



You are reading this because you are considering creating or updating your Will or maybe a Family Controlled Trust framework and want to understand the roles and responsibilities within the document.

## OFFICERS IN A WILL & THEIR DUTIES:

### EXECUTOR/S:

An executor is the person named in the Last Will & Testament who will be responsible for dealing with the estate when you have passed.

We will need at least one additional executor to each other, ideally one of your children or both.

An Executor will usually have to apply for legal authority to administer the estate of the deceased. This will have to be done **BEFORE** they can deal with the winding up and eventual distribution of the Estate in line with the deceased's wishes.

This administrative process is called Probate and at the end of the process the Executor/s are provided with a court sealed document giving them the legal power to administer and wind up the estate.

Often referred to as Grant of Probate, its legal title in England & Wales is Grant of Representation.

The principal power of an executor (or administrator) is the right to manage and distribute the estate of a deceased person.

An executor must be named in the Will, and the role only comes into effect once the person they have been nominated to act as an executor for, dies.

### IMMEDIATE ACTIONS AFTER DEATH OF THE TESTATOR:

If named as an executor in a Last Will & Testament written by Portcullis Wealth Retention Ltd then you will already have received this document, when you were named in the Will when it was constructed.

However, if you have come across this document via our website then this maybe all new to you.

If you want help support or some guidance then please get in touch as soon as is practical, on the numbers listed overleaf.

In the interim here are a few things you may want to think about getting organised:

- 1. Handle the care of any dependents and/or pets;** I usually advise clients to make the Executor aware of any instructions for the care of the spouse, children or pets. If the deceased has been ill for some time, this may already have been arranged, even if only on a temporary basis.
- 2. Keep all receipts for any expenses occurred.** Immediately after death the estate the assets and bank accounts are frozen the Executor will have to fund the expenses and can be reimbursed from the Estate once Grant of Representation has been secured.
- 3. Register the Death and get extra Death Certificates,** top tip use the DWP "Tell us once" service, as this means the registrars will contact the HMRC, DWP & Local Authority.
- 4. Secure and monitor the home.** If the deceased lived on their own, then I tend to advise that the Executor should secure the property as quickly as possible, changing the door locks as soon as possible. Any items of high value should be secured and maybe removed for safe keeping. Any perishable food items should be disposed of. Ensure the property remains heated and essential electrical items switched on.
- 5. Notify close family and friends.** If the deceased has been ill for a while the death may have been expected and you may know many of the people you need to notify already.
- 6.** Ideally going through mobile phone contacts or similar should help provide as many contact as possible.

**7. Arrange for funeral and burial or cremation.** If the deceased has a pre-paid funeral plan, we advise them to let their next of kin and / or Executor know where and with whom it is lodged. It's appreciated some religions require the deceased to be given a funeral to a very specific set of criteria. In these instances, I expect the Executor to already be aware of these requirements.

**8. Prepare an obituary.** If as Executor you are a close friend or close family member then writing an obituary for the local paper, along with a touching Eulogy for the funeral or celebration service can be very cathartic and a very personal way to say goodbye.

**9. Locate Important Documents.** As mentioned previously if Portcullis Wealth Retention Ltd wrote the Will, then we will be familiar with the location of most documents, we also recommend the settlor gets their paperwork in order and stores it securely and in a manner that permits the Executor to find it easily.

**10. Notify the employer or the provider if he / she received a pension, health insurance benefits or state benefits and notify them of the Death so payments can be stopped.** Payments paid after the death has occurred will have to be paid back in most instances, so not informing the provider now is only storing up a headache for another day.

**Can an Executor also be a Beneficiary?** It is a common misconception that an executor cannot be a beneficiary of a Will.

An executor can be a beneficiary, but it is important to ensure that he/she does not witness the Will otherwise he/she will not be entitled to receive his/her legacy under the terms of the document.

**If there's more than one executor?** If more than one person is named as an executor, you must all agree who makes the application for probate. Up to 4 executors can be named on the application.

If only one executor is named on the application, they'll need to prove that they tried to contact all Executors named in the will before they applied.

#### **If you do not want to or cannot be an executor?**

The will may name a replacement Executor for someone who becomes 'unwilling or unable' to deal with the estate.

If no Executors are willing or able to apply for probate, fill in a form to give up Executor rights and send it to HMCTS Probate.

