

INFORMATION FOR EXECUTORS WHERE A WILL CONTAINS A LEGACY TO A REGISTERED CHARITY

Guidance notes for Lay (non-professional) Executors

FIRSTLY, THANK YOU!

Thank you for taking on the role of executor, a role which can be exacting but also rewarding. Although this is a sad and a difficult time, in administering the estate, you will have rounded off the life of the person who has passed on, gathered together all its disparate elements and resolved all outstanding issues, leaving space and peace for those left behind.

At every step of this process, you can get assistance if you wish. This leaflet offers help and advice where registered charities are named beneficiaries. It introduces the main points about charities as beneficiaries, which you need to be aware of right from the start. Whilst it covers most aspects of the administration, you may need to seek more specialised professional help if complications arise. The cost of that help will almost certainly come from estate funds.

These notes principally relate to the estates of people domiciled in England and Wales, but the principles (and all of the tax information) relate equally to Scotland. If the deceased person owned assets abroad, you are strongly advised to consult an expert in this field.

THE PARTICULAR POSITION OF CHARITIES

Charities such as Birmingham St Marys Hospice greatly appreciate the generosity of legacies, which are vital to the continuance of their work.

Charities have a different legal status from private individuals – as charitable trusts - and are thus subject to stringent legislation. Each charity is the responsibility of its trustees and, like executors, charity trustees have duties to beneficiaries, that is, the beneficiaries of the charity's work. These duties are generally passed down to specialised staff and are to do with charity taxation, and with ensuring that funds left are used for the purpose for which they have been given. It is also their duty to ensure that the charity receives full benefit from the giver's generosity, in the same way that one duty of the executor is to gain full value for estate assets.

CONTACTING THE CHARITY

Do please let the beneficiary charity/ies know of the death and of the legacy at the start of the estate administration; they will be able to stop mailings being sent out, a real cause of distress to those left behind. They would also like to offer condolences and appreciation. Where the gift is to be used in a particular way, or where it has been left to part of the charity, such as a branch, this is particularly helpful. Please do not wait for probate to be granted.

Experienced charity staff can help you in the early and ongoing stages, saving you time and trouble and helping you to avoid problems. They will advise you which documents they need on file to meet Charity Commission guidance and the more experienced will offer help. If there are several charities named in the will, they can liaise with each other or even agree a 'lead' charity, thereby cutting down the number of letters you need to write and receive and often speeding up the process.

Legacies of fixed amounts (pecuniary legacies) and specific items

If the legacy is a specified lump sum or a specific item, the charity simply needs a photocopy of that part of the will which states its benefit. Please enclose it when you write to the charity/charities advising them of their benefit. At the same time, it is helpful to let them know when you expect to have Probate granted (usually no later than six months after the date of death).

If payment of pecuniary legacies is not made within the first twelve months from the date of death (known as the Executor's Year), interest on the due legacy can be requested by the beneficiary. The interest runs from the first anniversary of death and is payable from the estate. In addition, if you foresee a complication or delay, it would be helpful to let the charity know in advance to avoid uncertainty.

Gifts of a share of what is left - residuary legacies

Residue is that which remains after all the testamentary debts, tax due, pecuniary legacies and administration costs have been paid. Charity residuary beneficiaries are required by the Charity Commission to ask you for certain basic estate documents and for more detailed information as the administration unfolds. These will include:

- a photocopy of the will with your first letter, if possible. Until Probate has been granted, a Will is confidential, and a charity will of course respect that completely. After the Grant of Probate, a Will becomes a public document.
- a copy of the Schedule of Assets and Liabilities as soon as you have drawn it up. This will bring to immediate attention any aspects of the estate where, for instance, charity concessions could help reduce estate costs – such as on tax and preferential commission rates, or which will require special handling. These include real estate, shares, valuable antiques, objets d'art and jewellery.
- Valuations of significant assets – such as a property,
- Estate accounts – these are a requirement under law for any beneficiary who requests them
- Tax deduction certificates

We will discuss these in more detail in the remainder of this leaflet.

