



## What is the role of an executor, trustee and guardian?

### Overview of the Role & Duties of an Executor

**Register the death** at the local Registry Office and complete the "Tell Us Once" process to notify all government departments.

**Arrange the funeral.** Check to see if there is any pre-paid funeral plan or any instructions in the Will regarding the deceased's wishes and make the appropriate arrangements.

**Inform all relevant organisations** e.g. employers, utility companies, credit card companies, banks, council tax offices, non-state pension providers, life assurance companies, DVLA, passport authority.

**Ascertain a professional valuation of the estate** which could include the house and its contents and all other personal goods. Contact providers of investments, stocks and shares, life policies to obtain a date of death valuation. Draw up a detailed list of assets, including sole and joint assets and the respective values.

**Draw up a list of debts** that must be paid by the estate. This could include mortgages, loans, credit cards, household bills, taxes, overdrafts, overpaid pension payments and funeral expenses.

**Open a personal representative's bank account** for money paid into and out of the estate.

**Calculate if any Inheritance Tax (IHT) is due and Prepare the (IHT) return** – Ensure that any allowances or exemptions are applied to the estate to minimise any tax due. The grant of probate cannot be issued until any IHT that is due is paid. If part of the estate needs to be sold to pay IHT, banks can arrange loan facilities so that the tax can be paid straight away or if it is due on a property then arrangements can be made to pay in instalments. You must declare the value of the estate to HMRC within 6 months of death and it is your personal responsibility to ensure the tax is paid on time or HMRC impose penalties. Note that even where no inheritance tax is payable it is still necessary to submit a return.

**Note:** As an executor, you are appointed to manage the process, but you can delegate some or all of the work, before you start. Executors can (and most non-professional executors do) seek guidance and professional assistance in carrying out this role. If you do not have the time or confidence to complete the task yourself or require assistance, then please contact us. Cornerstone Wills Probate Services provide assistance at all levels required and for reasonable fees whether just to help with the required completion of forms or the full service of obtaining Grant of Probate through to estate distribution.



**Apply for a grant of probate** from the nearest probate registry once the paperwork has been collated. You will have to sign an Oath in front of a solicitor or a Commissioner of Oaths. Once the Grant is obtained, this will give you legal authority over the estate.

**Collect estate money and settle all debts** – payment of the deceased's tax and liabilities is your personal responsibility.

**Distribute the estate** – Pay all legacies in the Will. Set up any Will trusts. Set up a Deed or Appointment if a trust is to be disbanded. Pay residuary beneficiaries.

**Complete or notify that income tax returns** may be due for each beneficiary and also for any estate income if the estate has accrued any income during the Probate phase.

**Compile estate accounts** - you will need to keep a full set of accounts showing the estate assets and liabilities, administration income and expenses and how the estate has been distributed. These should prove that you have acted in accordance with the wishes expressed in the Will. This is important in case there is any query from the beneficiaries or the family.

**Undertake bankruptcy searches** for all parties as you cannot distribute to a beneficiary who is bankrupt.

**Estate Administration and distribution of the estate** – Pay all legacies in the Will. Set up any Will trusts and arrange property transfers if required. Set up a Deed of Appointment if a trust is to be disbanded. Pay residuary estate beneficiaries.



## Overview of the Role & Duties of a Trustee

The role and responsibilities of a trustee should not be undertaken lightly. If you have been chosen as a trustee, the settlor feels that you can be trusted to act in the best interests of the beneficiaries, and can manage this important role if or when you may be required to act.

Trustees are under a statutory duty of care (Section 1 Trustee Act 2000). This means that they must take reasonable skill and care when dealing with trust assets, and if there is ever any question as to whether they have exercised reasonable skill and care, the law will take into account any special knowledge that they may have.

Trustees must understand the terms of the trust so that they can follow the trust rules.

Decisions between all trustees must be unanimous and where a trust is established to benefit a number of beneficiaries equally, the trustees must not favour one beneficiary or type of beneficiary over another. In the case of a Discretionary Trust then often a letter of wishes is provided by the settlor to help the appointed Trustees to determine who should benefit and when. It is advisable to check if this is available and accessible.

Trustees are advised to seek professional advice when making investments. Trustees should not be put in a position of conflict between their own personal interests and the interests of the trust and its beneficiaries.

Trustees may delegate their duties of administration and investment to professionals if permitted by the trust deed. However, the overall responsibility will remain with the trustees.

The trustees' duties include:

- Registering the trust assets in the trustees' names;
- Liaising with other trustees to act in the best interest of the beneficiaries;
- If appropriate, investing the trust funds without making personal profit or causing loss to the trust;
- Acting impartially and treating all classes of beneficiaries fairly in accordance with the terms of the trust and any letter of wishes that comes to their attention;
- Holding annual trustees meetings and maintaining accurate accounts/records; and
- If appropriate, completing annual tax returns to HMRC on any income tax, capital gains tax and entry, exit and 10-yearly inheritance tax charges on the trust assets of a Discretionary Trust if applicable.

## Overview of the Role & Duties of a Guardian

These are essentially the same as those of a parent, and will include decisions about schooling and health as well as moral and social training. There will be financial, social and emotional implications, and these should be discussed with the parents before taking on the role.

The terms of the Will should be such that the executors (and subsequently the trustees) can do all that is necessary to provide financial help to the guardians.

While guardians have daily responsibility for the children, it is better for the financial control to be handled by someone different, normally the trustees of the estate.

Through the appointed Trustees of their Wills, most parents will make financial arrangements for their children in the event of their death, but guardians may be able to claim child benefit and receive a guardian's allowance if both parents are deceased.

This means that appointed Trustees and Guardians can share potentially difficult decisions such as provision of funds for the children's upbringing and other capital expenditure before the youngest child attains 18. Trustees in this event are obligated to use available estate funds to provide for the **maintenance, benefit and advancement** of the children. Trustees and Guardians need to work together to resolve issues and agree reasonable expenditure of funds.

**An aside:** *If you have been appointed as a guardian, you should also make a Will to further safeguard the future of the children.*