#### **WHAT IF THEY DON'T WANT TO BE AN EXECUTOR?**

They can do one of the following:

- completely give up your right to apply for probate ('renunciation') - fill in a form to give up executor rights and send it with the probate application form.
- reserve your right to apply for probate later if another executor cannot deal with the estate (holding 'power reserved')
- appoint an attorney to act on your behalf - fill in an attorney form or set up a signed enduring power of attorney (EPA) or registered lasting power of attorney (LPA) and send it with the probate application

#### **When an executor is unable to apply for probate?**

A replacement executor should apply for probate if the executor is unable to, for example because:

- they've died
- they do not have 'mental capacity' - get a doctor to fill in a mental capacity form and send it with the probate application.

**Can the Executor of a Will Take Everything?** Generally speaking, the Executor of a will cannot take everything simply based on their status as Executor.

Executors are bound by the terms of the Will and must distribute assets as the Will directs.

This means that Executors cannot ignore the asset distribution in the will and take everything for themselves.

However, if the executor of the will is also the only beneficiary named in the will, they can take the estate assets after debts and taxes are paid.

#### **TRUSTEE/S:**

If your Will contains a trust to give capital to someone who is too young to inherit or for any other legal reason, three will need to be someone appointed to look after the interests of the beneficiary/ies, this person is a Trustee. Ideally, we recommend a minimum of two, but you can appoint a professional trustee such as us to act.

The most important aspect of the role of Trustee is ensuring one acts in the best interest of the Trust beneficiary/ies.

A Trustee is a person who acts as a custodian for the assets held within a Trust. They are responsible for managing and administering the finances of a Trust per the instructions set out either in the Trust Deed or the Last Will & Testament. Laws governing trustees include the Trustee Act 1925 and the Trustee Act 2000, which establish core duties like acting in good faith, exercising reasonable care and skill, and avoiding conflicts of interest

If a Trustee can no longer discharge their duties due to incapacitation or death. At that point, a Successor Trustee takes over.

The responsibilities can include recording expenses and income, distributing funds to beneficiaries, filing taxes on

any income the Trust makes and keeping record of other transactions that occur.

When thinking about whom to appoint as Trustee, it's important to appoint someone who can be trusted to look after the interests of the beneficiary/ies until they are old enough to inherit or until they are replaced.

## WHAT POWERS DOES A TRUSTEE HAVE - TRUSTEE DUTIES & RESPONSIBILITIES?

A Trustee has many roles, but the main purpose is to carry out Trust's directions.

The goal of any Trust is to protect a legacy. Trustees will be required to do some or all the following:

- 🌿 **Act as a fiduciary:** The role of fiduciary means one is held to a high standard in terms of protecting the investments and distribution of the Trust. Some even feel that a Trustee must pay more attention to the Trust than they do his or her own personal accounts.
- 🌿 **Understand the terms of the Trust and ensure safety of assets:** Assets within a Trust must remain safe, so a Trustee should understand the basic terms outlined in the Trust. He or she should know who all the beneficiaries are and have access to and review all the records to ensure they're in order and accurate.
- 🌿 **Invest assets when necessary:** If the Trust dictates, a Trustee should invest assets with the intention of preserving them now and in the future.
- 🌿 **Administer the Trust:** Per the Trust direction, a Trustee would need to distribute and/or administer assets to any beneficiaries.
- 🌿 **Make ongoing decisions:** As needed, Trustees should be willing and able to make decisions about how and when beneficiaries receive payment, as well as decide on other provisions of the trust.

Keep in mind that these decisions are with respect to discretionary powers given to a trustee.

For example, Trust & Will's Trust-Based Estate Plan requires the trustee to distribute all income earned to the beneficiaries.

That's mandatory, so the trustee really doesn't get any say in it (or at least not much).

But our Trust also says the trustee may give additional distributions as needed. That's discretionary and the trustee must determine if it's a legitimate need and then determine how much to distribute.

- 🌿 **Keep track of records and prepare tax-related forms/filings:** In addition to preparing and filing tax returns, Trustees also need to keep financial records and statements organized and filed.
- 🌿 **Communicate with and answer beneficiaries' questions as needed:** Communication can include

things such as providing statements and account information and offering an overview of tax reports.

- 🌿 **Answer questions:** A big part of acting as Trustee entails finding out the answers to beneficiaries' questions and then ensuring the information is disseminated appropriately and in a timely fashion.

A Trustee's duties may also change over time. In most cases, when you create a Trust, you are both the Trustee and the beneficiary, and you have more flexibility over what you can and cannot do.

That makes sense because you're responsible for your own self. If you are ever to become incapacitated, or upon your death, the person you name Successor Trustee then steps in.

**What is the Role of a Trustee?** Even after the basic responsibilities of a Trustee are known and understood, there are often several questions that tend to come up. Knowing the answers to some of the following questions can help ease any stress and uncertainty as a Trustee you may feel as you take on the role.

