



Guidance note

The administration of a charitable estate – notes for executors

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The administration of a charitable estate

Firstly, thank you for taking the time to access these notes to assist in the administration of a charitable estate, and for the work you'll carry out to ensure that the Testator's desire to benefit their chosen charities will be fulfilled.

We hope these notes will be useful in explaining what information charities ask for and why.

Probate notifications

Charities have a strict legal duty to collect all monies due to them and ensure they are used to meet their charitable objectives, and so it is incumbent upon them to take reasonable steps to ensure that they are aware of all income to which they are entitled. As such, charities often subscribe to a probate notification service. Smee & Ford is currently responsible for notifying subscribing charities when they are a beneficiary under a Will which has just been granted Probate, although this is going to change in the coming months.

Whilst most executors will eventually notify charity beneficiaries of their legacy, this sometimes doesn't happen, whether through charities having moved address, confusion as to who the Testator intended to benefit because charities have merged or, occasionally, through a conscious decision on the part of the executor.

Some executors choose to wait until after Probate has been granted to advise beneficiaries of their legacies. Charities will often therefore be notified by Smee & Ford first, hence why you may sometimes receive a letter from charities before you have had the opportunity to communicate with them yourself. This is just standard procedure on the part of the charities and should not be taken in any way as a comment on your administration thus far.

Communication with charities

Most charities will be happy to communicate via email wherever possible. If there are several charity beneficiaries, it is commonplace for a lead charity to be appointed. They will act as a "post-box" so that you send correspondence to the lead charity only and they will then be responsible for sharing this with their co-beneficiaries. Likewise, they will coordinate responses when required and feed this back to you.

Understandably, some executors can feel uncomfortable taking instructions from just one charity, but if each charity communicates their agreement to the appointment of a lead charity to you at the outset, this should help put your mind at ease. This will hopefully lessen your workload when we know the administration of an estate is a very onerous task.



Request for information at the start of an administration

When benefitting from a share of residue, charities generally request a copy of the deceased's Will and information on the assets & liabilities of the estate (or the relevant inheritance tax form IHT205/IHT400) early in the administration. They are not just trying to be nosy! This is useful for several reasons:

- They can check and update their database if the Testator was previously known to them to ensure no distress is caused to the family through unwanted mailings being received.
- They can ensure that when monies are received, they will be correctly allocated in line with any conditions expressed in the Will (or highlight if they feel there may be any concerns over their ability to apply the gift).
- They can estimate the value of the legacy they are likely to receive for the charity's financial pipeline. With legacies playing such a crucial part in funding many charities' activities, the sooner they know their likely income, the sooner they can confirm what services they will be able to run in the following year.

Information provided by charities at the start of an administration

Many charities send out some form of guidance notes to executors as a matter of course. These will include information they feel might be helpful such as:

- Previous names and addresses for the charity
- Registered charity number
- To whom and how the payment of the legacy should be made
- Request for copy valuations of assets (such as shares and properties)
- Information on charitable tax exemptions such as
 - Inheritance tax, including information about the reliefs and exemptions available (including the charity exemption, the residence nil rate band and the "10% IHT rule")
 - Capital gains tax, including a draft Memorandum of Appropriation
 - Income tax reclaims

Again, this is a standard procedure, designed to be helpful to anyone administering an estate, whether an experienced probate practitioner or individual executor. By sending this, they do not intend to question your expertise or knowledge, but rather ensure that they always provide information which may be of benefit to everyone involved.

Capital gains with assets in an estate

Charities often ask for valuations of assets (such as properties and shares) as they can often provide guidance to executors to mitigate capital gains tax when assets may have increased in value between the date of death and the date they are sold. This can help executors meet their duties to the estate and the charities can ensure they meet strict legal requirements on a sale of land. Sometimes, executors can 'appropriate' (i.e. give) a share of property or shares to a charity before they are sold, saving capital gains tax, and sometimes saving the executor the need to complete a tax return! This area of administering an estate can be technical, so it is often best to seek professional advice if you are unsure of anything.

Requests for updates

Charities are very aware that each request for an update costs *you* time and the *estate* money. They will usually only chase for information when there has been a delay of several months.

If there is any reason why a delay is being experienced, i.e. retirement properties being harder to sell, overseas assets to be traced, please let the charity know and they can then ensure they don't bother you unnecessarily. An example at the time of writing these notes would be the delay currently experienced by executors waiting for HMRC clearance. In this instance, if advised that the executors are currently waiting on clearance, charities might diarise their files for 3 months' time rather than reviewing in say a month.

Ex Gratia payments

Charities are only authorised to use their funds for their specific charitable purposes. They do not have the same freedoms as individual beneficiaries and are under strict legal duties. Unfortunately this means that they cannot just agree to payments being made from the estate which are not contained within the Will, whether this be to executors (for anything other than out of pocket expenses), or additional legacies which the executors feel the Testator would have wanted to include in their Will but didn't.

If there is a strong case for why a payment should be made, the charities will need supporting evidence for this which they will then need to present to their trustees for their agreement. The payment can then still only be made when the case has been made to the Charity Commission and their express approval received. This may take many months to obtain and is never guaranteed.

Estate accounts

As you will be aware, a beneficiary cannot release an executor from their duties until they have agreed the accounts. A charity is no different and would certainly be challenged by their auditors were they not to do this. They may also need to request additional information such as copy valuations, completion notes etc. to satisfy their auditors' requirements. It is our experience that seemingly no two auditors require the same information, hence why this may vary from estate to estate or charity to charity. It is often easiest to keep these up to date as you go through the estate administration rather than leaving it to the end.

Tax Deduction certificates / Forms R185e

Charities require these in order to reclaim income tax which has been paid on interest not only during the administration of the estate, but also interest that had accrued during the deceased's lifetime, but which was not paid until after their death.

This is an important source of additional income and by providing these, you are helping ensure that the Testator's gift has achieved as much as possible for the charity.



Thank you!

Thank you again for the work you are undertaking to administer a charitable legacy. We appreciate that this can often be a difficult task and add further complications to a standard estate, but it really makes a difference to the charities the Testator wanted to support. If you have any further questions on anything mentioned above, or any other subject concerning the estate and the charity's entitlement, please feel free to contact our Head of Training & Professional Standards at training@legacymanagement.org.uk.

