

## **ADMINISTRATION OF ESTATES**

### **Duties and Powers of Personal Representatives**

A personal representative is a collective name for an executor or administrator. The duty of the personal representative is to collect and get in all of the deceased's assets and to administer them according to law. Within a reasonable time and taking whatever steps are necessary, the personal representative is to collect all money and assets belonging to the deceased. The personal representative will usually produce the original or a Court sealed copy of the Grant of Probate or Letters of Administration to the people who hold the assets in order to prove his entitlement to them.

By law, executors are obliged to exercise due care and skill in performing their duties. The actual standard expected of them will depend on their experience and capacity. For example, a professional personal representative such as a bank, will be held to a higher standard. Trustees have duties to act in the best interests of the beneficiary and to avoid conflicts of interest.

The personal representative must take steps to preserve the deceased's assets and realise any investment which are not proper for them to retain, within a reasonable time. This may include risky investments outside the scope of those which either the Will itself or in the general law allows.

The personal representatives would be subject to personal risk, if they distribute assets to certain beneficiaries, without regard to others about whom they do not know. There is a mechanism to protect personal representatives against this risk. Advertisements may be placed in London Gazette and newspapers circulating in the area in which any land forming part of the estate is situate and any other local newspaper as might be appropriate in order to trace beneficiaries and creditors. After a certain period, the personal representatives will be protected if they proceed to distribute the estate.

This protection will not apply to protect personal representatives who are aware of the existence of claimants, who simply cannot be found. Where beneficiaries or creditors are missing, monies can be paid into the Court offices and this will protect personal representatives. It is possible for personal representatives to take out insurance against the possibility of missing beneficiaries or creditors later appearing. Certain enquiries will be necessary in order to obtain the insurance.

Where there is a known future or contingent liability the funds should be set aside to meet it.

The personal representatives can be personally liable for Inheritance Tax. This will include tax on transfers made within seven years of death by the deceased. The personal representatives are obliged to make enquiries to ascertain whether any previous gifts had been made. Provided full enquiries have been made, the Revenue indicate that they will not pursue the personal representative for further Inheritance Tax of which they were not aware.

Personal representatives may sell the deceased's assets in order to pay tax and discharge any liabilities. If specific gifts of property are given, they should not be sold unless other assets have been exhausted.

The personal representatives are obliged to gather in the deceased's assets and ascertain his debts. This will generally mean distributing copies of the Grant of Probate or certified copies to various institutions and obtaining payment of the sums concerned.

Most legal claims for and against the deceased, usually survive death. The main exceptions are contracts for personal services and defamation claims.

A deceased's estate may be insolvent where its liabilities exceed assets. In case of an insolvent estate, debtors are entitled to be paid what is due to them from any part of the estate available.

Unless a Will says otherwise property charged with payment of a debt (such as with a mortgage) is primarily liable for that debt. There is an order of entitlement in relation to unsecured debts. They are paid out of the following:

- property disposed of by Will
- the remaining part
- property specifically given for debts
- property specifically charged for debts
- pecuniary legacy fund
- property specifically given

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.