

# GREENE & GREENE

## **EXECUTORS** and their obligations



Greene & Greene Solicitors 80 Guildhall Street Bury St Edmunds Suffolk IP33 1QB UK

T +44 (0)1284 762211 F +44 (0)1284 717499 mail@greene-greene.com [www.greene-greene.com](http://www.greene-greene.com)

## INTRODUCTION

When someone dies the first matters to be dealt with are:

- Register the death within 5 days;
- Locate the Will and check whether there are any burial requests; and
- Arrange the funeral.

Either the family or the Executor can do all or any of these. However, the Registrar generally prefers a family member to register the death, whenever possible, rather than a professional.

An Executor is a person appointed by the Will to administer the estate. There may be more than one Executor appointed by the Will.

If you are appointed as an Executor but do not wish to act, you are not obliged to do so. Provided you have not and do not get involved in the administration, you can either renounce altogether or have power reserved to you.

Being appointed an Executor of a Will is a responsible and possibly onerous role, which involves acting as the personal representative of someone who has died. The main duties are:

- To ascertain the assets and liabilities of the estate;
- To obtain the Grant of Probate of the Will (see page 2); and
- To administer the estate in accordance with the Will

## WHAT IF THERE IS NO WILL?

If there is no Will the deceased has died intestate. A relative can apply to the Probate Registry to be appointed to deal with the estate. There are specific rules as to who can take on the role of 'Administrator' of the Estate.

Administrators have the same duties as Executors to ascertain the assets and liabilities of the estate. They also go through the same process to obtain the Grant, which in this case is called a 'Grant of Letters of Administration'.

Complexities arise when no Will is left, because the Administrators have to distribute the estate according to the intestacy rules. This can sometimes mean working with genealogists to establish a family tree.

Throughout this booklet, the term "Executors" also refers to Administrators and "Grant of Probate" also refers to Grant of Letters of Administration.

## ASSETS AND LIABILITIES OF THE ESTATE

It is the duty of the Executors to find out exactly what assets the deceased owned, such as bank accounts, investments and property, and what debts were owed. The assistance of the family is usually required to do this. Any documents of title should be located and kept by the Executors.

All institutions then need to be contacted to advise them of the death, to confirm the ownership of the assets and to obtain a valuation as at date of death. There are specific valuation rules for assets such as shares and property, and therefore these valuations may need to be undertaken by specialists.

The same needs to be done for debts, to confirm the ownership of the debt and the amount owed.

The Executors will also need to find out whether the deceased made any gifts during their lifetime.

The Executors need to ensure that all assets are protected. For example, property that is unoccupied should be made secure, valuable items should be removed and the insurance company should be informed to ensure adequate cover continues.

Once institutions have been informed of the death, the assets will be frozen until a Grant of Probate is obtained.

For bank and building society accounts, this means that money cannot be accessed. However, they will normally allow the funeral expenses to be paid from the monies they hold on production of the funeral account. Any accounts held in joint names will be transferred automatically into the surviving account holder's name.

For shares, generally, they cannot be traded until the Grant of Probate is obtained. Dividends will be retained by the company registrars until the Grant of Probate is provided to them.



Any property, this can be marketed for sale prior to the Grant of Probate being obtained, however contracts cannot be signed or exchanged until the Grant of Probate is issued.



### GRANT OF PROBATE

This is the document which confirms your appointment as Executor of the Will. It gives you legal authority to deal with the assets of the deceased.

To obtain a Grant, the first step is to complete an Inheritance Tax Form to disclose the assets and liabilities of the estate to the Capital Taxes Office.

If the value of the deceased's estate falls below the Inheritance Tax (IHT) threshold, or meets certain other criteria, the estate is termed an 'excepted estate' and a shortened form has to be completed.

If the estate is not an excepted estate then a full IHT return has to be completed and submitted to HM Revenue and Customs (HMRC), formerly the Inland Revenue.

If a full IHT return has to be completed, any IHT payable has to be paid in full or in part before the Grant can be applied for. Again, banks and building societies will release monies to enable the IHT to be paid. It is also possible to pay the IHT liability out of any National Savings & Investments products held. If there are no available liquid assets in the estate to pay the IHT liability, the Executors will need to obtain a loan.

