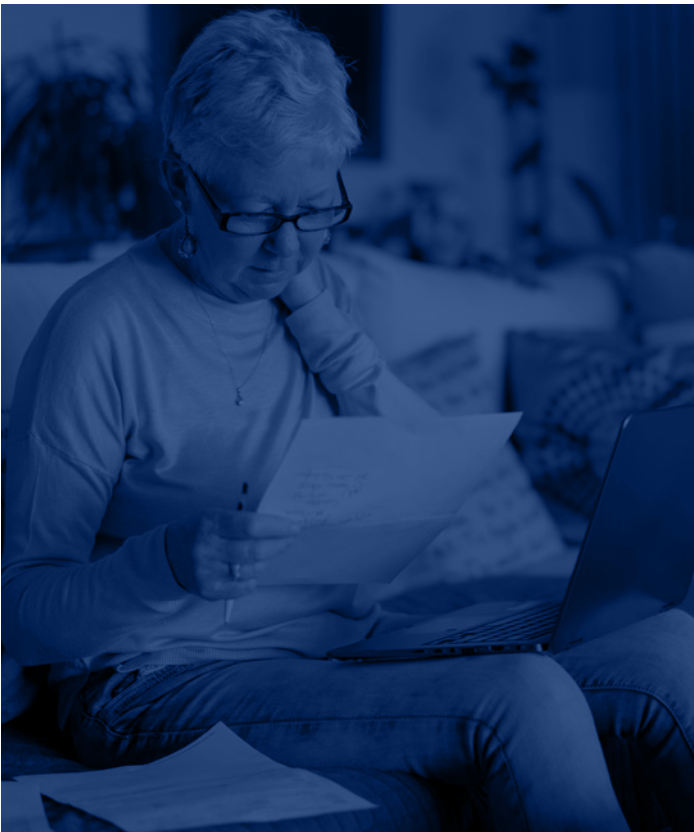
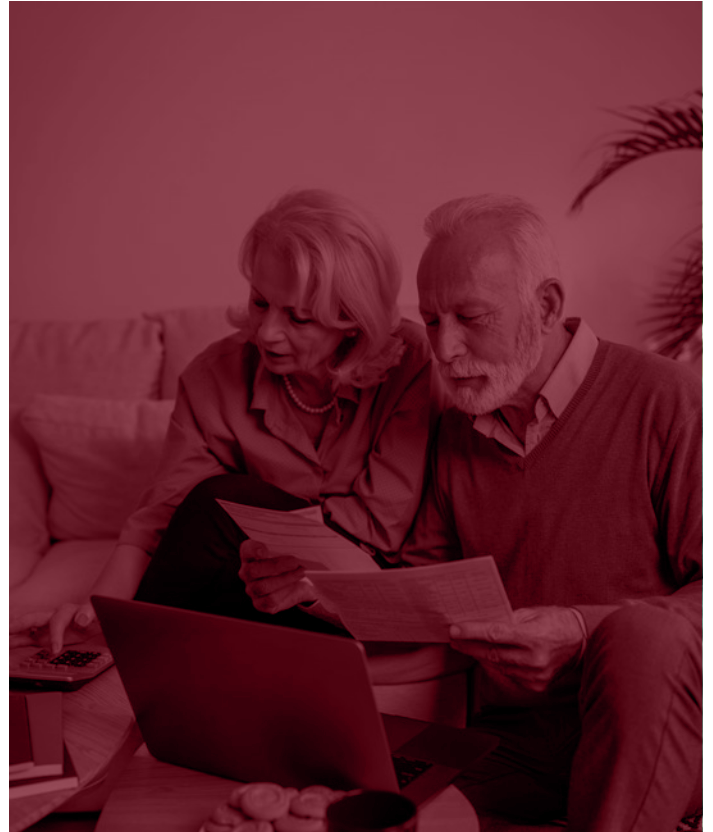


7 dangers executors need to know about to avoid personal liability when dealing with probate



If you've been appointed an executor in a Will or you need to sort out the estate of someone who has died intestate (without a Will), there are pitfalls you need to watch out for in order to make sure you don't find yourself having to pay out your own money for getting something wrong.

