

Natasha McKeever on the pitfalls of being an executor or personal representative

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Key points

What is the issue? The common pitfalls executors/administrators face when administering an estate and when they can be held personally liable.

What does it mean for me? Anyone who agrees to act as an executor/administrator should be aware of their personal liability.

What can I take away? Executors/administrators should not be tempted to cut corners and should seek the advice and assistance of a STEP member to limit their personal liability.

People often underestimate the huge responsibility and challenges of being a personal representative and the personal liability it brings if things go wrong. This article sets out a few common pitfalls personal representatives may fall into. It should serve as a warning to anyone contemplating administering an estate without legal advice.

Paying tax

Personal representatives have the personal responsibility of paying any tax due by the estate and to complete tax returns covering the administrative period. If a deadline is missed this can lead to significant penalties which may not be recoverable from the estate.

Failing to make sure beneficiaries provide relevant information in respect of IHT

The case of *Hutchings v HMRC*ⁱ highlighted the importance of personal representatives making appropriate enquiries of beneficiaries of any lifetime transfers by the deceased.

The personal representatives were held not to be in breach as they had clearly asked the beneficiary to disclose all lifetime gifts and he had deliberately concealed these. It is crucial beneficiaries are asked about any lifetime transfers in the seven years before the testator's death, whether to them or any other parties.

Personal representatives should also keep in mind what the inheritance tax (IHT) toolkit says in relation to lifetime gifts: 'It is strongly recommended that you check all bank and building society statements for the seven years prior to death to see what transactions have taken place which may be regarded as "gifting".'

Dealing with claims against the estate

Any personal representative faced with a claim against the estate should assess if they need to make a Beddome application seeking directions from the court on the action they should take and protection for legal costs. A failure to obtain a Beddome's order may lead to personal liability for legal fees.

Insuring and securing vacant property

If a property with its contents is left unoccupied it would be sensible to remove the valuables and the property should be kept secure and insured. A personal representative should make sure the security is carried out by a reputable company and obtain several quotes.

Personal representatives also appointed as trustees

It is always crucial to check if the testator has set up any trusts and what duties and liabilities arise under these.

Distribution

A personal representative is responsible for paying all the beneficiaries; however, they need to ensure all debts are honoured before any payments can be made. If the personal representative has placed statutory advertisements (an advert in the London Gazette and a local newspaper), they will not be personally liable to settle any unknown debts; however, the creditor is entitled to recover payment from the beneficiaries direct.

If the personal representative misinterprets the will and overpays any of the beneficiaries they may need to make up the difference to the other beneficiaries.

If one of the beneficiaries is bankrupt then his creditors must be paid by the personal representative before any distribution to the beneficiary. Even if the personal representative is not aware of the bankruptcy they will still be personally liable if they get this wrong. A bankruptcy search should therefore be carried before distributing to any beneficiary.

As a matter of good practice a personal representative should not distribute the estate until at least six months after the date of the grant as a claimant has six months to issue a claim under the 1975 Act. In practice, however, the claim form may be served up to four months after issue so there is an argument to wait an additional four months.

Unnecessary delay

If a loss occurs because the personal representative acted too slowly they may be personally liable to the estate for the loss. Examples would be selling a property which falls in value or failure to pay a debt leading to additional interest or penalty charges.

Failing to communicate with beneficiaries

The personal representative should inform the beneficiaries of their interest in the estate and give a time frame for the administration. They should also be advised of the executor's fees in order to avoid any disputes.

Not an easy job

My advice would be to consider carefully whether you have the necessary time and expertise to take on the role of a personal representative. A huge amount of work needs to be carried out which may take considerable time. Personal representatives should not be tempted to cut corners and should seek the advice and assistance of a STEP member to limit their personal liability.

ⁱ [2015] UKFTT 9 (TC)