

# Estate Administration – A Guide for Beneficiaries

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While an executor of an estate will generally have regular contact with and advice from the lawyer assisting them administer an estate, a beneficiary named in a Will often doesn't have the same information available to them.

When lawyers are instructed by executors to assist with the administration of an estate, their duty is primarily to the executor. This limits the amount of information or advice we can give to beneficiaries, especially in situations where there are conflicting views among family.

Often beneficiaries may have a different idea of the nature of the work required to administer an estate or the time it can take for money to be available to them. The following is a brief outline of the process which is followed.

## 1. Locating the will

Usually finding a person's Will is straightforward. They will have a copy among their personal papers or the family will know who their lawyer was. The original Will is usually held in a lawyer's deeds room.

Sometimes it is necessary to advertise through the Law Society to request that lawyers check their files to ensure that there isn't a more recent Will. If there doesn't appear to be a Will at all, you have to advertise. Depending on the time of the year, it will generally take six weeks for an advertisement to appear in the Law Society's publication.

## 2. Obtaining probate or letters of administration

In most cases executors will need the High Court's approval to begin the administration of the estate. To obtain this approval, known as a "Grant of Probate", the executors sign an affidavit prepared by the lawyers which is filed in support of an application. Obtaining Probate typically takes around a month but can vary if a more complicated affidavit is required and how busy the High Court is at the time.

If there is no Will, then an application is made to have someone (usually a spouse or child of the deceased) appointed administrator of the estate under 'Letters of Administration.' This application will generally take longer to obtain than a Grant of Probate as a certificate from Births, Deaths and Marriages is required along with confirmation that an advertisement has appeared in the Law Society's publication before the application can be made.

Sometimes it is necessary to wait for a Death Certificate to become available before an application can be made. It usually takes two weeks for a Death Certificate to become available.

## 3. Collecting assets and paying debts

Lawyers write to all the banks and other institutions where the deceased held assets to update them. Bank accounts are frozen at that point so that no further withdrawals can be made, except for payment of funeral expenses.

Once Probate or Letters of Administration have been granted, bank accounts can be closed and the proceeds usually paid to the lawyers administering the estate. They arrange to pay the funeral expenses and any other bills for the estate and deal with any transfers of real estate. Payment of debts usually comes from the residuary estate.

Sometimes it can take a few months for assets to be collected. This is often when a person has died unexpectedly and a Death Certificate is issued 'subject to Coroner's findings.' If this is the case, insurers will generally wait for the Coroner's findings before agreeing to pay out a policy. It can take up to six months for the Coroner to determine if they intend to investigate and much longer for a report to become available.

#### 4. Paying gifts to beneficiaries

Any specific gifts in the Will are paid out first. The executors organise handing over gifts such as jewellery to those who were entitled to it under the Will. If there are any disputes, regarding for example, which piece of jewellery goes to which child (if the Will wasn't specific enough), the executors help to resolve those disputes.

The balance remaining is known as the residuary estate and will generally be held by the executors to ensure that no claims are made, before being paid out to the residuary beneficiaries.

#### 5. Selling property

Sometimes it's necessary to sell a house owned by the deceased which can take some months to complete.

A contract for sale will generally not be signed until Probate or Letters of Administration have been granted.

Often it will take some weeks or months to ready the house for sale in any case.

If a business needs to be sold or wound up, it will likely take many months to be dealt with.

#### 6. Ensuring there are no claims

By law the executor has to hold on to estate assets for six months after the grant of Probate or Letters of Administration and cannot pay anything out to beneficiaries before this time is up.

This is to ensure that an estate is not distributed before any claims have been made. This may include claims made about the distribution of an estate, for example by children not named in a will, but also includes any creditors who may be owed money by the deceased. The executor of an estate is personally liable for any claims made on the estate within that six month period, which means that if they have distributed an estate in that time and there is later a successful claim, they will be required to pay that claim themselves.

Often an executor will not allow distributions within that six month period because of this. In some

situations, particularly where it is clear that there will be no claimants or creditors, an executor may choose to pay funds out to beneficiaries early. This will usually be on the basis that the beneficiaries sign an indemnity to the executor in respect of any claim which may arise. This will mean that the beneficiaries will have to repay any money they have received which is needed to satisfy a successful claim.

In general, we suggest that beneficiaries don't expect to receive any funds from an estate until at least six months after probate.

#### 7. Dealing with claims that arise

If a person intends to make a claim under the Family Protection Act 1955, Law Reform (Testamentary) Promises Act 1949 or Property (Relationships) Act 1976, they will generally need to file proceedings in the Family Court within twelve months of Probate having been granted.

If an executor has received notice that such a claim is to be made, generally, they will not distribute the estate assets until the twelve month period has elapsed (if proceedings have not been filed in that time). If proceedings are filed, the estate cannot be distributed until after the claim has been resolved.

#### 8. Paying gifts to beneficiaries

The residuary estate is then paid out to the beneficiaries who are entitled to the residue of the estate and after tax returns have been completed, the estate is wound up.

Often the Will provides that gifts will not pass to children until they have reached a certain age, such as 20 or 25. In this case that child's share of the estate will be held by the executors on trust for them. It will be invested and tax returns completed each year until the child is old enough to receive the funds outright.