

Your Role as a Executor or Trustee

A guide to your duties, responsibilities and liabilities

The **co-operative** funeralcare
Central England Co-operative



The Role of an Executor

First and foremost, thank you - on behalf of your relative or friend that has appointed you and from Will and Probate Services. Agreeing to act as an executor is a fantastic thing to do.

Being an Executor of a Will brings with it a number of duties and responsibilities, in most cases they are not too onerous and can be discharged in a straightforward way. One of your powers as an executor is appoint an agent to administer the estate on your behalf if you deem it necessary.

This guide contains an outline of a person's duties and responsibilities when they have been named as an executor within the Will and also gives a guide to how you should handle the deceased's affairs and administer the estate. It does not deal with the large number of technical matters that can arise. The best guidance must be, if in doubt, to seek professional advice.

➤ If you can, prepare in advance

If possible, you should ask to familiarise yourself with the Will before death. For example, there might be statements on which you are unclear and guidance would be helpful. The Will may express specific wishes about organ donation, burial or cremation and the funeral service and people may need to be aware of issues like this as they become urgent after a death. You should ensure that you know where the original Will is kept. Our clients are recommended to store their Wills securely with ourselves via our storage subsidiary UK Legal Storage. So, we should be your first port of call.

➤ Personal Liability

It is important to know at the outset that an executor is personally liable for the actions he or she takes in the administration of an estate. It is therefore vital that you ensure that all of the necessary steps in the administration of the estate are carried out correctly. If not, then creditors and beneficiaries could both pursue you in the future. Once again if you have any doubts seek professional legal advice.

➤ Tell People

The first thing to do is to make sure that news of the death is passed on to members of the family and friends. It makes sense to enlist the help of other family members in this task so that the inevitable emotional distress is shared. If appropriate, you might announce news of the death in the local newspaper.

➤ Register the Death

You, or a member of the direct family need to do this within five days of the death. You will need to obtain a form from the doctor or hospital certifying the death and take this to your local registry office (you need to make an appointment to do this and details can normally be found online). When you register the death obtain copies of the Death Certificate; several copies will be required as many organisations will need sight of it, we normally recommend between 5 and 10 copies.

