

# Guide for Executors



*After a person dies, the Executors, who are those people trusted to carry out or “execute” his or her wishes and are named in the Will, have certain legal responsibilities. This guide is not comprehensive but is designed for Executors to help them carry out their duties*

## ***What should I do first?***

If you do not have a copy of the Will you need to obtain one as soon as possible. It is the practice of LDJ Solicitors to supply clients with a copy of any Will we have prepared on their behalf and we advise clients to keep the copy in a safe place and tell their Executors where it is. If you cannot find a copy of the Will, please contact us and we will check our records.

## ***Why do I need a copy of the Will so soon?***

It is important to check if the Will gives instructions for the funeral and if so to make sure that whoever is arranging it (which may be close members of the family and not the Executors) is aware of those instructions.

The Will may make gifts of specific assets such as jewellery, porcelain, furniture or a car and the Executors must identify these items and keep them safe. But before driving a car or other vehicle, the driver must first check with their own Insurance Company that he or she is insured to drive it.

If the person who died had a domestic pet, the Will may make arrangements for the welfare of the pet.

## ***What else should I do straightaway?***

If the person who died owned their own home or other property the Executors should make sure that there is proper insurance cover and the premises are secure. If a property is empty then the Executors must inform the Insurers of this.

## ***What happens next?***

In most cases the death must be registered with the Registrar of Births Marriages and Death where the person died. Often a member of the family does this but sometimes one of the Executors will do so. When the death is registered the Registrar will ask if any copies are needed. It is important to obtain at least one copy. There will be a cash fee payable which is currently £4.50 per copy.

The government in November 2011 launched the "Tell Us Once" Service which means on registering a death a number of different government departments are automatically told of the change of circumstances.

Depending on whether the funeral is to be a burial or cremation, the Registrar may issue a certificate to be handed to the funeral directors.

*“For Professional & Friendly Advice”*

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## ***How do I find out about the money and other assets of the person who died?***

The Executors need to get as much information as possible about the assets owned by the person who has died. Bank statements and cheque books and Building Society passbooks or investment certificates will help identify any cash savings. Share certificates or dividend vouchers can show any stocks and shares owned, as will a report by a stockbroker or financial adviser. Premium receipt books as well as policy documents will reveal any life insurance and correspondence or a payslip from an employer or former employer may disclose death in service or pension benefits.

If there is money outstanding on a mortgage, the Bank or Building Society will have safe custody of the deeds. A mortgage statement will have the mortgage account number and may show how much is still owed. If the mortgage was repaid while the person was alive, the deeds may be with their Bank or held by LDJ Solicitors for safe keeping in our strong room.

## ***What should I do next?***

If the Executors want to instruct LDJ Solicitors to act for them in the administration of the estate, please bring in with you all the paperwork and information that you have found together with a Registrar's copy of the death certificate and a copy of the Will. If you want us to act for you, we will write to you with information about our charges for acting in the administration of the estate and our terms of business. The Will provides that the legal costs will be paid out of the estate of the person who died.

## ***What happens then?***

LDJ Solicitors will write to the various Banks, Building societies and companies to register the death certificate and ascertain the value of all the assets as at the date of death. If necessary we will obtain valuations of properties, stocks and shares and personal effects such as furniture and motor vehicles.

Once this information is obtained we will prepare either an Inland Revenue Return of Estate Information Account IHT205 or an Inland Revenue Account IHT400 with the relevant Schedules. This is a type of tax return showing the value of the estate of the person who has died. The information required by the Inland Revenue is detailed and must be accurate. At the same time we calculate if any inheritance tax is payable.

We will also prepare the Oath which the Executors must swear. This document, which is written in rather old-fashioned language, refers to the Will and sets out of the facts, the Executors' duties and the Court's sanctions. We will send both the IHT205 or IHT400 and the Oath to the Executors for approval before fair copies are prepared.

Once signed and sworn, if an IHT 400 has been prepared because inheritance tax is payable or the value or nature of the estate means that Capital Taxes Offices needs to scrutinise the forms, we will forward the IHT 400 to the Capital Taxes Office with the appropriate amount of inheritance tax, if any, and then, once the Capital Taxes Office acknowledges receipt, apply for a Grant of Probate at the Probate Registry.

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If no inheritance tax is payable then we will forward the IHT205 to the Probate Registry at the same time as applying for the Grant of Probate. It currently takes 2 to 3 weeks for the application to be processed by the Probate Registry.

Once the Grant has been issued we will register official court sealed copies of it with Banks, Building Societies, company registrars and arrange for assets to be cashed or transferred in accordance with the terms of the Will and on the instructions of the Executors. We will then arrange for debts and funeral expenses to be paid as well as any cash legacies.

## ***Will I need to advertise in the local paper?***

The Executors have a duty to ensure that all known debts incurred either by the person who died or by them in the course of the administration of the estate are paid off before any distributions are made to beneficiaries. If the Executors fail to do this, the creditors can hold them personally liable to meet the outstanding debts, up to the limit of the estate. It is, therefore, important that no distributions to beneficiaries should be made until the full extent of the debts can be established.

The Executors can however protect themselves by placing “statutory advertisements” pursuant to Section 27 of the Trustees Act 1925. These advertisements will protect an executor against claims from creditors (or any other claimants against the estate) of which he had no notice. If anyone later makes a claim after the deadline in the advertisements has expired, then they may try to recover the money owed to them from the beneficiaries but not from the Executors personally.

## ***What happens to the remaining assets?***

The remaining assets will then be sold or transferred in accordance with the terms of the Will or as required by the residuary beneficiary or beneficiaries (the person or persons who inherit the estate after all debts, funeral expenses and legacies have been paid).

LDJ Solicitors will also prepare Estate Accounts which set out the financial aspects of the administration of the Estate. After being approved by the Executors, a copy will be sent to the residuary beneficiary or beneficiaries before final distributions are made.

## ***How long will it take?***

It is usual for an estate to be administered within a year of a person’s death. Of course, the beneficiaries will want to receive their inheritance as quickly as possible. However, a claim can be made under the Inheritance (Provision for Family and Dependents) Act 1975 six months after the Grant of Probate has been issued so Executors are advised to wait until at least this time period has passed before distributing the estate.

## ***Will I have any more responsibilities?***

If a trust has been established, say, for the benefit of a child who has not come of age, then the Executors (who then become Trustees) should regularly review the terms of the trust, letter of wishes (if any) and the trust investments. It may also be useful to meet with the beneficiary or his or her parents to consider his or her personal and financial circumstances.

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All trustees have to meet and review investments regularly because of the requirements of the Trustee Act 2000. Every meeting and decision should then be recorded in writing and signed by those at the meeting and those written records preserved. If the value of the fund in trust for the child is substantial then Trustees may wish to take advice from independent financial advisers concerning investments of the trust funds. The Trustees may even delegate their management of the trust investments to a financial adviser. However, the trustees are still required to meet regularly to review the trust investments.

Depending on the type of trust established it may be necessary to complete annual Trust Tax Returns.

## *Conclusion*

We hope you have found this Guide helpful. If you require any further information please do not hesitate to contact:

## Services We Offer

LDJ Solicitors have been providing legal advice to the communities of Warwickshire & Leicestershire for over 90 years.

With offices in Nuneaton & Hinckley we offer a broad spectrum of legal services which include:-

- Making a Will & LPA's
- Probate, Tax & Trusts
- Moving House
- Family and Children Law
- Employment Law
- Housing Issues
- Criminal Law
- Business Services

For all your legal requirements, including publicly funded work, please contact us on free phone:

**0800 542 5800**

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