to locate. You may have to speak to close members of the family and friends to see if any recall the testator making a will.
- **at a High Street Bank.** check out where the deceased's banked and approach them; you may need to write/contact a number of them to request they check their records.
- **at a Solicitor's office.** many solicitors offer free storage where they either draft the original will, or are appointed as executor of the will. The problem for the family/executor is that solicitor practises merge, (or more worryingly close) on more frequent occasions than people often realise, thus you may have the time consuming task of trying to locate the whereabouts of your relative's Will from a wide number of solicitors in the area. Try the 'testator's family solicitor' first, and then those in the local area. And consider ... has the testator moved? Did they make their Will where they lived previously?
- The sundry paperwork relating to the deceased's property title deeds may give an indication of a past relationship with a local solicitor.
- **at the Central Probate Registry.** there is a growing trend to store Wills at the Central Probate Registry. Costs are competitive, and there are advantages to using this service. Approach them to check. Our [links page](#) gives contact details.
- **with the will writer.** In recent years home-visit will writers have been offering storage facilities. For many it is a valuable income source. Many are not registered with any trade body. A phone call to the [Society of Wills Writers](#), or the [Institute of Professional Willwriters](#), or to Kings Court Trust Corporation (located in Bath) may yield results. They may be prepared to circulate details to their members. Other organisations include STEP (Society of Trust and Estate Practitioners) and the Law Society who may be able to help. Otherwise look through the testator's home for evidence of storage elsewhere -- such as plastic laminated cards, certificates of deposit, or correspondence from a Will writer.

For future guidance we always recommend testators notify their executors where they have stored their will.

The consequences of not finding a deceased's will are that he/she will be deemed to have died intestate, and his/her estate will therefore be distributed in accordance with the fixed Rules of Intestacy. The responsibility for sorting out such an estate is undertaken by an administrator (rather than an executor). There is a 'pecking order' of who is appointed as the administrator. The administrator will be forced to undertake greater work [when compared to the tasks of an executor] to sort out the deceased's affairs, work that will be more costly than if an executor was officially appointed. It is therefore worth searching for a will.

- **Register the death** of the deceased. Obtain copies of the death certificate - several may be required not only before the funeral takes place but also for each of the funds that may have to be released or transferred e.g. bank accounts, insurance policies, shares and other equities.

Try to gauge how many copies are needed - and then add a few more (Yes, you could waste a little money now purchasing unnecessary copies but if you need to obtain more in the future they will then cost significantly more, and you will have the inconvenience of obtaining them.) Many organisations will need sight of an original Death Certificate before releasing funds; some even keep an original!

Copies obtained from the 'Registry of Births Deaths and Marriages' are regarded as 'originals' as opposed to a photocopy of the certificate.

- **Arrange the funeral of the deceased.** The cost will usually be the first expense paid for from the deceased's estate. (I.e. the deceased's estate pays the costs - not you as the executor.)

Make enquiries about the existence of a prepaid funeral plan - these are becoming increasingly popular amongst retired people wishing to guard against the effects of inflation.

If the deceased had purchased a funeral plan ideally the Executors should have been informed immediately and given the location of the relevant documents - but this may have been overlooked. You should therefore search for evidence of such a plan if you are not 100% certain that a plan has not been purchased.

Also note that many people give an 'Expression of Wish' within their Will, [others make a separate 'Expression of Wish' that is retained with their Will] stipulating their desire to be buried or cremated. Some give quite specific instructions. Whilst you are not legally bound by these directives most executors do try to fulfil them. If possible therefore try to locate and read the deceased's Will, and 'Expressions of Wishes' prior to arranging the funeral.

Seek help and guidance from the Funeral Director. They are professionals who, unlike most people, deal with the arranging of a deceased's funeral day in, day out. They will offer guidance and advice at this distressing time.

- Notify friends and family of the deceased.
- **Apply for a Grant of Probate** via the nearest Probate Registry - if required. The [Probate Office](#) are very helpful.
- You might also want to use the services of a solicitor to help you with this task. Be aware that solicitors charge fees for this service, which can be sizeable. Check with them first what they will charge, and bear in mind you may still end up doing the bulk of the work anyway.