➤ Obtain the Will

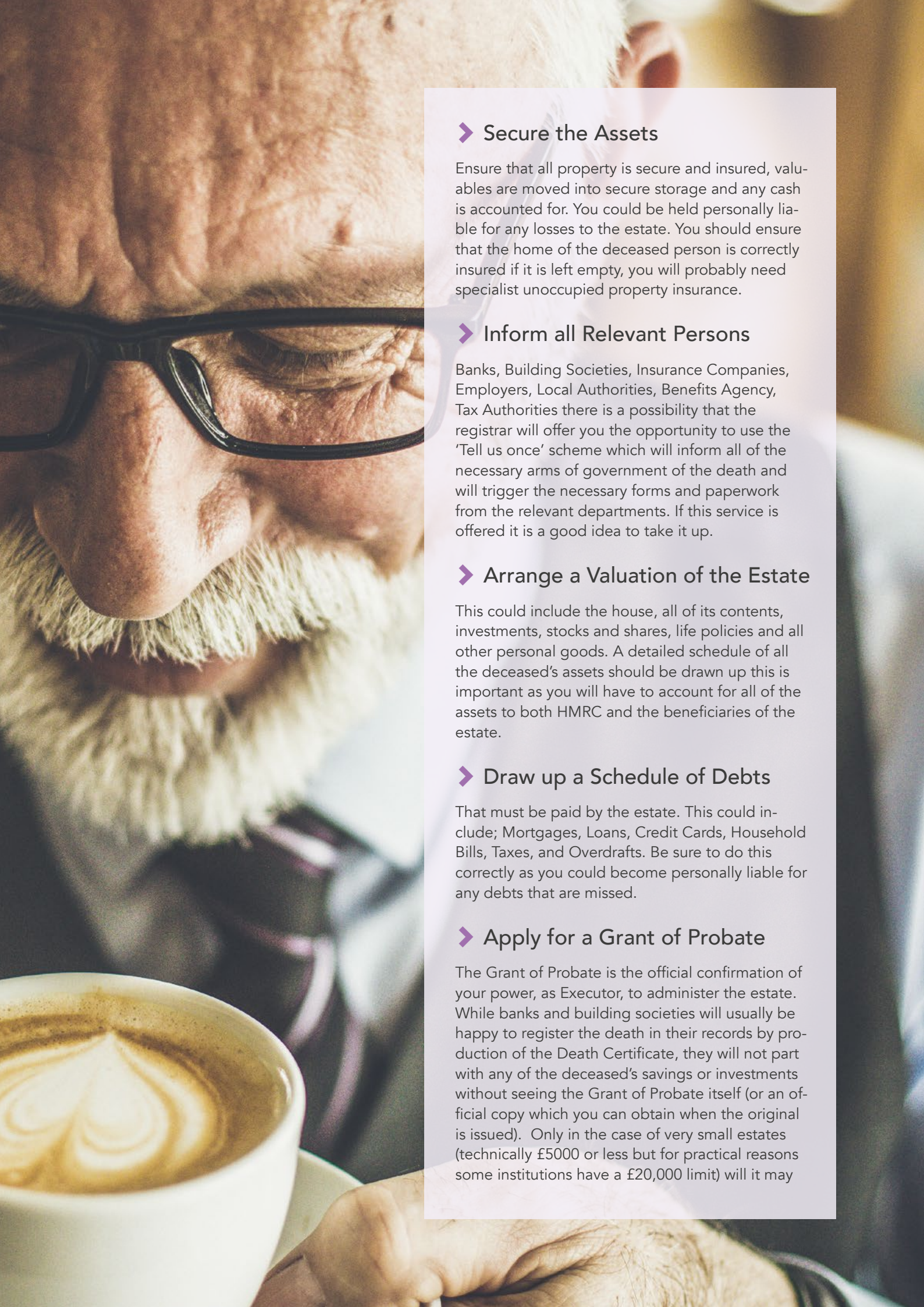
An executor should know of the whereabouts of the original Will and should retrieve it in order to begin to carry out the deceased's wishes.

➤ Arrange the Funeral

The cost of this is normally the first thing to be paid from the deceased estate. The deceased may have left instructions regarding their funeral wishes in the Will and an executor should see that these are carried out. An executor should make enquiries as to the existence of any pre-paid funeral plan. The registrar will have given you a form that authorises the funeral to take place and you will need to provide this and a copy death certificate to the funeral director.

➤ Get Advice

Call us. This is the point at which you should get professional advice. You will then know whether you are going to administer the estate yourself or employ a professional. Speak to us and we will make your options clear along with the costs.



➤ Secure the Assets

Ensure that all property is secure and insured, valuables are moved into secure storage and any cash is accounted for. You could be held personally liable for any losses to the estate. You should ensure that the home of the deceased person is correctly insured if it is left empty, you will probably need specialist unoccupied property insurance.

➤ Inform all Relevant Persons

Banks, Building Societies, Insurance Companies, Employers, Local Authorities, Benefits Agency, Tax Authorities there is a possibility that the registrar will offer you the opportunity to use the 'Tell us once' scheme which will inform all of the necessary arms of government of the death and will trigger the necessary forms and paperwork from the relevant departments. If this service is offered it is a good idea to take it up.

➤ Arrange a Valuation of the Estate

This could include the house, all of its contents, investments, stocks and shares, life policies and all other personal goods. A detailed schedule of all the deceased's assets should be drawn up this is important as you will have to account for all of the assets to both HMRC and the beneficiaries of the estate.

➤ Draw up a Schedule of Debts

That must be paid by the estate. This could include; Mortgages, Loans, Credit Cards, Household Bills, Taxes, and Overdrafts. Be sure to do this correctly as you could become personally liable for any debts that are missed.