**Can a Trustee Be Personally Liable?** In general, yes, a Trustee can be held personally liable. You must make all decisions in the best interest of the Trust and on behalf of the beneficiaries' benefits. You can protect yourself by keeping accurate, detailed records of the financial transactions and distributions. And the single best thing a Trustee can do is really have a solid grasp on and understanding of the Trust's instructions.

### What is the Difference Between Beneficiary and Trustee?

The difference between a beneficiary and a Trustee is simple. A beneficiary benefits from the Trust, and a Trustee oversees it. Trusts are created to benefit someone or something else (often a child or other family member).

Trustees are responsible for holding and managing all the assets and property inside the Trust as well as distributing assets as needed to the beneficiaries named.

**Trustee vs Executor** just has to do with Trusts vs Wills. A Trustee will administer a Trust, handling the assets inside the Trust and distributing or managing them as the Trust directs.

An Executor, on the other hand, oversees and manages an estate by distributing a deceased person's assets as directed by a Will.

**What is a Successor Trustee?** A Successor Trustee is named second in line to serve as Trustee. Most often, the person who creates the Trust is Trustee until he or she is incapacitated or passes away.

At that time, the Successor Trustee steps in. If the Successor Trustee is either unable or unwilling to serve the role required, it can be a good idea to name an alternate just in case anything happens to the originally named person.

### **How Long Does a Trustee Have to Settle a Trust? A**

Trustee can essentially have as long as needed to settle a Trust, provided they are acting in a timely manner and as directed by the Trust.

Most Trusts take between 12 - 18 months to fully settle and distribute all assets.

Generally, it takes at least six months (but often longer) to settle a Trust. The time it takes greatly depends on how complicated the Trust is and what provisions are required, as well as how old the beneficiaries are.

Trusts created for the benefit of minor children may be active until the child or children are of a certain age.

**How Does a Trustee Get Paid?** A Trustee gets paid what would be considered "reasonable compensation" to fully perform the duties necessary. Trustees are paid out of the Trust assets, and occasionally (though not often) the Trust will define what the compensation amount should be.

Understanding the role and responsibilities a Trustee must take on is key for the job to be well done. Knowing what's expected ensures that anyone taking on the task will be able to perform their duties to the best of their ability.




### **GUARDIAN/S:**

If the testator of a Will has children under age 18, they need to write a Will and appoint legal Guardians to protect their future. If you are reading this then here's everything you need to know about being a legal guardian and your responsibilities.

**What is a guardian?** A guardian is the person legally responsible for looking after the children of a deceased parent. If the parent died before the children were age 18 and there is no surviving parent, then you are the person that's been selected by the deceased to look after their children until they reach the age of 18.

We strongly recommend that when nominating a Guardian in a Will, the testator should make sure the person/s nominated are aware of their nomination and will accept the role if called upon.

**What are a guardian's responsibilities?** A legal guardian is responsible for all the roles they would usually play as a parent, including:

-  **Bringing the children up until they reach adulthood, which in the UK is 18.**
-  **Giving them somewhere safe to live.**
-  **Maintaining their diet and health**

### **Making sure they get an education**





Clearly when a child reaches 18 you may choose to continue to act as their Guardian / surrogate parent for many years to come, in much the same way you would for you own child once they have reached 18.

However, in law you no longer have the legal responsibility to do so and the child, now an adult, is free to make their own choices.

**Why have you been chosen as a Guardian?** It's essential that the person (or people) chosen to carry out all the responsibilities listed above are a suitable surrogate parent and that is a matter of individual judgment based upon a variety of very personal factors.

If you've been nominated then you are a very special person; indeed, particularly in the eyes of the testator and their children.

We ask clients writing their Will, to consider the following factors when determining the most suitable candidates:

-  **Do your guardians share similar beliefs to your family?**
-  **Could your children still enjoy their favourite hobbies?**
-  **Would your children be able to go to the same school?**
-  **Do your chosen guardians have children of their own?**

The most important thing as Guardians you are comfortable with the responsibility, even if the chances of you being called upon are very small.

Always talk things through with them before agreeing to be included in their Will.

**Who can be a legal guardian?** A legal guardian can be anyone who doesn't already have parental responsibility for the children, such as their grandparents, Aunts, Uncles or close friends.

**Legal guardians for pets:** Pets play a huge role in our lives they give us so much love while we're alive, so it's only right that we make sure they're provided for when we die. By writing a will and appointing a legal guardian for your pet, you will have the relief of knowing they'll continue to be loved when you're gone.

Even if you think your sister would love to have your dog or your niece would love to take care of your cat, it's important to speak to them about it before writing it into a will. This helps to make sure they're aware of the responsibility and you both know they're happy to take it on.

