

PWR TECH GUIDE – ROLE & RESPONSIBILITY OF AN EXECUTOR



You are reading this because you have been named as an EXECUTOR in the Last Will & Testament of a client of Portcullis Wealth Retention Ltd. We have over 30 years' experience in estate planning, administration and probate matters.

Working with our sibling Independent Financial Adviser (IFA) practice Portcullis Wealth Planning Ltd we are here to assist every step of the way when it comes to winding up your loved ones financial affairs (Estate), in fact its highly likely they were looked after under our IFA sibling so we will have a wealth of information you may need to fulfil your duties as Executor.

Depending upon when you are receiving this TECH GUIDE you may wish to contact us now for help and assistance (our contact details are at the end of this document) or simply understand what your future duties may entail and keep it safe for reference for potential future use.

Whatever the position please do not hesitate to get in contact, we will endeavour to assist as swiftly and efficiently as possible. ork and want to understand the roles and responsibilities within the document.

EXECUTOR/S AND THEIR DUTIES:

An Executor is the person named in the Last Will & Testament who will be responsible for dealing with the estate when the Settlor (person who wrote the Will) has died.

If Portcullis Wealth Retention Ltd wrote the document there will be at least one additional Executor to yourself, ideally it will be a sibling, partner, or someone known to you.

An Executor role is to wind up the financial affairs of the settlor in accordance with their instructions which are laid out in the Last Will & Testament in which you were named. Their initial role will be to apply for the legal authority to administer the estate of the deceased.

This will have to be done **BEFORE** you can deal with the winding up and eventual distribution of the Estate in line with the deceased's wishes.

This application for the legal permission to administrate the estate of the deceased is often referred to as Grant of Probate, its legal title in England & Wales is Grant of Representation this is a court sealed document giving you the legal power to administer and wind up the estate. The entire administrative process is referred to as the Probate Process.

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 or were provided with it because you have just informed us you are acting as Executor 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 at the end of this tech guide.

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. Ideally going through mobile phone contacts or similar should help provide as many contact as possible.
- 6. 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.
- 7. 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.
- 8. 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.

- 9. 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? 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.

Some of the other parties who maybe names in the Last Will & Testament, their role, responsibilities and what they do:

GUARDIAN/S:

If the testator of a Will has children under age 18, they need to write a Will and appoint legal Guardians to nurture, protect and look after their children on their behalf. Here's everything you need to know about being a legal guardian and their 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 have made / 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 the Guardian may choose to continue to act as their Guardian 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.

We recommend Testators always talk things through with their nominated Guardians so they can agree 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 the pet, the Testator has the relief of knowing they'll continue to be loved when they're gone.

As with the Children we will have recommended the client speaks with the nominated person BEFORE naming them in the Will which help to make sure, they're aware of the responsibility and you both know they're happy to take it on.

If the deceased didn't nominate a Guardian, then the Executor/s will have to use their best endeavours to find a suitable home which can include local shelter or rescue centre if nobody is willing to take care of them. In the worst cases, unwanted pets can even be put down.

As animal lovers ourselves it's why we always stress to our client the importance of Writing a will and appointing a pet guardian, to make sure their furry friends future is protected.



GIFT & DISTRIBUTIONS THINGS TO CONSIDER:




The Executors role is to distribute the Estate after paying the HMRC its Inheritance Taxes and Gaining the Grant of Representation (England & Wales) and paying the distributions in accordance with the deceased's wishes.

Beneficiaries: There are no limits to the number of beneficiaries that can be named in a Will and no requirements for them to be related to the deceased. They can be a person, an institution or indeed a Charity.

The Will should have provided 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 any beneficiaries currently under the age of 18 the Testator should have nominated 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, however the deceased will have named Trustees to administer and nurture the capital being held in Trust, it's the Trustees responsibility to create the trust and manage its contents, this is where our sibling **Portcullis Wealth Planning Ltd** are able to assist as they can advise on the trust creation and where the capital can be best invested.

Your role as Executor is simply to pay the distribution from the estate into the newly created trust. If you have also been named as Trustee in the Last Will & Testament you should also have received the **PWR TECH GUIDE - TRUSTEE v.1**. If we wrote the Will the Trustees will have


received this guide already. Again, it can be requested by contacting us using the details on the reverse.


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.

WHAT IF A BENEFICIARY HAS PREDECEASED THE TESTATOR?

If any potential beneficiary has predeceased the Testator and there was insufficient time to re write the Will and nominate a replacement, then usually a well written Last Will & Testament will stipulate what should happen and capital can be distributed in one of two nominated 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%.

OTHER CONSIDERATIONS:

Signing:

The Wills themselves need to have been signed in the presence of independent witnesses unrelated to the Testator or anyone named in the Will. This should have been checked when the document was created. If the witnesses are named in the Will as Executors, Trustees or Beneficiaries then the Will is void and the person died intestate. If this is the case contact us immediately.

Document storage:

We recommend that all Wills are stored safely and securely so that they can be retrieved easily by you as Executor/s after the Testator's death. Hopefully the deceased has informed you as Executor exactly where to find important documentation that are critical to the deceased's Will being followed and implemented.

If you, as Executor/s, cannot find the Will after the person has died and there is no record of where it is stored, then it will be treated as though you had no Will and defined rules, The Laws of Intestacy, will have effect the distribution of the estate. For **Portcullis Wealth Retention Ltd** clients there were two options in relation to storage of their Will:

SELF-STORAGE:

The first option for many people is to retain the original with their own papers and documents within the 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 the person die intestate. The very thing the deceased wanted to avoid in writing the Will in the first place! Hence why we strongly recommend the far safer and easier to use second option:

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

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

We will also write to you, as Executors, notifying you of the location of the Testators Last Will & Testament, which is this document, and it provides both our details and the details of the archive and what you will need to do to retrieve the Will from the Archive after death. The deceased will have been provided with a credit card sized receipt as evidence of the location of the Will. Portcullis will also have a copy of this receipt, if the original is lost.

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.

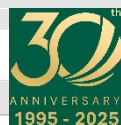
To access this service, we charge a one-off fee of **£247.00** per Will or you can do it yourself via the National Will Archive.

NEXT STEP:

Hopefully the above information has given you some insight into some of your responsibilities and if relevant the next steps you need to take. The great news is we also provide our Executors with the PWR GUIDE TO PROBATE when the time comes; all you need to do is contact us using the details at the end of this document.

If you want to contact us, or are interested in receiving more details about any aspect of this guide or indeed advice on any personal financial matters yourself then please contact us:

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