



**YOUR GUIDE
TO EXECUTRY
ADMINISTRATION**

mackinnons
solicitors



INTRODUCTION

DEALING WITH THE LOSS OF A FAMILY MEMBER OR FRIEND IS ALWAYS DIFFICULT.

Our aim at Mackinnons is to help you to understand your role as Executor and to assist you as much as you need through the executry procedures.

EXECUTORS' DUTIES



THE EXECUTORS' FIRST RESPONSIBILITY IS TO INGATHER ALL THE ASSETS OF THE DECEASED, KNOWN AS THE ESTATE, AS SOON AS PRACTICABLE.

However, before the Executors can begin to ingather the Estate, a grant of Confirmation will often be required. This is obtained from the Sheriff Court, to establish the Executors' legal authority to deal with and administer the Estate.

If no Will has been left, it may also be necessary to request by petition for the Sheriff Court to appoint an Executor. The Court may also require an Executry Bond of Caution – a type of insurance policy – where there is no Will.

Once Confirmation has been obtained and the Estate ingathered, the next duty of the Executors will be to pay any debts of the deceased, including any Inheritance Tax. Consideration can then be given to paying any legacies to beneficiaries specified in the Will.

The final duty of the Executors is to pay out the residue of the Estate, i.e. what is left after debts and legacies are met, to those people who are entitled to share in it.

In all these duties the Executors can be assisted by the professional advisors they choose to appoint. In most cases this will be a firm of Solicitors.




MEETING WITH THE SOLICITOR

THE FIRST MEETING WITH THE SOLICITOR NORMALLY TAKES PLACE SHORTLY AFTER THE FUNERAL. HOWEVER IF THERE ARE MATTERS OF PRESSING IMPORTANCE THEN AN EARLIER MEETING WILL BE NECESSARY.

The Executors or next of kin should bring to the first meeting as much of the deceased's paperwork as can be located. In particular, the following information and/or documents will be useful:

- The Full Extract Death Certificate
- Birth Certificate and Marriage/Civil Partnership Certificate, if applicable
- Details of State Pension and any other benefits received
- Private pension details
- Bank statements
- Cheque books and bank cards
- Building Society passbooks
- Life Insurance policy documents

- Premium Bonds
- National Savings Certificates and Bonds
- Insurance Certificates including house/contents insurance papers
- Title deeds and any other property related papers
- Income Tax papers
- Any outstanding accounts or debts due by the deceased
- Credit cards
- Vehicle registration documents, driving licence and car insurance papers
- Passport
- Share Certificates and/or invested portfolio details
- Dividend counterfoils
- Details of the deceased person's immediate family
- Any other papers which appear important



If you are unable to identify all the appropriate paperwork then Mackinnons will be able to assist you in the investigation of any missing items.

If the Executors are not existing clients of Mackinnons, they will be asked for proof of identity. This is a requirement of the Law Society of Scotland for the purposes of Money Laundering Regulations. You should therefore bring with you to the first meeting your own passport or driving licence (or other form of proof of identity bearing your photograph) and a utility bill or bank statement dated within the last three months, as evidence of your home address.



OUTLINE OF ADMINISTRATION PROCEDURES

THE ADMINISTRATION OF AN EXECUTRY ESTATE COMPRISES FOUR STAGES, NAMELY:

1. INVESTIGATION OF THE ESTATE

After we receive the paperwork we will write to all those who hold assets for the deceased, i.e. banks, building societies and insurance companies to obtain date of death values of the assets.

If a house is owned it will usually be necessary to obtain a professional valuation from a surveyor. It may also be necessary to obtain a valuation from a local auctioneer of the deceased's furniture, jewellery and personal effects. Any stocks and shares of the deceased will also be valued by a stockbroker. A fee is payable for such valuations.

Once the investigation has been completed, an inventory of the Estate is drawn up for signature by the Executors. In addition, a separate Inheritance Tax Return is required for estates above the Inheritance Tax threshold.

Any Inheritance Tax payable on the Estate must be paid to HM Revenue and Customs before the application for Confirmation is lodged with the Sheriff Court for Confirmation.

Certain small Estates may be administered without the need to obtain Confirmation. In such situations banks, building societies and insurance companies will provide forms for completion by an Executor or, in some cases, by the next of kin.

