



wilson  
&fish



# Administration of a Deceased Estate

A Guide for Executors

wilson&fish  
solicitors

Specialists in Executry, Probate  
and Estate Administration

# Contents

---

## **Who inherits?** pages 3,4

When there is a Will page 3

When there is no Will page 4

---

## **Do you need Confirmation?** page 5

---

## **Guidelines** for Executors page 6

---

## **Who** are the Beneficiaries page 7

---

## **Dealing** with Real Estate page 8

---

## **Tax** pages 9,10, 11

---

## **Variations** of a Will page 12

---

## **Estate** Accounts page 13

---

## **Finalise** the Estate page 14

---

This guide contains general information about deceased estate administration in scotland. It is not legal advice. Every estate is different and, where necessary, you should seek professional advice.

Information correct as at March 2018.

# Who Inherits?

---

## When **there is no Will** – Intestate Succession

**A person** who dies without leaving a Will is said to die intestate. The law of intestacy of Scotland effectively takes the place of a Will in that it specifies who may be appointed the executor of the estate and who shall benefit from the estate.

Unless the whole estate passes to the spouse/civil partner then a Bond of Caution must be obtained from an insurance company before Confirmation will be granted.

In normal circumstances the specialist insurer issuing the Bond of Caution will make it conditional upon the executor instructing a firm of solicitors to wind up the estate. This means that if the deceased died without a Will, you will require to instruct solicitors to administer and wind up the estate in most cases.

### Bond of Caution

A Bond of Caution (pronounced "kay-shun") is a fidelity guarantee issued by a specialist insurer. The Bond is intended to protect the beneficiaries of the estate from misappropriation of funds by the executor. Executors on intestacy must (with limited exceptions) obtain a Bond of Caution before applying for Confirmation.

# Who Inherits?

---

## When **there is a Will** – Testate Succession

If the deceased left a Will this is known as Testate Succession. If you are the executor nominated in the deceased's Will, you are responsible for managing and finalising the deceased's estate. There may be more than one executor. As executor you can choose to:

- manage the estate yourself;
- instruct a lawyer to assist you with all or any part of the process; or
- renounce your executorship if you do not want the responsibility.

If the executor is no longer alive or is unable or unwilling to act, a residuary beneficiary named in the Will may seek appointment as executor of the estate.

In order to obtain access to assets of the estate (and sometimes for other reasons) you usually need to obtain Confirmation from the Sheriff Court.

### Small Estates

Where there is no Will and the whole estate is valued at <£36,000.00 it may be possible to follow the Small Estates procedure and have the Sheriff Clerk assist the spouse/civil partner or next of kin in obtaining Confirmation to the estate.

---

## How we can help you

- We can advise on the will
  - We can establish who inherits
  - We can offer fixed fees
  - We can reduce the work & stress for you
-

# Do you need Confirmation?

---

**You will** need to obtain Confirmation in all but the most simple of estates. Without Confirmation the Executor can experience problems in gathering the estate. Most financial institutions will require the Executor to exhibit Confirmation before they will release the funds or assets held.

In certain limited circumstances the Executor may not require to obtain Confirmation. For example, if the deceased owned everything jointly with someone else and everything passes automatically to the surviving joint owner.

Even if the estate can be administered without Confirmation it can make sense to obtain Confirmation as the Inventory details the estate and beneficiaries can be satisfied that the executor has acted properly.

Confirmation is always required if the value is substantial or if the deceased estate includes:

- **heritable property, unless owned in joint names with a survivorship destination clause** [see page 8 Dealing with Real Estate]
- **a bank account, valued at more than about £30,000\***
- **NS&I savings of > £5,000.00**

\*These thresholds can vary according to the requirements of the relevant

financial institution or company share registries.

## Confirmation or Probate

In Scotland an executor applies for Confirmation to the deceased estate. In England & Wales the executor applies for Probate or Letters of Administration.

Confirmation is the ratification by the court of the appointment of executor.

Confirmation gives the executor a title to uplift, administer and dispose of the deceased estate in the U.K., as contained in the Inventory.

## Executor's Liability

Failing to obtain Confirmation could lead to the executor being liable for all of the deceased's debts, even where these exceed the value of the estate. If Confirmation is obtained that liability is restricted to the value of the estate to which Confirmation has been obtained.

---

## How we can help you

- We apply for confirmation
  - We offer a confirmation only service
  - We wind up the estate
  - We offer fixed price estate administration
-

# Who are the beneficiaries?

---

In **Scotland** the law recognises certain rights of children and spouses/civil partners to inherit notwithstanding the terms of the Will. These rights are known as **Legal Rights** and must be dealt with by the executor before paying any legacies or dealing with the residue. If someone has a right to inherit under the Will and Legal Rights, they cannot claim both – they must choose between them.