If you don't write a will, your pets may end up going to a shelter or rescue centre if nobody is willing to take care of them. In the worst cases, unwanted pets can even be put down. Writing a will and appointing a guardian, will make sure their future is protected.






## GIFT & DISTRIBUTIONS THINGS TO CONSIDER:

**Beneficiaries:** There are no limits to the number of beneficiaries you name in your Will or requirements for them to be related to you. They can be a person, an institution or indeed a Charity.

All we need is the full name, date of birth and last known address for individuals, registered office address and companies house number for institutions and charitable reference number for charities.


**Age to inherit (children and / or grandchildren)** For potential beneficiaries currently under the age of 18 you should nominate an age from when they may inherit. This can be any age over 18.


Some clients instruct us to create the legacy to distribute in stages for example:

-  10% on the 18th Birthday,
-  20% on the 21st birthday
-  Balance on the 25th Birthday.

There are no hard and fast rules here, it is up to you to decide what you would like to happen.

**The "What ifs?":** If any potential beneficiary pre-deceases, you, and there hasn't been time to amend or update your Will accordingly then that beneficiaries share can be distributed in one of two ways:

 **Accrual** - In the context of beneficiaries if one predeceases the other and in the absence of a new Will then that person's share is spread equally amongst the other surviving beneficiaries, e.g. 50% each to person A and B but B predeceases the Testator / Settlor then 100% to person A.

 **Substitution of Issue**- In the context of beneficiaries if one predeceases the other and in the absence of a new Will then that person's share is then passed

down to their children or grandchildren, e.g. 50% each to person A and B however B predeceases the Testator / Settlor then B's 50% goes to their children or grandchildren. Person A still receives 50%.

**Legacies:** Legacies are specific cash gifts to specific people, typically these might be gifts to specific family members, family friends or indeed a registered charity of your choosing. Indeed, whom ever you wish to leave a financial gift to.

**Chattels:** Typically, specific non-cash gift/s that you would like to bequeath to a specific person/s. Typically this is usually a cherished personal item for example a family heirloom, painting, jewellery, watch or antiques etc.

## OTHER CONSIDERATIONS:

### Signing:

The Wills themselves need to be signed in the presence of independent witnesses unrelated to you, further they cannot be named as beneficiaries of the Will in any way. If you are also establishing a Trust, then the Trustees need to sign and accept their office and wherever possible we try to arrange a meeting with the trustee's present. However, logistically this is not always possible, and in this situation, we can arrange for the trustees to sign their acceptance of the office of trustee via postal signing.

### Document storage:

We recommend that all Wills are stored safely and securely so that they can be retrieved easily by your Executors after your death. Clearly informing your Executors exactly where to find important documentation is critical to your Will being followed and implemented.

If your Executors cannot find your Will after you have died and there is no record of where it is stored, then it may be treated as though you had no Will and defined rules (The Laws of Intestacy) will have effect over the distribution of your estate. For most clients there are two options in relation to storage of the Will:

### Self-Storage:

The first option for many people is to retain the original with your own papers and documents within your home. However, if you don't have a fireproof safe, then there is a risk the fire that kills you also destroys your Will at the same time! Only the original Will is sufficient for the HMCTS and the application for Probate, therefore the destruction of your Last Will & Testament will mean you die intestate. Something you would have wanted to avoid by writing the Will in the first place!

### Secure lifetime storage:

Having gone to the time and cost of creating a Will to skimp on the storage seems daft. Portcullis Wealth Retention is a member of the Society of Will Writers, and we use The National Will Archive to professionally store your signed

Last Will & Testament. First and foremost, the Archive is safe and secure, all documents are kept in a fireproof safe. Secondly in using this professional storage option it also provides a registration service in partnership with The National Register.

When you store your Will with the National Will Archive, they will automatically upload the location of your Will to their database which currently has over 10 million records.

We will also write to your Executors notifying them of the location of your last Will & Testament, provide both our details and the details of the archive and what they will need to do to retrieve the Will from the Archive after your death.

In the unlikely event that your Executors are in doubt over the existence or last-known location of your Will, a Will Search can be conducted to help locate it.

To access this service, we charge a one-off fee of **£147.00** per Will.

The fee covers the cost of storage for life or until the Will is replaced and in addition covers the cost of PWR notifying your executors of the existence of the Will and providing them with the details of what to do in the event of your premature death.

## NEXT STEP:

Hopefully the above information has given you some insight into some of the proactive steps you can take to avoid, reduce or eradicate inheritance tax.

If you want to contact us, or are interested in receiving more details about any aspect of this guide and advice on how best to either use the details to your advantage or indeed make subtle changes to your financial plans to avoid some of the negative issues highlighted, please contact us:



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