The second step is to swear an Oath to confirm your right to apply as Executor, which is then sent to the Probate Registry together with the Will.

### ADMINISTERING THE ESTATE

Once the Grant of Probate has been issued, the Executors arrange for assets to be cashed in or transferred to beneficiaries, debts paid, legacies paid in accordance with the Will and for the residue of the

estate to be distributed in accordance with the Will.

An Executors bank account may need to be opened if you are not employing the services of a solicitor to administer the estate.

Accounts then need to be prepared to enable the Executors to account fully to the beneficiaries, and discharge their duties. When accounting to the beneficiaries, they have to be provided with details of income they are deemed to have received from the estate.

Any Income Tax and/or Capital Gains Tax (CGT) liability needs to be reported to HMRC and paid.

### IN ACTING AS AN EXECUTOR, CAN I BE PERSONALLY LIABLE?

Provided you act responsibly, securing professional advice where appropriate, your liability will be limited to the assets of the estate. Because of that, it is very important to ensure that before moneys and assets are distributed to those entitled, all debts have been paid.

If there is more than one Executor, you have joint and several liability, which means that the act of one is binding on the other/s and one of you can be made to pay the liability, leaving you to claim a contribution from the others.

As regards debts, before distributing the estate, advertisements for creditors can be placed in the London Gazette and local papers. These advertisements give any creditor a minimum of two months from the date of the advert to come forward and make their claim known to the Executors. If the Executors have placed advertisements, then they will not be personally liable for debts which are notified after the expiry of two months.

It is also recommended that confirmation is obtained from HMRC that they consider that there is no further





IHT payable. For Income Tax and CGT, confirmation should be obtained for the period to death, and the administration period. This is called "clearance".

Under the Inheritance (Provision for Family & Dependents) Act 1975, a person who claims to have been a dependant and other categories of family member or cohabitee, have six months from the date of the Grant of Probate in which to make a claim against the estate. As an Executor, you are duty bound to make reasonable enquiries to find out whether or not there is a risk of a claim. You can be personally liable if you distribute the estate without checking this adequately. The safe course is not to distribute any of the estate until the six months has expired but this is the decision of the Executors.

### **CAN I BE PAID FOR MY SERVICES AS AN EXECUTOR?**

You cannot be paid for being an Executor, however you can be reimbursed for any expenses you pay personally, or any out of pocket expenses you incur in carrying out your duties as an Executor.

Professional Executors can be paid for their services, provided there is an appropriate clause allowing them to charge in the Will.

### **DOES A PROFESSIONAL HAVE TO BE INSTRUCTED TO HELP ADMINISTER THE ESTATE?**

No. Executors can make personal applications for a Grant to the Probate Registry without the assistance of a solicitor.

### **HOW CAN GREENE & GREENE ASSIST ME?**

We have a team of legal and tax advisors with many years experience. We are available to answer your queries, advise and guide you at this difficult and often emotional time.

By instructing Greene & Greene to assist you, you are incurring a personal expense as Executor in order to ensure that you discharge your duties as an Executor properly and thoroughly, an expense which is usually reimbursed from the estate. By doing so, you minimise the risk of incurring personal liability for debts or claims and liabilities of the deceased. We can also assist with any family disputes, which you may not feel it appropriate to be involved in.

Greene & Greene can act in purely an advisory manner, by for example confirming the terms of the Will and any resulting trusts, and providing legal support.

We can be instructed to deal with the estate to the stage of applying for the Grant of Probate, or we can be instructed to deal with the entire administration of the estate.