The Executor must identify those entitled to Legal Rights, calculate the amount of that entitlement and inform them accordingly.

Legal Rights can be enforced or rejected. If rejected a Discharge must be obtained.

## When there is a Will

After payment/discharge of the Legal Rights the beneficiaries may receive specific legacies or residue of the estate according to the Will. Specific legacies are generally a fixed sum of money or an item of property. The residue of the estate is the remainder of the estate (what is left over) after the debts, Legal Rights and expenses have been paid and specific legacies have been distributed. Residuary beneficiaries receive a share or all of the residue.

## When there is no Will

The beneficiaries of an intestate estate are set out in Succession (Scotland) Act 1964. After payment of the **Prior Rights** and **Legal Rights** the **Free Estate** is divided between the deceased's children or, failing that, more distant relatives including parents, siblings and grandchildren. The Act specifies the shares of each beneficiary.

---

## How we can help you

- We advise on interpretation of the will
  - We establish who inherits if there is no will
  - We deal with legal rights
- 

## Legal Rights

Legal Rights are like a debt due by the estate.

A spouse or civil partner can claim 50% of the net moveable estate if there are no children and 33.3% if there are children.

The children (including illegitimate and adopted children) can claim 50% of the net moveable estate if there is no spouse or civil partner and 33.3% if there is a spouse or civil partner. This share is divided equally between the children and passes to grandchildren if a child has died and left offspring.

## Prior Rights

If a spouse or civil partner survives then he or she is entitled to the first slice which is known as Prior Rights. Calculated thus-

- House to value of £473,000
- Furniture to value of £29,000
- Cash - no children - £89,000
- Cash - children survive - £50,000

## Free Estate

On intestacy once the Prior Rights and Legal Rights have been met the balance of the estate passes to the next of kin in the following order-

- Children take all;
- Spouse takes all;
- Either/both parents and brothers & sisters take all – half to each group;
- Brothers & sisters take all;
- Either/both parents take all;
- Husband /wife/civil partner takes all;
- Uncles/aunts take all;
- Grandparents take all;

# Guidelines for Executors

---

## The Basics

The office of Executor is a gratuitous office and an executor is not entitled to remuneration for services. The executor is entitled to reimbursement of expenses incurred. The executor cannot transact with the estate. The executor can be a beneficiary.

## Executor's Duties

### Inheritance Tax

IHT should be calculated and paid where possible within 6 months of death. After 6 months interest will accrue.

### Obtain Confirmation -

- prepare and exhibit a full and true inventory of the estate
- make an application for Confirmation within 6 months of assuming possession and management of estate

### Engather the estate

By producing a Certificate of Confirmation the executor can uplift funds and transfer property

### Pay Debts

Identify and pay privileged debts-

- Funeral expenses
- Legal fees

### Settle Legal Rights

See page 6

### Pay Beneficiaries

If intestate make appropriate investigations to ascertain who can share.

Pay claims by surviving spouse/civil partner.

---

## How we can help you

- We ensure that the executor fulfills all obligations
  - We ensure that the estate is correctly distributed
  - We protect the executor from any claims
- 

## The Six Month Rule

The first duty of an Executor is to settle the debts and liabilities due by the deceased.

Debts do not die with the deceased.

Identify the creditors of the estate and pay them when funds are available.

Care should always be taken as an executor can incur liability if he/she pays funds to a beneficiary without first settling the debts of the deceased.

It is very rare that any estate is finalised within six months of the date of death. The reason being that after six months the executor is protected from claims by any creditor that has not lodged a claim with the estate within six months of the death

## Debts

- Loans secured by mortgage
- Personal loans
- Credit cards
- Monies owed by the deceased, for example family loans
- Tax debts
- Liabilities outside U.K.
- Funeral costs
- Council tax
- Telephone and internet
- Household bills
- Professional invoices- legal, accounting

# Dealing with Real Estate

---

**In Scotland** Real Estate is known as Heritable Property. This is land and buildings.

We have direct access to Registers of Scotland and can obtain a current copy of the Title Sheet for land in which the deceased had an interest. From the Title Sheet it will be clear whether the deceased is:

- **the soleowner**
- **a joint owner**
- **or a joint owner with survivorship destination**

Details of mortgages and securities over the property are also recorded in the Title Sheet.

Land held by the deceased as a joint owner with survivorship destination cannot be disposed of by Will and is not part of the estate. It automatically passes to the nominated person (usually the surviving proprietor). The value of the share passing is however taken into account when calculating any liability to IHT.

Land held by the deceased as a sole owner or as joint owner with others is part of the estate and must deal with according to the terms of the Will (or rules of intestate succession).