2. INGATHERING OF ASSETS

Once the Inventory has been lodged with the Sheriff Court, Confirmation will be issued, together with Certificates. These Certificates are then sent to the holders of the various assets of the deceased, i.e. banks, building societies, etc., together with appropriate forms signed by the Executors, to allow us to transfer or ingather the Estate.

3. PAYMENT OF DEBTS AND LEGACIES

The next duty is to deal with payment of the debts of the deceased. You should note that creditors have six months from date of death to notify Executors of any outstanding debts, and therefore the estate will not be paid to beneficiaries until after this point at the earliest.

After payment of all the deceased's debts, the Executor can pay any cash or specific legacies provided for in the deceased's Will. We will normally send to each of the legatees a cheque for the amount of the legacy or arrange delivery of the items bequeathed together with a form of receipt acknowledging payment or receipt from the Executry.

4. PAYMENT OF RESIDUE

Following payment of the deceased's debts and any legacies, there will be provision within the Will outlining how the residue of the Estate is to be distributed. Alternatively, if there is no Will, Scots Law provides how the estate is to be distributed. At this stage an Executry Account is prepared detailing all the assets in the Estate and how each asset has been dealt with during the course of the administration, to be approved by the Executors. From this Account the exact value of the residue can be established and payments made to the residuary beneficiaries once the Account has been approved.

It may also be necessary at this stage to prepare Certificates detailing the amount of income received during the course of the administration and the amount of Tax deducted from that income. These Certificates are passed on to the residuary beneficiaries to retain with their own papers and lodge with their Income Tax Return for the appropriate year.



LEGAL RIGHTS

UNDER SCOTS LAW THE SURVIVING SPOUSE AND THE CHILDREN OF THE DECEASED PERSON HAVE CERTAIN RIGHTS IN THE ESTATE.

These are known as Legal Rights. These rights apply whether or not the deceased has left a Will. As part of the administration we will establish any Legal Rights claims and approach the claimants to clarify whether they wish to claim or discharge their Legal Rights.

LEGAL FEES

OUR MINIMUM FEE FOR THE ADMINISTRATION OF AN ESTATE IS £850 PLUS VAT.

In all but very simple Estates, it is our normal practice to submit the files to a professional firm of Law Accountants for the assessment of our fees. This means that the file is independently reviewed and a fair charge for the work undertaken is proposed. A charge is made by the party assessing the fees for this service which is payable from the Estate. Please note that if you do not wish this independent assessment of fees to be undertaken you should advise us at the outset. Our Account will be fee'd in accordance with the Law Society General Regulations. The fee is payable from the Estate as are all the costs of administration.

It is also our practice to charge an interim fee for Estates on receipt of the Grant of Confirmation. In larger Estates, interim fees may be charged at other times.

It is very difficult to estimate what the fees may be for the administration of a particular Estate. Circumstances vary enormously and often an Estate of low or moderate value can be as complicated or more complicated than Estates of larger value. This can be discussed in more detail at the initial meeting.



HOW LONG WILL IT TAKE?


WE ARE OFTEN ASKED HOW LONG THE ADMINISTRATION OF AN ESTATE WILL TAKE.

Unfortunately it is impossible accurately to predict the timescale to completion of an Executry: timing in these matters depends on a number of factors. However, it is often possible to complete the administration within the following time scales:

TYPE OF ESTATE	LIKELY TIME OF COMPLETION
Not including a house to be sold and not subject to Inheritance Tax (total value of assets less than £200,000)	6–8 months
Total value of assets greater than £200,000 or including a house to be sold and not subject to Inheritance Tax	8–12 months
Larger Estate [over £325,000 or subject to Inheritance Tax Examination]	12–18 months

Please note that the following matters may cause delays in the completion of the administration of an Estate:

- House to be sold
- Foreign assets
- Legal Rights claims
- Intestate Estate [no Will]
- Missing beneficiaries
- Inheritance Tax valuations and payments
- Income Tax aspects
- Outstanding debts
- Variation of Will
- Executors living at a distance.



We understand how difficult and upsetting it can be dealing with the estate of a family member or friend. We believe that we have the expertise and understanding to assist you as much as you require at this time, and our principal aim is to make the process as straightforward and painless as possible for you.

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