As the administration proceeds, please let beneficiaries know of any problems, such as claims on the estate, unforeseen or relatively large costs, any possible litigious or contentious disputes, or any simple requests by the family which are not covered by the Will but could be easily and quickly dealt with.

From time to time, if the charity has not heard anything within what it considers to be a reasonable period, it might enquire on its own behalf or on behalf of all the charities how matters are progressing. This is not to hasten matters or put pressure on the executor, but to give reassurance that everything is moving along satisfactorily, taking all issues into account. Problems can come to light where the charities can be of help.

Please ensure that you place funds received in an interest-bearing account in the executor's name until the funds are distributed

TAX MATTERS

As executor, you have a duty to finalise the deceased's outstanding tax affairs and pay all taxes due as a result of the death, or arising during the administration. There are certain charity tax concessions which apply when a charity benefits from a pecuniary legacy and/or part or all part of the residue. These concessions can help reduce the overall burden on the estate.

• Inheritance Tax (IHT) - formerly Capital Transfer Tax or 'Death Duties'.

UK-registered charities are exempt from IHT and charitable relief should be claimed from HMRC Capital Taxes in the IHT 200 or IHT 205 return you make (they will not otherwise volunteer it!); you have 12 months to make the return, otherwise HMRC may issue a penalty which would be your personal responsibility.

Where the residue is shared between registered charities (exempt) and individuals or other types of organisation (non-exempt), you will need to consider which shares of residue should bear the IHT on residue before you distribute it. You are strongly advised to seek advice, either from a solicitor or from one of the charity legacy administration officers, many of whom are well versed in IHT calculation.

If the deceased made lifetime gifts, unless there is any contrary direction in the Will, the recipient of the lifetime gift is responsible for the payment of inheritance tax on it. Likewise, the surviving joint owner of property passing by survivorship is also responsible for the payment of inheritance tax attributable to it.

• Capital Gains Tax (CGT)

CGT arises if an asset is sold after gaining value since death. The tax is calculated only on the gain since death. The Revenue deems the executor to be selling as an individual, even though the proceeds will benefit charities. Executors pay CGT at 40%. Executors do not have an annual exemption but there is an extension of the deceased's exemption for the year of death and the following two years.

Charities are exempt from paying CGT and therefore would appreciate the executor using his power to pass beneficial ownership of any shares or other asset to them before a sale takes place. This does not mean physical transfer, but is a simple exercise, on paper. You confirm to the charities that you will "appropriate" the assets to them, with their agreement, and then sell as agent or "bare trustee" on their behalf. HMRC is entirely happy with this arrangement; if you wish, you can set out a 'Memorandum of Appropriation' for the charities to agree – an example is available as a fact sheet from ILM at www.ilmnet.org. A house or land can be dealt with similarly but appropriation needs to take place before contracts are exchanged. Always seek professional advice first if you are asked to appropriate a house or land.

• Income Tax

Executors have a duty to pay income tax at the appropriate rate and to account for it in the year in which income is received. Depending on the estate value and whether the deceased's Local Inspector of Taxes is dealing with the estate's tax affairs, you may have to complete a Trust and Estate Tax Return (Form SA900) and account for tax on any gross income received.

Charities are able to recover most of the income tax paid on their share of the residue; typically, this would be where interest on bank or building society accounts held by the deceased have been taxed at source. However, charities can only claim on income actually distributed and only at the rates in force in the year of distribution. This is one reason why charities welcome regular distributions.

To assist charities to reclaim tax, please provide each charity with tax deduction certificates (Form R185 Estate Income available from HMRC and its website) covering all the distributions. Please note that income received by the estate after death, and that accrued before the date of death, forms part of the income of the estate.