---

## How we can help you

- **We ascertain the ownership of the property**
  - **We deal with mortgage lenders and arrange payment**
  - **We reduce the work and stress on you**
-

# Tax

---

**Winding up** a deceased estate can be complicated, technical and a lengthy task. There are many traps for the unwary, not least of all a UK tax liability on the estate. There are three types of tax to consider – Income Tax, Inheritance Tax and Capital Gains tax.

## **INCOME TAX**

For deceased estates there are two situations where income tax may be payable.

### **Tax Before Death**

If the deceased was a UK taxpayer income tax is paid on most types of income received by individuals (and executors) if specific levels are reached. It is important to finalise the deceased's income tax return in the year to date of death. Any Income Tax due is a debt on the estate and will reduce the value of it for Inheritance Tax purposes.

### **Tax After death**

The estate may continue to receive income until it is finally wound up, and that may be taxable in its own right, and payable by the personal representatives.

So it follows that personal representatives will need to finalise the deceased's income tax to the date of death and then separately for the period of the estate administration.

If the deceased's financial affairs were managed by an accountant, you may wish to ask the accountant to complete the income tax affairs of both the deceased up to the date of death and the estate administration period.

If the deceased was taxed on PAYE, then there is now an automated process by which HMRC calculate any tax owed or refund due.

If the deceased was self-assessed for income tax, then HMRC will advise in each case whether a self-assessment return needs to be completed on the deceased's behalf.

### **Tax returns**

We may need to complete and lodge income tax returns for the deceased up to the date of death and for any financial years prior to death that tax returns are outstanding. If the estate earns, or is likely to earn, income above the tax-free threshold, we will submit a tax return for the estate for each financial year in which the estate is open.

## **Examples**

### **Before Death**

At death the deceased received a pension from his employment and rental income from investment properties. It is important to declare the income in the year to the date of his death on a final tax return and pay the tax due.

### **After Death**

The same deceased's pension entitlement will end on death but the estate may continue to receive rental income from the property. This income is taxable on the executor and must be declared to HMRC. In addition if this income is later paid to the beneficiaries tax vouchers must be issued to allow them to disclose this tax paid income to HMRC.

# Tax

---

## Tax Vouchers

If the Executor pays income from the state to beneficiaries, tax vouchers must be prepared and sent to the beneficiaries

## Inheritance Tax

When a person dies IHT becomes due on their estate. IHT can also fall due on some lifetime gifts but most are ignored providing the donor survives for seven years after the gift.

## Nil Rate Band

The rate of tax on death is 40%. The first £325,000 chargeable to IHT is at 0% and this is known as the nil rate band (NRB).

## Transferable nil rate band

It is possible for a spouse/civil partner to claim the unused portion of the NRB of a predeceased spouse/civil partner. This can double the nil rate band available on the second death to £650,000.

## Residence nil rate band

An additional NRB is available where an interest in a qualifying residence passes to direct descendants. Currently £175,000.

The residence nil rate band can only be used in respect of one residential property which does not have to be the main family home but must at some point have been a residence of the deceased. Restrictions apply where estates (before reliefs) are in excess of £2 million.

Accordingly the total NRB for IHT available jointly between spouses/civil partners is currently £1M .

## IHT on lifetime gifts

Lifetime gifts fall into one of three categories:

- A transfer to a company or a trust (except a disabled trust) is immediately chargeable.
- Exempt gifts which will be ignored both when they are made and also on the subsequent death of the donor, e.g. gifts to charity.
- Any other transfers will be potentially exempt transfers (PETs) and IHT is only due if the donor dies within seven years of making the gift. An alternative way of looking at this is that they are potentially chargeable until seven years has passed. The primary example of a PET is a gift to another individual.

## Gifts between spouses

Gifts between spouses are generally exempt, if both are either UK or non UK domiciled. It may be desirable to use the spouse exemption to transfer assets to ensure that both spouses can make full use of lifetime exemptions, the nil rate band and PETs. Special rules apply where only one spouse has a UK domicile.

## Charitable giving

A reduced rate of IHT applies where 10% or more of a deceased's net estate (after deducting IHT exemptions, reliefs and the nil rate band) is left to charity. In those cases the 40% rate will be reduced to 36%.

## PETs

John becomes ill and can no longer travel to his holiday cottage. He transfers title to his daughter Emma in 2010. This is a PET.

The value of the property at the date of transfer is £150,000.00. John dies in 2018. As >7 years have elapsed since the date of the transfer the PET becomes an exempt transfer and is not part of the estate for IHT purposes.

# Tax

---

## IHT on Death

The main IHT charge is likely to arise on death. IHT is charged

on the value of the estate treated as beneficially owned by the

deceased. This may include certain types of interest in trust property.

Furthermore:

- PETs made within seven years become chargeable.
- Transfers (usually lifetime gifts and trusts) made within the previous seven years.