➤ Apply for a Grant of Probate

The Grant of Probate is the official confirmation of your power, as Executor, to administer the estate. While banks and building societies will usually be happy to register the death in their records by production of the Death Certificate, they will not part with any of the deceased's savings or investments without seeing the Grant of Probate itself (or an official copy which you can obtain when the original is issued). Only in the case of very small estates (technically £5000 or less but for practical reasons some institutions have a £20,000 limit) will it may

not be necessary to obtain a Grant of Probate. You can obtain the papers necessary to apply for probate from your local Probate Registry, who should give you guidance on how to complete them.

If you apply in person you will need to complete a statement of truth stating that the declarations that you have made are correct and assuming personal responsibility for any discrepancies. Before probate can be granted, you will also have to deal with the estate's liability for any inheritance tax and an Inland Revenue form will be required to be completed. There are penalties for incorrect information being given.

You will need to complete a lengthy and complicated Inland Revenue account which requires details of the value at the date of death of all the assets and investments owned by the deceased (including the house, contents, car and personal affects) and of the amounts owed by or to the deceased. You should ensure that you declare all of the assets carefully and claim all of the IHT reliefs that are available to the estate, the most common of these is a claim for the transfer of the unused nil rate band of a spouse or civil partner who has pre deceased. Should you feel you are not able to do this alone, Will & Probate Services can offer help and guidance with these forms.

➤ Arrange to open a Personal Representative's Bank Account

You must not mix the deceased assets with your own – even if you are a sole beneficiary. Will & Probate Services can provide details of banks who offer this facility.

➤ Probate Application and Statement of Truth

You will need to submit a probate application to H.M Courts and Tribunals Service along with a Statement of Truth confirming the value and details of the estate.

➤ Deal with Inheritance Tax

If Inheritance Tax is due the executors' account of the estate is passed to HMRC. A grant of probate cannot be issued until the tax is paid. You will have calculated and declared the amounts of tax due when you applied for probate. In circumstances where part of the estate needs to be sold to pay Inheritance Tax banks can arrange loan facilities to pay the tax straight away. There are special rules that apply to property that may allow for the tax to be paid in instalments, if this applies you should seek

professional advice on how this can be arranged and how it may benefit the estate.

➤ Deal with Statutory Advertisements

When dealing with an estate it is important that you protect yourself against claims by unknown creditors and beneficiaries as well as ensuring that you have traced all of the assets. If you fail to do this you can be held personally liable for any losses suffered, the good news is that you can protect yourself against this by following the guidelines on statutory adverts for creditors and beneficiaries Will & Probate Services can advise on what you need to do to place the adverts and the required wording.

➤ Distribute the copies of the Grant of Probate and Call in the Estate

The executors now have legal authority over the estate and should distribute copies of the grant to persons and asset holders who owe the estate money. You should arrange for the money to be paid into the estate's personal representative bank account. At this stage, you should be in a position to be able to pay any debts owing by the deceased and any liabilities that have arisen during the course of the administration. You should also make sure that you obtain receipts for all payments made. There are strict rules about the order in which debts should be repaid, so you may need to seek advice at this point.

➤ Assent any Trusts laid down in the Will

Many Wills contain trust arrangements and it is likely that if they do you will have been appointed as a Trustee of these arrangements. If there are trusts you need to ensure that they are put into force and constituted in a correct manner. If you are not a Trustee, then you will need to arrange for the transfer of the trust assets to the named Trustees. This needs to be done properly and you need to discharge your responsibilities in line with the various trustee acts (see 'The Role of the Trustee' opposite for more information) it is highly likely that you will need professional help and advice at this point.

➤ Prepare the Estate Accounts

Your will need to keep and produce a full record of assets, liabilities and income received during the administration period. This account will be presented to the residuary beneficiaries of the estate, or the Trustees of the estate. They have a legal right to see this and you will not be released from your responsibilities and liabilities until this account is accepted and signed off by the beneficiaries or trustees.

➤ Distribute the Estate

When the accounts are approved the estate can be divided according to the instructions left in the deceased's Will. The executor should ensure that they have receipts for funds from any beneficiaries confirming that the funds or assets released are in full and final settlement of their entitlement to the estate. An executor should be able to provide an audit trail showing exactly what they have done during the administration of the estate and this should prove that the executor has acted in accordance with the wishes expressed in the Will.