PROPERTY AND OTHER MAJOR ASSETS

It would be helpful to advise beneficiaries of any significant assets such as land or buildings early on and advise them on the marketing, sale price and offers received. This is regarded as good practice by solicitors. You might well want to obtain written valuations from more than one estate agent. HMRC requires that the probate valuation should always be the market value at the date of death (not an undervalue, as some think).

It is important that the property is exposed to the open market. If it has development potential, beneficiaries should be closely involved in any decisions. Where a house or land is appropriated to charity beneficiaries before sale (see Capital Gains Tax above), charity law usually requires a special valuation report on their behalfs before the sale takes place.

SHARES

Please obtain a valuation from a broker. Certain rules apply to the way shares are valued for probate, namely that they are a quarter up from the share price of the day. Beneficiaries such as charities should be given the opportunity as early in the estate administration as possible to receive their share of the investments by direct transfer, though often they prefer to receive the sale proceeds. The Institute of Legacy Management has secured special sales concessions from some brokers – please see www.ilmnet.org.

HOUSE CONTENTS (CHATELS) AND PERSONAL BELONGINGS

Sorting out the personal possessions of a departed friend or relative is one of the most difficult aspects of an estate administration. Many charities have networks of shops and are able to effect house clearances. Others have relationships with firms of national auctioneers who will sell chattels left to charities at very favourable rates and often gaining better sale prices than local auctioneers. The Institute of Legacy Management can provide further details (www.ilmnet.org). As with the valuation of a property, the probate valuation should always be the market value at the time of death. Again it is helpful to notify the charity beneficiaries as soon as possible.

EX GRATIA PAYMENTS

You may find as executor that you are asked to make payments to people which are not part of the estate administration or are not gifts set out in the Will. There may appear to be a very good moral reason why the payment (known as an "ex gratia" payment) should be made. However, such a payment can put charity beneficiaries in a very difficult legal position.

Before an ex-gratia payment can be made, an Executor should take professional advice on whether the applicant/intended beneficiary has a legal remedy for the claim. If so, s/he should pursue this route.

As a residuary beneficiary, a charity must agree any payment which is not covered by the instructions in the will. Whilst most charities can agree a legal claim, different considerations arise with an "ex-gratia" claim. There is a strict process of approval based on perceived moral obligation, first by the charities' trustees and then by the Charity Commission itself.

Therefore, where charities are beneficiaries, you should not make any ex-gratia payment without their prior consent. The Charity Commission booklet CC7 "Ex Gratia Payments by Charities", gives further information and is obtainable from The Charity Commission at Harmsworth House, 13-15 Bouverie Street, London, EC4Y 8DP.

VARIATIONS

A Deed of Variation can vary the Will where it is in the interests of all affected beneficiaries; the most common reason is that the will is poorly structured for tax. A Deed of Variation can be entered into once all the beneficiaries have agreed; however, if an affected beneficiary is a minor, a Deed of Variation cannot be used.

EXECUTORS' EXPENSES

Beneficiaries fully appreciate the time and effort non-professional Executors give to administer the estate. Not least, by acting in person as Executor, you are saving the estate legal fees. However, unless the will includes a clause enabling the executor to make a charge for his or her time, non-professional executors are not legally permitted to do so. This is regarded under law as "profiting from a position of trust". Therefore beneficiaries may need to query expenses, particularly where the claim appears to include a time element.

You are, of course, entitled to reclaim all reasonable expenses actually incurred, such as the cost of travelling, fares, postages, telephone calls, photocopying and any payments made for such items as death certificates, swearing fees etc.

STEPS TO TAKE TO PROTECT YOURSELF

Advertising for creditors. As an executor, you have a duty to ascertain the debts of the deceased and must take reasonable steps to do so; you can be personally liable for any debts of the deceased that come to light once the estate has been distributed. However, you can protect yourself by advertising for creditors in the London Gazette and in a paper covering the area in which the deceased lived; you should also consider other advertisements as you think are appropriate. After the expiry of these notices (usually 2 months) you can distribute the estate having regard only for debts of which you are aware. However, if you feel that there could be a claim against the estate from a close member of the family or a person who was dependent on the person who has died, you may want to hold back any distribution and to take legal advice.