If you decide to instruct Greene & Greene to deal with the entire administration of the estate, the work we would carry out on your behalf is as follows:

- Contact all the relevant institutions to ascertain the value of the assets
- Collate this information and prepare the necessary forms
- Deal with the Probate Registry with regard to the application for Probate
- Once Probate had been obtained, we would arrange for the assets to be dealt with and liabilities settled
- Receive any monies due to the estate and hold them in a designated client account
- Pay any legacies left in the Will
- Prepare Accounts for the estate and deal with the necessary tax disclosures
- Distribute the residue of the estate

### **HOW LONG WILL IT TAKE?**

It is difficult to estimate how long it will take to obtain the Grant of Probate and then to administer the estate, however our aim is always to ensure that Probate is obtained as quickly as possible and with the minimum of fuss. Throughout the process we would work with you as an Executor and also with the beneficiaries, keeping you up to date with progress throughout.

It is not unusual for the administration of an estate to take up to a year, and even longer if matters are not straightforward.

We will always try to give you some indication of the likely timescale when the extent of the estate is known, and inform you of any delays that may occur.

Factors which affect the time taken are as follows:

- The state of the deceased's financial affairs
- The type and number of assets the deceased owned (delays often arise when many organisations are involved)
- The deceased having an interest in a business or a farm
- Family or ongoing legal disputes
- Inheritance Tax being payable
- Disputes between Executors

### HOW MUCH WILL IT COST?

Our charges depend on what is involved in administering the estate, and are based on the amount of time spent in dealing with the estate.

Wherever possible we will try to give you an indication of the likely cost to obtain Probate, however in complex cases this is not often practicable until we know what work is going to be involved.

The critical thing to appreciate is that the client engagement with Greene & Greene and an Executor is personal to the Executors. In very rare cases, usually where Executors disagree with each other about how to proceed, or whether to proceed at all, a matter cannot move forward to the Grant of Probate, and so the Executors legal fees cannot be reimbursed out of the estate. Where this is the case, you, as the Executor will be personally liable to pay the legal fees, and cannot reimburse yourself until Grant of Probate is issued. It is therefore absolutely critical that before you accept the office of Executor you are in agreement with your co-Executors of how, and how quickly, you wish to proceed.

### THE PROBATE DEPARTMENT AT GREENE & GREENE

The partners of Greene & Greene, whose names are listed on the firm's letters, own and are responsible for the firm. If 'The Partners of Greene & Greene' are named as Executors in a Will, it is usually Suzanne Alston, Michael Batt and Jonathan Mathers who take on this role, as directors of Suzanne Alston Limited (Partner), Michael Batt Limited (Partner) and Jonathan Mathers Limited (Partner), unless a specific individual director is named in the Will.

In general, Suzanne Alston, Michael Batt or Jonathan Mathers are the solicitors responsible for Probate and Estates. Existing clients will usually regard one of our solicitors or another member of our professional staff as their normal contact. We encourage this relationship. This is the person to contact initially, even though the work might be outside their speciality. They will ensure, in liaison with you, that it is dealt with by the right person for the job and that you are introduced as soon as possible. Probate matters are usually handled by either a partner through an individual director or by professional staff under the supervision of a director. We will tell you who that individual is and members of staff involved. Any changes are also notified.

Where sensible, a corporate partner will be your Client partner – the individual usually responsible for your matters will be a solicitor and director of that corporate partner. If he/she is an Executor with you and the matter is outside his/her field of expertise, another corporate partner will act in liaison with the principal corporate partner.

The firm employs professional staff, Assistant Solicitors, Legal Executives, Qualified Tax Advisors and Trainees to assist them.

Assistant Solicitors are fully qualified, employed solicitors. Legal Executives are Fellows of the Institute of Legal Executives (ILEX) who, in their specialisations, have passed exams as demanding as the equivalent taken by Solicitors. Executives have varying experience and qualifications. They are not Solicitors or Fellows of ILEX but have other qualifications such as CTA (Chartered Tax Advisor) or long experience.

We allocate staff to a matter on the basis of cost effectiveness, specialisation, availability and previous good relationship with you. The client partner will be happy to discuss staff allocation with you.

If all is going well and the matter is within normal competence you might see little of the client partner in the day to day administration of an estate.

### CONCLUSION

This booklet is designed to cover some of your questions. But we should be happy to discuss any further aspect with you if there is anything you would like us to clarify. We hope that your association with Greene & Greene will be a long and happy one.