➤ Store the Records

All paperwork, including the grant of probate should be stored securely for a minimum of twelve years. Above all else, take action. As the executor of a Will you are personally liable to the beneficiaries for what you do or don't do. If you feel you don't know what to do or who to ask for help then call us – we will help you call us now to find out more.

➤ Payment for your Role

In general, you are able to claim reimbursement out of the estate for any direct expenses that you incur purely as a result of your role as Executor. You will not usually be able to charge for your time. Before dealing with the administration of the estate, consider whether you feel that the estate is solvent. If it seems likely that the liabilities are greater than the value of the assets, you may be advised not to accept your appointment to ensure that you do not acquire any personal liabilities.

➤ Communication

Remember to keep in touch with the deceased's family as the administration of the estate progresses. Not only may they be able to help resolve some problems, such as tracking down investments, but the administration of an estate can take time and the beneficiaries will need to know likely timescales.

These notes contain only an outline of how you should handle the deceased's affairs and administer the estate. It does not deal with the large number of technical matters that can arise. The following list of circumstances are those where it is highly recommended that you enlist professional help with the administration of the estate.

- Cases where the testator has had a change of mind after the Will is drafted and has attempted to make alterations to it (which may or may not be valid).
- If the estate includes business assets or agricultural land or property. It will fall to the executors to run the business until a sale can be arranged or until an orderly wind down of the activities can be arranged. These involve specialist skills and need to be done correctly.
- Cases where the deceased had an interest in a trust or owned unquoted shares.
- It is sad to say that while death in the family brings out the best in many people, it can also bring out the worst in some. As an Executor, you may find yourself in a difficult position if family disputes develop. If this happens, you should consider protecting your own position by seeking professional advice, or by using professionals to act as agents in the administration of the estate.
- Completing the Inland Revenue account and the probate forms can be complicated. The tax side of administration of the estate can seem bewildering. Issues it might concern include: income and capital gains taxes incurred before death, inheritance tax implications, taxation of income and gains of the estate, the need to take inheritance tax into account when distributing various legacies and bequests. If the estate is anything other than straightforward, seek professional advice.
- Where there are Trusts within the Will



The Role of the Trustee

If you have been nominated as a Trustee in a Family Trust or a Will, then you are probably wondering what you need to do and when you need to do it. The answer depends on what type of trust you are a trustee to.

➤ Trusts set up by a Will

If you are a trustee appointed in a Will, then there is nothing that you need to do until the person who has made the Will dies.

After death the executors will transfer the trust assets to you as trustee. This could involve cash, property and investments. Each is treated differently:

Cash – You and your fellow trustees will need to set up a Trust Bank Account. Some high street banks offer this facility, basically it is a joint current account on which you are all signatories. Most trusts will need a cash reserve for contingencies, and an account to receive income. A trust bank account is essential. If you need help with this, we have arrangement with a specialist provider of trust bank accounts so please get in touch.

Property – Once the trust property is transferred to you and working with your fellow trustees you will need to make a number of decisions.

With a Will trust, if the property is occupied by a surviving spouse then you need to ensure that the property is correctly insured and that the person occupying is aware of their responsibilities to pay the bills and keep the property in a good state of repair. Beyond that there will be little else to do.

If the property is unoccupied the decisions are more far reaching. Your first priority should be to ensure that the property is insured. Most ordinary household properties are unsuitable if a property is going to be unoccupied for a prolonged period (more than 45 days). Call us if you need help and guidance on finding the right insurer.

Once insured, you can then decide whether to sell the property, rent it out or leave it empty. Remember your job is to manage the assets of the trust for the benefit of the beneficiaries. If the beneficiaries are young children, or a vulnerable person it is probably worth renting the property out to give them an income. If the beneficiaries are older and likely to need capital lumps sums in the short term, then a sale might be your best bet. It is hard to see any circumstances when leaving a property empty would be the best option, but plenty of trustees choose this option.

➤ Investments

When investments are transferred to you take advice. Find a suitably qualified financial advisor – we can introduce you to some – and take time to set out your aims and objectives for the investment. How long will it be held for, is it for capital growth or to provide an income, who are the ultimate beneficiaries. Your advisor will come up with a strategy for you and your fellow trustees to follow. Take the advice and run with it to discharge your responsibilities to the beneficiaries.

