# BLACKWOOD & SMITH WS

## INFORMATION FOR EXECUTORS

### Duties of Executors

When someone dies leaving a Will appointing Executors, the Executors are the people who are responsible for making sure that the deceased person's estate is administered in accordance with the provisions of the Will. Sometimes the Executors are also beneficiaries, but sometimes they do not benefit at all from the estate. Provided there is no conflict of interest it makes no difference, and it is perfectly all right for an Executor to be a beneficiary also.

Except perhaps in the case of very small estates, it is normal for the Executors to employ solicitors to carry out the work involved in winding up someone's estate. The relationship between the Executors and the solicitors, therefore, is the normal client/solicitor relationship in which the solicitors are responsible to the Executors who are in turn responsible to the beneficiaries. Beneficiaries are entitled to rely on the Executors to wind up the estate in accordance with the Will, and ensure that the beneficiaries obtain payment of what is due to them in terms of the Will.

The Executors are responsible for paying the solicitors' fees out of the estate, and this will be dealt with later.

### Preparing the Inventory of Estate

The first stage of any Executry is for the solicitors to establish the nature and extent of the deceased person's estate. This entails making a list of all property and possessions and having these valued. The object of this is to establish what the estate consists of, and how much it is worth. This has to be done in order to complete the Government Inventory which is required (a) to ascertain whether any Inheritance Tax is payable, and (b) to obtain Confirmation in favour of the Executors.

The process of valuation includes valuing not only investments, but also a person's house, personal effects, etc. When all the values are obtained the Executors are then in a position to know whether the estate is taxable or not. As regulations stand currently, Inheritance Tax is payable on estates of more than £325,000. This means that the first £325,000 ("the nil rate band") is exempt from tax, and the balance is taxed at 40%. However, there are a number of exemptions which can apply to a deceased's estate, the effect of which is that no Inheritance Tax liability will arise. This is usually the case where spouses leave everything to the survivor of them. Moreover, a surviving spouse or civil partner may claim any unused nil rate band from the spouse or civil partner who died first, potentially increasing the proportion of estate on which no Inheritance Tax is payable on their death.

### Obtaining Confirmation and Paying Inheritance Tax

When the value of the estate has been ascertained, the solicitors prepare the Government Inventory which is then signed by one of the Executors, and is submitted to the Sheriff Court for the area where the deceased was resident. If Inheritance Tax is payable, the Inventory

has to be submitted to HM Revenue & Customs and any Inheritance Tax paid prior to the Inventory being sent to the Sheriff Court. Sometimes the solicitors will have to obtain a loan in the name of the Executors in order to raise funds to pay the Inheritance Tax. Alternatively, it may be possible to instruct the deceased's bank or building society to make payment from the funds they hold. Confirmation is then issued by the Sheriff Court in favour of the Executors.

**Dealing with the Revenue**

When Confirmation has been issued it enables the solicitors to deal with the estate on behalf of the Executors, and to ingather the estate. Where a taxable estate is involved HM Revenue & Customs may ask for further information in relation to the estate, and there follows a period during which there is an exchange of correspondence between the Revenue and the solicitors. This can often be quite protracted, but unfortunately it is unavoidable, and it is only after the Revenue is satisfied with every aspect that an estate may finally be wound up.

This does not necessarily prevent the Executors from making interim payments to the beneficiaries, but it does mean that sufficient money has to be kept back to meet any legitimate demand for additional tax which may be made by HM Revenue & Customs. Such a demand could arise if any tangible assets were to be sold by the Executors during the course of the executry.

The Revenue will want to know whether any such assets have been sold, and the purpose of this is to establish whether the sale price obtained is greater than the value put on the particular item by the Valuer. If the sale price is greater then tax has to be paid on the difference. For example, if a house is valued by a Surveyor at the date of a person's death at, say, £350,000 and that figure is included in the Inventory, then the initial tax is paid on the basis that the house is worth £350,000. If it is subsequently sold during the course of the executry for £375,000 then the Revenue will require payment of an additional £10,000, being 40% of the increase in value. If the property is sold for less than the inventory value, the Executors can apply for a repayment of the Inheritance Tax paid. The same applies to other assets such as shares or furniture and personal effects.

The deceased person's Income Tax also has to be dealt with during the course of an executry. If there is any outstanding tax due then this has to be paid, and conversely if any repayment is due this has to be obtained and taken into account.

**Distributing the Estate**

Once the correspondence with the Revenue is complete, the Executors can distribute assets to the beneficiaries. This may mean transferring assets to a beneficiary or selling these and making over the cash proceeds.

**Finalising the Executry Accounts**

Once the administration is complete the solicitors prepare an Executry Account which is normally in the form of an Account of Charge and Discharge. This is an Income and Expenditure Account which details all the transactions which have taken place during the course of the executry.

At this stage the solicitors have their fees fixed. It is our normal practice to have our fees fixed by an independent legal accountant who will charge a small fee for this service and

which is an executry expense. We do this because we feel that it is fair to both parties. In the event of any dispute regarding solicitor's fees the matter can be referred to the Auditor of the Court of Session. It is usual for us to charge interim fees at various stages of the administration depending on how long this is likely to last. Any interim fees will be taken into account by the legal accountant in fixing the final fee.

At the outset it is difficult to give an accurate indication of costs involved in terms of legal fees. We do not have a scale fee, and the fee which we charge is a fee for the actual work done based on the Table of Fees issued to you at the start of the Executry.

In addition to issuing our Tables of Fees we will also issue a copy of our Terms of Business to each Executor. We will require two forms of identification for each Executor in accordance with Law Society Guidelines.

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