Disgruntled beneficiaries who think they have lost out could come after your own assets if they think you caused them to lose out. This can be particularly tricky if charities are involved as they are always keen to ensure that they get every last penny they are due under a Will even if it means resorting to litigation against the executors and the estate.

Executors are under a legal duty to gather in all the assets, pay all the tax and the debts, and then distribute the estate correctly to all the beneficiaries. They will be personally liable for any under or overpayments if they get any of this wrong.

Losing a loved one is difficult and upsetting and having to sort out their estate is never easy; but there are time limits involved so don't leave it too long to get started.

We've put together this short guide to help you understand the role of an executor and avoid the potential pitfalls so that you don't end up having to pay for mistakes out of your own pocket.



! Danger 1:

Not paying Inheritance Tax within 6 months incurring interest & penalties

Executors must work out the value of the estate and pay any Inheritance Tax within 6 months of the death. This involves identifying all the assets and debts but also checking what gifts the deceased made over the last 7 years to make sure you pay the right amount of Inheritance Tax. You also need to claim all the available exemptions and reliefs to keep the Inheritance Tax to a minimum.

You may need to do some digging to work out if you can transfer unused 'nil rate bands' and 'residence nil rate bands' of deceased spouses or civil partners. You will need to find out about their estate and what happened to it.

Getting the Inheritance Tax declarations right is imperative – if you under pay, HMRC can come after you personally years later; if you overpay or incur penalties for late payment, beneficiaries who end up receiving less will want you to make up their losses.

6 months seems like a long time at the start but it soon runs out so you can't leave all this work to deal with later on. You need to get started on it quickly. If there is a liability for Inheritance Tax, you will need to arrange to pay it before you apply for the grant of probate and raising the money for this can be tricky if there is not enough cash in bank accounts.

Inheritance Tax on the deceased's house doesn't have to be paid all at once. You can pay that in 10 annual instalments, but the full balance must be paid when the house is sold.

In one recent and unfortunate reported case, an executor transferred the house to the beneficiary and left it to him to pay the tax on the sale of the property, but he took himself off to live in Barbados without paying. HMRC sued the hapless executor for the tax and the Court ordered him to pay £340,000 out of his own pocket.

! Danger 2:

Taking too long to get probate and missing out on tax reliefs

Sorting out an estate can be a very daunting prospect and people often keep putting it off. But you don't only have to worry about the penalties for not paying the Inheritance Tax within 6 months.

Some reliefs and exemptions are only available for 2 years from the date of death. And the ability to claim back tax on shares or land sold for less than their probate valuations is only available for 2 years from the date of death.

Executors should consider whether any variations to the Will could be made in order to save tax, but these must be done within 2 years of the death. Leaving sensible variations too late will lead to tax being paid which need not be and beneficiaries may well question why these weren't done in time.

In one recent matter which we dealt with, where the family had lost their father within a few months of their mother, we were able to mitigate the rules which taper the tax relief on the house in estates over £2 million by preparing a variation of the mother's Will to reduce the total estate of the father. This was only possible because the mother and father died within 2 years of each other, and the executors instructed us quickly after the second death.

Timely legal advice can be crucial to minimising the Inheritance Tax payable.

The ability to pass on some pension pots tax free also only lasts for 2 years so it could be very costly if it isn't done in time as 40% Inheritance Tax could be payable in certain circumstances. The average pension pot in the UK is about £60,000 but some people have hit the lifetime limit of just over £1 million – not saving 40% tax on that would be catastrophic.

If you don't move quickly to get the grant and take any appropriate tax saving measures, you could lose the ability to benefit the estate and beneficiaries might ask why and look to you for their losses.



**Being an executor can be a
long-term commitment if there
are young children involved.**

! Danger 3:

Allowing assets to devalue causing loss to the beneficiaries

You will need to make sure the deceased's house and personal possessions are kept adequately insured against loss. The existing policy probably won't cover any loss if you don't tell the insurers the property is empty and not all insurers will cover an empty house or flat so you may need a specialist policy.