For all categories of assets, you need to keep accounts of everything that you have done in relation to the trust.

You should note that as soon as a trust becomes income producing, be it from a property or from investments you will need to register it with HMRC.

➤ Lifetime Trusts

Many of the same considerations that apply to Will trusts apply to Lifetime trusts. The difference is that the assets will be transferred to you by the person who is setting the trust up (the settlor). This type of trust needs to be registered with HMRC as soon as it is set up. Don't worry we can help you with this. Registering will trigger the annual tax return and consequent accounting requirements.

Duties of a Trustee

You and your fellow trustees will need to have regular (once a year at least) trustee meetings to discuss the trust, the beneficiaries and any investment or distribution decisions that need to be made. You can treat the assets in the same way as you would those in a will trust. Don't forget to take advice.

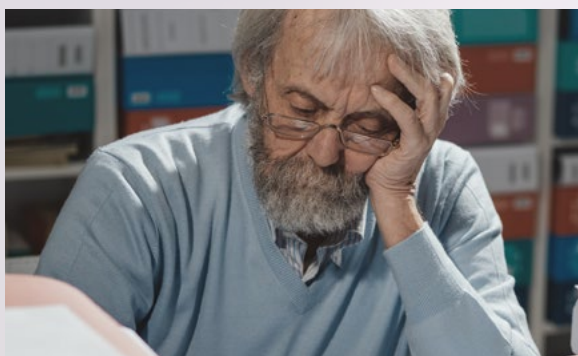
The law imposes on trustees a range of duties in respect of their dealings with trust property, as well as their duties in respect of the beneficiaries. The express terms of the trust can alter or add to these duties.

➤ Duty of care

Trustees are under a statutory duty of care (Section 1 Trustee Act 2000). This means that they must take reasonable skill and care when dealing with trust assets, and if there is ever any question as to whether they have exercised reasonable skill and care, the law will take into account any special knowledge that they may have. So, for example, the duty of care expected from a lawyer or a financial adviser, would be greater than that expected of a lay person.

➤ Duty to take advice

When exercising your duties as a trustee, Section 5 Trustee Act 2000 requires you to take professional advice from a suitably qualified advisor. This will apply when setting up the trust, making legal decisions and any decisions about investments. Will & Probate Services can help with setting up the trust correctly, so we would suggest that you give us a call. We can also arrange to introduce you to a qualified independent financial advisor.



➤ Duties on appointment as trustees

When a trustee is first appointed they must:

- Check that they are properly appointed.
- Check who the beneficiaries are under the trust.
- Check that all the trust property has been transferred into their name.
- Check that any investments that have been made on behalf of the trust fall within the terms of the trust.
- Ensure that no breaches of trust have been committed by former trustees.
- Duty to safeguard trust assets

➤ The trustees must ensure that trust property is safeguarded.