Tracing beneficiaries. An executor must correctly identify and, if necessary, trace the beneficiaries as well as ascertaining the extent of their entitlement. Again, if not, you could be personally liable if they turn up and you have already distributed the estate. If you are trying to trace a potential beneficiary you can protect yourselves by advertising for beneficiaries. If you are unable to trace a beneficiary whom you believe exists you can protect yourself by applying to the Court for a "Benjamin" Order. If a Benjamin Order is granted the executors are protected on distributing the estate.

Instead of applying to the Court for a "Benjamin" Order, you could take out an insurance policy or take out an indemnity from the known beneficiaries to reimburse the estate if a beneficiary should appear. However, an indemnity is the least favourable option as it would require you to reclaim from those who have already had the use of the funds distributed.

ESTATE ACCOUNTS

Executors must provide on request to residuary beneficiaries (charitable and non-charitable) a set of estate accounts at the end of the administration; professional estate administrators do so as a matter of course. The Charity Commission requires charities which benefit from residue to ask for estate accounts. This is not for them to question the probity of the administration but to clarify that there is no outstanding matter which would create a liability on charity trustees. For the clearest arrangement, accounts should comprise the following:

- The capital assets and liabilities at the date of death
- An expenditure account, to include any inheritance tax, administration expenses and pecuniary legacies - in fact, to reflect everything that happens during the administration after the death other than income)
- An income account (giving details of interest, dividends, rents etc. paid since death – ideally by tax year.)
- Finally, a distribution account, to show how the estate has passed to the various beneficiaries.

Beneficiaries welcome additional information to support particular items in the accounts, for example, a Completion Statement for the sale of a property, confirmation of investments sold or a listing of the Executor's Expenses.

Estate Accounts should be sent to the residuary beneficiaries for their approval before the final distribution. This is particularly the case where inheritance tax (IHT) is involved. Charity legacy staff have considerable experience in this area and will be willing to help. Whilst HMRC will of course agree the total amount of IHT payable, there are frequently misunderstandings about how the tax is apportioned between (exempt) charities and others.

A SUMMARY OF INFORMATION CHARITIES ARE OBLIGED TO REQUEST

To sum up, before a charity can give a final receipt and discharge, the Charity Commission requires it to request the following information:

- A copy of the Will and any codicils
- A schedule of Assets and Liabilities of the estate
- A copy of an independent valuation of any other significant assets, particularly property
- Estate Accounts (preferably prior to distribution)
- Tax Deduction Certificates (Form R185 Estate Income)

THANK YOU AGAIN!

The charities named in the will you are about to administer are truly grateful, not only to the deceased, by whose generosity their work can continue to benefit the world, but also to you, the executor, by whose time and effort the deceased's generosity may take effect.

Please do not hesitate to contact any of the charities early on if an issue arises, either within the administration or in your relations with the charities. To simplify your life at a stressful time, we suggest you go to the first-named or largest charity in the will in the first instance. The Institute of Legacy Management may be able to offer help and advice and will certainly know to whom you should go next, if necessary. The Institute's contact details are:

The Executive Director
The Institute of Legacy Management
86 Stormount Drive
Hayes, Middlesex, UB3 1RH
Email: mike@ilmnet.org

Website: www.ilmnet.org

Thank you for playing such an important role.

Institute of Legacy Management

The ILM was established to support those professionally involved in the administration of estates which have charities as beneficiaries. It runs training courses for charity legacy officers, promoting a high standard of professionalism among its members, provides information for the probate legal sector, lobbies for improved standards within the legal profession and charities, and acts as a bridge between all parties to ensure the successful administration of estates. It is the author of this leaflet. Please note that this advice is published without any legal responsibility.