For this reason, and if possible or practical, we recommend that the services of a solicitor are not used; the task is not generally difficult for a simple estate, but does require time and a logical approach to the task. Where an estate contains complex trusts, or is insolvent, or the deceased's family are likely to exert undue pressure upon the executor then using the services of a professional executor should be considered.

The rules regarding the need to obtain Probate are under review; historically if the estate was greater than £5,000 in value then Probate was needed. More recently Probate may only be necessary where institutions (such as Banks and Life Insurance Companies) insist upon it. To be on the safe side seek clarification from your local Probate Office.

- **Arrange to open a Personal Representative's bank account** - if required. This will be used for the receipt of money due to the Estate and any loan arranged to pay an Inheritance Tax bill and/or Probate fees.
- **Inform all relevant persons** and organisations - doctors, banks, building societies, life assurance companies, employers, local authorities, Inland Revenue, benefit agencies, pension schemes etc.
- **Arrange for a valuation of the Estate.** This will include the house and its contents, other personal effects, investments in savings plans, equities, life policies, building societies etc. Draw up a detailed schedule of all the Testator's assets.

Be aware of (and do not overlook) Internet banks; most people do not have any correspondence from these organisations so locating their existence can be quite difficult.

- **Draw up a full schedule of debts** that must be paid from the proceeds of the Estate. These will include mortgages, income and capital gains taxes, bills, credit cards, loans and overdrafts - and funeral costs.

If the debts, taxes due, and funeral bills exceed the assets of the estate then seek professional advice from a solicitor. There is a hierarchy of payments when a person dies insolvent.

- **Complete the forms required** by the Inland Revenue Capital Taxes Office if inheritance tax (IHT) could be an issue. IHT applies to estates valued at more than £325,000 (tax year 2011-12) - though exemptions and allowances exist to reduce the potential tax liability.

Be aware that [substantial] gifts made in the previous 7 years should be added back into the value of the estate for IHT purposes.

- **Complete the Probate forms** and send or take them to the Probate Office along with the original Will, a death certificate, and the Inland Revenue account.

7 Subsequent Duties

- **Provided that the estate** is fairly straightforward, an appointment will be made for the personal representative to 'swear the Probate papers' within about 5 - 6 weeks of receipt at the Probate Office.
- **When Inheritance Tax is due** the Executor's account of the Estate is passed to the Inland Revenue and the Grant of Probate cannot be issued until the tax is paid, or an arrangement is met to meet the liability. The Probate office and HMRC will explain your payment options.

Where inheritance tax is due consider arranging a 'deed of variation' to the Will if, by so doing, you can reduce the tax liability.

- **Copies of the Grant of Probate** should be sent to everyone who owes money to the Estate. The Executors now have a legal authority to pursue any debts owing to the Estate.
- **When the Grant of Probate is received**, the Estate can be divided according to the terms of the Will. The Executor must prepare and sign accounts showing who has received what from the distribution. They must be able to show that they acted in accordance with the terms of the Will in case there is any dissent from the family of the deceased.
- Before distributing the estate obtain from each beneficiary their written acknowledgement that they accept what they are receiving is the final dividend. Failure to do so will leave you open to risk.
- **All papers, including the Grant of Probate**, and the account, must be stored safely for a period of 12 years.

If there is a potential inheritance tax liability for a surviving spouse then specific documents should be kept until the surviving widow's death as well.

8 Hints and Tips

- **Don't panic.** If suddenly faced with sorting out a person's estate there is a natural instinct to worry - especially if you have not sorted out an estate before. Use the many resources available to establish a plan of action.
- **Sorting out a person's estate is not generally difficult.** It can be a time consuming task - but it is not generally difficult. If you are logical in approach, and honest, you should not have too much difficulty - and you can always use the services of a solicitor or accountant to help you (or you can relinquish your duties altogether, if you prefer.)
- **Be aware** that Solicitors and Banks make a substantial profit from being professional executors, and probate work in general. We would recommend you only use their services when you have to; some are dreadfully slow in the process. You should be able to do the bulk of the work yourself.
- **To protect yourself** (in your role as executor) you should make the deceased's estate as secure as need be, and as quickly as possible. This is particularly so where the deceased was single /widowed. Family members - with access to the house and property - often seem to think they have a right to take what they want; many do not realise that by so doing they make themselves 'executors' and can subsequently be sued for breach of trust. Little comfort for you though - who, as the officially appointed executor, has to explain to 'little Johnny' why the gift Grandma had promised him for years

is no longer available. It is better to secure the premises by changing the locks etc to all properties. This cost can be charged to the deceased's estate.