If you have to hold liquid assets for longer than the usual 'executors' year', you will need to invest them wisely to try to preserve their value. Deciding on appropriate investment vehicles isn't easy so you may well need to seek advice from a reputable financial adviser.

This is a particular problem where children are involved as you could have to hold their entitlement as a trustee for many years until they reach 18 (and sometimes even older if that is what the Will provides).

! Danger 4:

Not paying Income Tax and Capital Gains Tax or paying too much

Income tax will be payable by the executors on interest and dividends, or other income earned during the administration of the estate. Capital Gains Tax may be due on any gains made between the date of death and the sale of the assets. There may be Chargeable Event Gains on insurance policies which need to be declared for income tax.

Executors need to consider when to sell assets and whether to transfer them first into the names of beneficiaries as the estate won't get the tax-free allowances that they would get.

Some beneficiaries may have used their personal allowances already so may not be keen to receive certain assets as part of their entitlement but would prefer the estate to bear the capital gains tax liability – it may be tricky to satisfy all the beneficiaries as they will all have different tax positions. Getting it wrong could leave executors facing disputes and personal liability.

! Danger 5:

Not distributing assets in accordance with the Will – are you sure you fully understand who is entitled to which assets?

Many Wills refer to 'my children' or 'my grandchildren' – you need to be absolutely sure who all these people are. This may include illegitimate children and it may or may not include stepchildren. Getting it wrong and paying out to the wrong people or missing someone out could leave you having to pay out of your own pocket if you can't get the money back.

Are you sure what the testator meant by leaving 'my car' or 'my watch' if they actually owned two? Is it the one they owned at the time of making the Will or is it one they owned when they died? Resolving these issues can be tricky.

Is it clear who should inherit the share of a beneficiary named in the Will who died before the testator? If the Will doesn't make it crystal clear, you will need legal advice on what to do. There may be beneficiaries who can't be found – you might need to take out insurance in case they turn up later asking for their share. Or you may have to look after the money in case they are found or consider missing beneficiaries insurance.

! Danger 6:

Being liable for your fellow executor's mistakes

Not everyone wants to be bothered with administering an estate, so they leave it to another executor to do most of the legwork. If you take up your executorship, you will be liable for any mistakes made by the other executors. You will also be responsible if you or they rely on someone else (like a family member) to do some of the work for you and they get it wrong or keep some of the money.

In a recent reported case which went to Court, where there was no Will, an administrator took it upon himself to ignore the rules governing who gets what where there is no Will and instead insisted his brother had wanted him to give his money to the poor. He claimed his brother had not wanted any of his money to go to his family, so he sold all the assets and bought gold coins which he proceeded to hand out to needy people living on the streets.

Understandably, his family objected and sued him. The judge ordered him to pay just shy of £250,000 to his 3 siblings on top of which he would also have had to pay huge legal costs. If a fellow executor had done the same in the estate you are dealing with, you would be liable too.

! Danger 7:

Facing a claim for a share after you've paid out all the money

Do you know if anyone has been left out of the Will and might make a claim against the estate? Some testators don't make provision for children from an earlier relationship or indeed a secret one and sometimes their second family has no idea they have half siblings. Any child can make a claim against the estate under the Inheritance (Provision for Family & Dependents) Act 1975 if they think they have not been left with reasonable financial provision under the Will.

Has the testator left a young child and a partner no one knows about? They could both claim for provision under the Act. Even a divorced spouse can apply in certain circumstances.

While these claims may not succeed, or only in part, they can lead to protracted litigation which executors would have to defend on behalf of the estate. Good legal advice at the outset is essential to bring any litigation to an early conclusion before it eats up the assets. Making the wrong decisions on behalf of the estate could lead you into personal liability so don't try to handle it alone.

Most importantly for you in view of the potential personal liability, if you can't be absolutely sure that there is no one who could claim under the Act, you must not distribute the estate until you are sure there are no claims. Claims can be issued in Court up to 6 months after the grant of probate is issued, but the papers do not have to be served on the executors until 4 months after that. That means it would be prudent to wait 10 months from the date of the grant before paying out funds to beneficiaries.