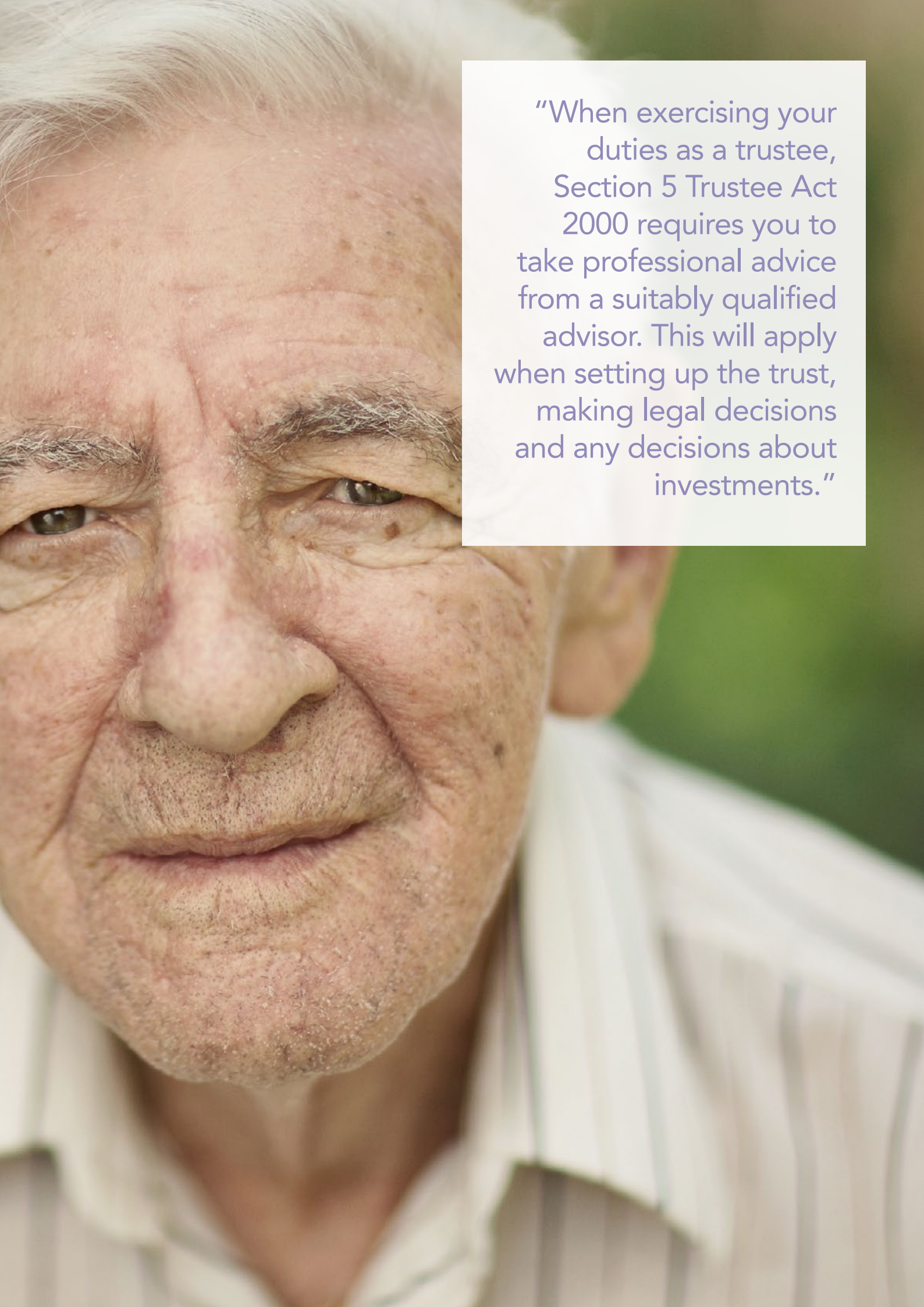
This duty extends to, for example, the requirement for a trustee to sue for the recovery of assets. That said, trustees do have the discretion to allow time for payment of debts, and to negotiate compromise agreements.

➤ Duty to act unanimously

With the exception of charity trustees and trustees of occupational pension schemes, trustees must act unanimously.

➤ Duty to distribute

Trustees must act under the terms of the trust and distribute the trust property in the manner specified by the settlor. A trustee must make distributions on income and capital as any income or capital becomes due to the beneficiaries. However, in a discretionary trust a trustee will have a discretion as to the manner in which the capital and income are distributed and/or the people to whom it is distributed. Trustees cannot make a distribution to someone



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who is not entitled. If it is not clear from the trust document who should benefit from the assets, the trustees may apply to the Court for directions. The Court can also help resolve issues relating to missing beneficiaries, by ordering that they be treated as dead.

➤ Duty of impartiality

Where a trust is established to benefit a number of beneficiaries, the trustee must not favor one beneficiary or type of beneficiary over another.

➤ Duty to supply information and produce accounts

Trustees are under a duty to maintain accurate accounts and allow the beneficiaries to inspect them on demand. Trustees are not under a duty to have the accounts audited, but they have the power to have them audited, and to have the cost paid from the trust funds. Trustees must also be prepared to provide information concerning the trusts administration, but they do not need to justify to the beneficiaries any discretionary decisions that they make. In fact, the trustees have a right to exercise discretion in confidence. The trustees must notify the Inland Revenue of the existence of the trust and ensure tax returns are made and the tax paid during the duration of the trust.

