

If you find yourself in the situation where you are dealing with a deceased's estate, it is essential that you are made aware of your rights and responsibilities as executor of the estate. Without legal guidance, you run the risk of a claim against you – by a disappointed beneficiary or even HM Revenue & Customs.

By instructing a solicitor, not only will you have the comfort of knowing what is expected of you as executor, you can share the burden (or off-load this entirely) with the solicitor – who will deal with all the paperwork and court procedures on your behalf.

If you decide to administer the estate yourself, it is worth bearing in mind the following:

Steps to take following the death

The death should be registered as soon as possible. This is not necessarily the Executor's responsibility (unless there is no one else who can do it) but you should ensure that you obtain the death certificate.

The person registering the death should also complete the Government's *Tell Us Once* service, which will automatically notify the Passport Office, DWP, DVLA and all other Government agencies of the date of death.

Who arranges and pays for the funeral?

The funeral arrangements are not an official responsibility unless the deceased's Will instructs you, as Executor, to make these arrangements, although if the preference is impossible or impractical you are not bound to carry out these terms.

If the funeral was not prepaid or covered by insurance, the funeral director's invoice can be settled from the deceased's assets. You will find that the deceased's bank or building society will arrange to pay the bill immediately provided there is enough money in the deceased's account.

To settle the funeral invoice, simply forward to the deceased's bank the Extract Death Certificate and the final invoice from the funeral director.

Locate the original Will

It is critically important that you locate and take possession of the original Will of the person who has died. The Scottish courts will only accept the original version of the Will – not a photocopy.

If the original Will can't be found, you must make exhaustive endeavours to locate it. Check with solicitors whom the deceased dealt with during their life. Check with the bank, in case the Will has been stored there with other important documents (e.g. title deeds).

Remember, only the Executor(s) named in the Will have the right to deal with the deceased's affairs after they have died.

If there is no will, you must apply to the court to be executor

Unless you are named in the deceased's will, you do not have the automatic right to act as executor of the estate unless you have petitioned the sheriff court nearest to the deceased's home address.

There are strict rules for such a petition, and in many cases you will be expected to obtain an insurance policy (known as a bond of caution) before the sheriff court will entertain your application.

Where the deceased owned a property, you will need to see the title deeds

This is critically important, since it is often the case that the deceased's house is the most valuable asset in their estate. The title deeds may be held by a solicitor or the mortgage company. If you are having difficulty tracing the whereabouts of the title deeds, you can obtain electronic copies within a few days via the Registers of Scotland website. A thorough examination of the title deeds and the nature of the deceased's ownership of the property is essential.

How do I find out about the deceased's assets and debts?

You will need to go through the deceased's papers to find bank statements, insurance policy statements, mortgage statements, share certificates and the like. You'll also need to find out about debts such as credit cards, mortgages, loans, etc.

This information enables banks, building societies, share registrars, etc. to be notified of the death and to let you have valuations of assets, and debts, correct to the date of death.

Not all assets require Confirmation/Probate

If the deceased had jointly-owned property with specific wording in the title deeds or held joint bank accounts, these can usually be transferred to the surviving joint owner by producing the death certificate to the relevant organisation.

If the deceased had life policies or death in service benefits, these will usually be paid to the people named on the policies or nominated to the trustees. A life policy in favour of the deceased, or in favour of someone who has already died, will usually be paid to the deceased's estate and the Executor may need to obtain Confirmation/probate.

Small bank or building society balances, National Savings certificates and Premium Bonds may also be released without Confirmation/probate, but do check with each institution/asset-holder to determine their individual position in this regard.

Obtaining confirmation requires attention to detail

If you have been asked by a bank or third party to provide confirmation (also known as probate or letters of administration in England and Wales), this means that you will need to complete and submit a set of official forms that detail the deceased's assets, personal circumstances and those of the executor(s). The confirmation document contains an inventory, which must be populated to include all assets forming part of the deceased's estate. In some cases, assets such as insurance policies written into trust or an employer's death in service benefits may not form part of the estate, so it is important that you are able to distinguish estate from non-estate assets.

You will need to contact all potential beneficiaries

As executor, you have a responsibility to account to all potential beneficiaries of the estate. This means that all children (including formally-adopted children but excluding stepchildren) must be contacted following the death to inform them of their right to make a claim on the estate – even where the deceased's will states otherwise. The law of Scotland allows all children of a deceased parent the right to claim on the estate, and this right does not extinguish until 20 years following the death. If, during that time, the executor has not provided the potential claimant with their entitlement, the executor may be personally sued by the claimant for the amount they were due from the estate.

Can the distribution of the estate be varied in any way?

It is possible to vary a Will and this is usually done for tax purposes although it can be done for other reasons.

All the beneficiaries affected would need to agree to the Variation and a court order would be needed if any affected beneficiaries are minors or lack mental capacity. If the estate is exposed to Inheritance Tax, the Variation must be registered with HM Revenue & Customs.

We would recommend taking legal advice before attempting to do this. A valuation for tax purposes must be made two years from the date of death.

You must keep accurate and transparent financial accounts

For the sheriff court and HM Revenue & Customs' purposes, you will need to obtain the date of death valuations of the deceased's assets. For complete accounting, you must also ingather the final values of these estate items, together with all interest that may have accrued. Once the legal protocols have been followed to conclusion, the executor must produce a final estate account – showing the amounts received, tax due, professional fees paid, liabilities deducted and amounts to be distributed. This account can be requested by third parties so you are advised to ensure full and diligent accounting.

How long should the process to obtain Confirmation/Probate take?

This will depend on the particular circumstances that you are dealing with. However, as a bare minimum, assets of an estate should not be distributed within six months of death in case any creditors decide to make a claim.