If the executors are the main beneficiaries, they may be happy to pay out to themselves and to deal with any claims themselves if they arise. But, if you're not a beneficiary, or only due a nominal sum under the Will, you won't want to be left trying to recover money from beneficiaries to pay for any claims. If you can't get the money back, you will have to pay the claim yourself.

In one case, a brother and sister were appointed executors in their father's Will. He left lump sums for his grandchildren who were then under 18. The executors gathered in the money and the sister agreed that her brother could take the money for his children to invest for them until they reached 18.

Sadly, he had been estranged from his children for some years. When his daughter reached 18, she asked for her money, only to find that he had spent it. She had every right to seek repayment from either or both of the executors, even though it was only one of them who had received the money and spent it.

Remember that your duties as an executor won't go away even after you have finished administering the estate. If you or a fellow executor make a mistake, or miss debts and pay out all the money, you could still be liable even years later.



**You don't have to do it alone;
it's sensible to take advice
and get professional help.**

What can you do to protect your position and still fulfil the deceased's wishes?

If you've been appointed executor of an estate, you don't have to do everything yourself. Good legal advice at the start is invaluable even if you want to do some of the legwork.

Solicitors can advise you whether the Will is valid, help value the estate, search for missing Wills, and undertake searches to identify unknown assets and creditors to make sure you don't miss anything. We can prepare the Inheritance Tax forms and advise on what reliefs you can claim to minimise the tax.

We can protect you against expensive mistakes and relieve you of the burden of all the paperwork. If you like, we can just help you get the grant of probate and then you can gather in the assets and distribute them; or we can take the whole burden off you and do it all for you and remove the worry about personal liability if you get it wrong. You will still need to make decisions and sign documents, but we can prepare it all and make sure you fully understand the choices you are asked to make.

If you would like to discuss your concerns and find out how we can help, call **Beth King** on **020 8313 1300** or email her at **beth.king@marsons.co.uk** for a **FREE 15 minute Probate Review Session**. This can be done on the phone or by video call which we can arrange to suit you. In the session, we will:

1. Get an overview of the estate, the assets and liabilities;
2. Identify any areas of concern which might need investigation;
3. Consider if there are any possible areas for tax savings which might be explored;
4. Look at how we can help you resolve any disputes or issues which have already arisen.

Don't risk personal liability by trying to do it all yourself – get advice and help from professionals experienced in administering estates, interpreting Wills and dealing with disputes.

About the author

Beth King is a solicitor and partner at Marsons and heads our Private Client team. Beth has been a solicitor since 1986 and has helped many recently bereaved clients through the probate process efficiently and sympathetically. Her focus is on valuing the estate quickly, making any necessary variations to the Will to minimise Inheritance Tax, and proactively managing the probate process to ensure beneficiaries receive their entitlements as early as possible.

**Don't just take our word for our expertise and our service levels
– have a look at the Google reviews we have been
pleased to receive from satisfied clients.**

"I have used Marsons now on 3 occasions; each time utilising a different area of their expertise and have been very pleased with the service throughout the entire process. They are diligent, fastidious, proactive and professional. All this is achieved while simultaneously being very friendly, open and communicative with their clients. That's the important stuff, but the additional bonus is that they are also very reasonable on rate.

Wouldn't hesitate to recommend."



5 star Google review

"We recently used Marsons for obtaining probate and dealing with our father's estate as well as for selling his house. We were very happy with the service provided by both Beth on the estate side and Tina and her team for the house conveyancing.

Everyone was very professional, helpful, proactive and responsive and we felt we were in safe hands. The fees are also reasonable.

We definitely recommend using their services."



5 star Google review

"My daughter and I used the services of Beth King to carry out probate for us. We found her very approachable, efficient and from our point of view everything went through very smoothly.

The fee structure is also reasonable and we would not hesitate to use the services of Marsons again."



5 star Google review