➤ Duty to invest

Trustees must invest trust property to maintain its value. From a duty of care perspective low risk investments are preferred, and the investments should be diversified to minimize risk. In effect trustees have the same power to invest the trust assets that they would have if they owned the assets themselves, but they have a duty to err on the side of caution in respect of the type of assets selected. In making investment decisions, the trustee must seek proper investment advice from a suitably qualified independent financial advisor; unless they are able to conclude that it is unnecessary or inappropriate to do so. A trustee must from time to time (usually yearly) review the investments of the trust and after obtaining and considering professional advice, must decide whether any changes should be made.

A trustee must act impartially between all the beneficiaries and therefore must not benefit one beneficiary at the expense of another. For example, in a life interest trust a trustee must consider the competing interests of the life tenant and the remaining beneficiaries, investing to provide a reasonable income for the life tenant but also to keep the capital secure for the remaining beneficiaries.

➤ Delegation of duties

A trustee may delegate his duties of administration and investment if permitted by the trust deed, however, the overall responsibility will remain with the trustee. He must act with reasonable skill and care in appointing agents. If there is a delegation of any investment functions, e.g. to a stockbroker, an agreement in writing and a policy statement will be required. The policy statement should give guidance as to how the functions should be exercised and the agent must agree to comply with it. A trustee who does delegate their investment function should keep the arrangement under review. As long as a trustee has acted with care and skill in appointing the agent and in reviewing the arrangements, he will not be liable for the default of an agent.

➤ Duty of loyalty

At all times the trustee must act exclusively in the best interests of the trust. In practical terms this means that a trustee cannot profit from the trust; a trustee must avoid any conflict of interest between their own interest and those of the trust or the beneficiaries; and they must always act in good faith.

➤ Who can be appointed a trustee?

Anybody, providing they are over the age of 18, even if they are a beneficiary. Up to four trustees can be appointed, but if only one is named, then another must be appointed as there must be a minimum of two. An Undischarged Bankrupt cannot act as a Trustee.

➤ Appointing New Trustees and Resigning as a Trustee

It may be necessary to change trustees from time to time, existing trustees might want to resign, and new trustees might need to be appointed. A trust must always have at least two trustees. So, it is critically important that when changing trustees the correct procedures are followed. The first step is to appoint the new trustees this is done by the existing trustees drawing up a Deed of Appointment. The trust property should then be transferred into the names of the new trustee(s), once done this can be followed by a Deed of Retirement executed by the retiring Trustees. Again, it is important to take advice at this point so that the change of trustees is done correctly.

➤ Conclusion

The decision to act as a trustee should not be taken lightly. If any loss to the trust fund occurs because of the trustee breaching any of the above duties, the trustee could be held personally liable for the loss. In certain circumstances it may be desirable to take out trustee indemnity insurance.

If you are unsure about fulfilling your duties, we can help, call us on **0800 488 0861** now.

Being an Executor of a Will, or becoming a Trustee are both significant undertakings. Over the past 15 years we have advised hundreds of people on their duties, helping them through the often perilous maze of Estate Administration or Trustee Decisions.

Getting advice from Will and Probate Services can help you avoid personal liability, by ensuring you don't go outside the scope of your duties. In many cases it will pass the burden of your administrative duties to us. We have administered hundreds of estates, so we know exactly what we should be doing and when.

As an Executor or Trustee, you owe a financial duty of care to the beneficiaries of the estate or trust. By using Will & Probate you will be discharging your duties and can enjoy real, personal peace of mind. When you meet with a Will & Probate Services consultant or speak to one of our administrators you can be certain that they share our founding values of transparency, value and accountability. They will offer you a comprehensive and tailored solution that suits the needs of you and your loved ones.

You might also want to put your planning in our expert hands. Many of the Executors and Trustees that we have helped over the years have gone on to become clients in their own right. Perhaps you might be next?