## Business property relief (BPR)

When 'business property' is transferred there is a percentage reduction in the value of the transfer. Often this provides full relief. Professional advice should be sought to determine whether you have qualifying business property.

## Agricultural property relief (APR)

APR is similar to BPR in that it reduces the value of the transfer but it may not give full relief on the value. It is available on the transfer of agricultural property so long as various conditions are met.

## Time Limits

The executor must deliver the IHT400 tax form to HMRC by the end of the twelfth month after the person died (or, if later, within 3 months of their accepting office). Penalties may arise from late lodging.

Any IHT payable must be paid by the end of the sixth month after the person died. If late, interest is charged on the tax due.

## Capital Gains tax

Whilst The deceased may have made a disposal before death that results in a chargeable gain or loss and should be reported in the tax return.

CGT liabilities can arise-

- Where the deceased made disposals before death that have to be included in a tax return.
- Where there is a disposal by the executors during the administration of the estate.

## CGT on the Estate

shares in a listed company valued at £100,000.00. During the period of administration of the estate the listed company is subject to a takeover and the shares are acquired at a price of £150,000.00. There has been a capital gain to the estate of £50,000 on which tax is due.

---

## How we can help you

- We ascertain if IHT is payable
  - We ensure that all reliefs are claimed
  - We arrange for funds to meet a tax liability
  - We ensure that tax is paid on time
-

# Variation of a Will

---

**A deed of variation** can be useful if all beneficiaries (testate or intestate) agree to a variation of the terms of the Will or the laws of intestacy.

## Requirements

To obtain tax mitigation benefits the deed of variation must satisfy certain criteria-

- The variation must be made in writing. If effective, the variation is treated as if it was how the deceased's will was originally written, or how the rules of intestacy would normally take effect.
- It must be signed by the parties benefiting or who will benefit. In addition the executor always signs.
- There must be no external financial consideration or inducement; and it must be executed within two years of the date of death.

## Other Factors

The person making the variation must have legal capacity i.e. be at least 16 years of age and have mental capacity.

The deed should take account of Legal Rights where appropriate.

A variation can be made before or after the grant has been issued and whether or not the estate has been fully distributed.

## Examples

On intestacy adult children can vary the rules to allow the estate to pass to their surviving parent to ensure his/her financial security.

A deed of variation can be used to direct a greater share of an estate to those more in financial need.

A deed of variation is often used in order to make the will more inheritance tax efficient.

---

## How we can help you

- We advise on the benefits of deed of variation
  - We reduce the work and stress for you
-

# Estate Accounts

---

**The Accounts** are a crucial part of winding up an estate. They provide the Executor with a true and accurate record of all the funds and assets. They demonstrate to the beneficiaries the amount of their share of the estate and how that share is calculated.

Providing an accounting to the beneficiaries is very important and reduces the possibility of any claim on the estate.

Our Accounts will include-

- assets at the date of death
- liabilities at the date of death
- income received during the administration period
- changes in asset value after death
- administration expenses
- the distribution of the estate to the beneficiaries

---

## How we can help you

- We prepare full accounts
  - We reduce the work and stress for you
-

# Finalise the estate

---

## Interim distributions

As a general rule, the Executor should allow sufficient time for any potential claims against the estate to be resolved before making distributions to beneficiaries. It is unwise for any estate to be wound up within 6 months of the date of death.

The Executor may make an interim distribution to the beneficiaries of a portion of the estate's assets where the beneficiaries are in need of funds.

It is crucial that when making an interim distribution the executors retain sufficient funds to pay tax, debts, legacies and ongoing expenses plus contingencies.

### **Receipts and Discharges**

The executors should always obtain a receipt from beneficiaries.

### **Final distribution**

You should finalise the estate by paying its debts and distributing the estate's net assets to the beneficiaries in accordance with the terms of the Will.

A beneficiary may require you to account to them and fully disclose all transactions.

You must complete your duties as executor or administrator within a reasonable time, having regard to the complexity of the estate.

As a very rough estimate, most straightforward estates should be finalised within about 12 months.

---

## How we can help you

- We deal with all the administration
  - We ensure the executors fulfil all obligations
  - We ensure that the executors are protected from claims
  - We reduce the work and stress for you
-

# Contact us

---

wilsonandfish.co.uk  
0141 222 7955  
info@wilsonandfish.co.uk

6th Floor  
Queens House  
29 St. Vincent Place  
Glasgow G1 2DT

---

Office hours –  
Monday to Friday, 9.00am to 5.00pm.

Wilson & Fish Solicitors is a trading style of Wilson  
McKendrick Solicitors Limited Registered in Scotland  
company number SC455450

© 2023

---

wilson&fish  
solicitors

Specialists in Executry, Probate  
and Estate Administration