Call us if you want to know a good locksmith in the Stoke on Trent area.

- **Keep a record of all costs incurred.** All your expenses can be reclaimed from the deceased's estate - but evidence should be kept to defend any accusation from family members of potential abuse of your position.
- **Remember: As an executor you are a trustee.** Your role, amongst other things, is to distribute the estate in accordance with both the Law and the Will. Failure to do either and you are in breach of trust, and potentially at financial risk yourself.

Be particularly careful of outstanding loans. The deceased's estate must be distributed in accordance with a specific 'pecking order'. If you miss out the repayment of a loan the loan company do not go after where the deceased's estate went - they go after the executor for failing in their duty and therefore being in 'breach of trust'. You could become personally liable for the repayment of the debt.

Wills created by Convenient Wills include a indemnity clause - but this is the final defence. Far better to distribute the Will correctly in the first place.

- **Don't Be Bullied.** You will find beneficiaries demanding their share of the estate NOW. Well, they can't have it until you are ready. Don't put yourself at risk by releasing funds until you are 100% sure you have done all that is right.
- **Work logically:** Sorting out an estate usually takes 6 months (it can be done sooner with simple estates) Two years is common where a property has to be sold.

9 More Information

- **Your Local Probate Office** offer guidance and advice.
- Online www.hmcourts-service.gov.uk explains more about gaining Probate, what forms to complete etc. You can also download the forms you need.
- The H.M Revenue and Customs web site www.hmrc.gov.uk explains more about inheritance tax. This is an online technical manual; if you have a simple query please feel free to call us.
- Visit your local **library**. They often have D-I-Y books to guide you through the process of obtaining Probate - especially in the reference section.
- [Funeral Directions](#) web site is informative - but the Internet in general contains loads of information.

10 Make (or Update) A Will

Sorting out a person's estate will probably make you realise how important having an up-to-date Will for yourself actually is. When matters have settled please call us to see how we can help.

Convenient Wills is the only home visit, specialist Lasting Powers of Attorney & will-writing business located in Newcastle-under-Lyme that covers North Staffordshire, South Cheshire and North Shropshire.

Convenient Wills, as a specialist home-visit will-writing service, offers you:

- **convenience:** we come to your home, thereby saving you travel costs, and time;
- **flexibility:** our appointments are held at times convenient for you, including daytime, evening, and at the weekend. There is no need for you to take time out from work;
- **a relaxed atmosphere:** the discussions are held in the comfort and relaxed atmosphere of your own home -- and not in an 'oppressive' office in your local (or not so 'local' in some cases) town;
- **time saving:** our experienced and friendly consultant will advise and guide you through all the options you should consider -- thus eliminating the need for you to undertake any prior research, such as searching the Internet or library to see what you should include;
- **a bespoke Will:** your Will will be legal and personalised to match your exact wishes. This means, for example, that the names of your children will be included in your Will rather than just referring to them as your 'children'; and we will draft your Will to match your wishes rather than making your wishes fit into one of our pre-formatted template wills.

- **a fixed fee:** We do not charge extra for the inclusion of, say, a trust in your Will (Unlike some of our competitors). Nor do we do increase our fees if we feel you can 'afford' to pay more; and
- **protection:** our processes (which includes visiting you twice) ensure your Will can be defended from claims of lack of capacity, undue influence, and fraud.

The full features and benefits of our home visit will-writing service is available on our [web site](#).
To register your initial interest (without obligation) in our services just [click here](#).

Not all will writing services are the same.

No one likes to consider their demise; we though make the task relatively simple. If you would like to join our existing and growing group of satisfied customers please call Rod on:

(Stoke) **01782 639716** or click on

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