

CHECKS AND BALANCES

Key factors for legacy officers to consider when reviewing a set of estate accounts

The duties of an executor or administrator of a deceased's estate are succinctly set out in *s.25 Administration of Estates Act 1925 (AEA) (as amended by s9 AEA 1971)*:

"The personal representative of a deceased person shall be under a duty to collect and get in the real and personal estate of the deceased and administer it according to law; when required to do so by the court, exhibit on oath in the court a full inventory of the estate and when so required render an account of the administration of the estate to the court; [and] when required to do so by the High Court, deliver up the grant of probate or administration to that court."

It is fair to say that maintaining accurate records and preparing estate accounts can be time consuming, whether they are prepared and updated during the course of the administration, or produced at the end of the administration period. Accounts can be produced in a range of ways; by the personal representatives themselves (lay or professional), or by their lawyers or accountants, or by employing a specialist estate accounting firm. Estate accounts sent to your charity might be handwritten, typed or produced as a spreadsheet, and can range from a being a simple cash statement; an account based on the less commonly used double-entry bookkeeping principles; or even software-produced accounts with multiple schedules. Whatever the format used, estate accounts must still contain certain fundamental elements.

Fit for purpose?

A common mistake made by lay personal representatives is to simply produce a cash summary. A cash statement usually only gives details of funds which have passed through the personal representatives hands or which was held on their behalf (such as on a solicitor's client account). A cash statement will be of limited benefit. Going back to section 25, the personal representatives must be able to produce "a full inventory of the estate", and not merely a reproduced cash statement.

The STEP publication 'Accounting Guidelines for Trusts and Estates' is often cited as being a 'practice standard' for probate practitioners, giving examples of a range of different estates, including one with an ongoing will trust.

The Guidelines make it clear that estate accounts (simple or otherwise) should ideally:-

- be prefaced by a **summary of the terms of the Will** in order to provide a context for the information that follows.
- provide details of the **assets and liabilities of the estate with their values at the date of death** (as shown on an IHT205 or IHT400). This core information sets the scene for the recording of subsequent 'post-death' transactions
- details of **income received and tax paid** (ideally broken down by tax year and included in a separate Income Statement);
- the recording of **gains or losses** attributable to the assets or liabilities on sale or encashment
- legacies paid,
- **administration expenses** including payment of inheritance tax and how this has been apportioned between the charitable and non-charitable beneficiaries .
- A statement showing the **balancing (or reconciliation)** of the cash held, assets remaining, debts outstanding and sums payable to the beneficiaries should ideally be shown at the end of a set of accounts, where possible set against a balance held on an executors bank account, a solicitor's client account or even a stockbrokers valuation. This statement also provides an 'at a glance' indication of what remains to be dealt with, and how the funds or assets still held are nominally allocated.

This level of detail allows the personal representatives to determine how any remaining funds (the 'residue' of the estate) should be dealt with, by reference to the terms of the residuary gift in the Will.

It is fair to say that beneficiaries usually welcome additional information if this helps to clarify an entry in the accounts. This might include a completion statement for the sale of a property, details of individual investments sold or a full schedule of the personal representative's costs or expenses.

Personal representatives need to be able to demonstrate that they have dealt properly with the administration of the estate and a set of estate accounts is an accepted way of achieving this, providing reassurance to the beneficiaries (and to the Court if necessary) as to the manner in which the estate has been administered.

Questions to consider:

So, you receive a set of estate accounts – let us assume at the end of the estate administration – and you are asked to approve them to allow final distributions to be made. What points should you look for or consider, in order to ensure that the information provided makes sense, adds up, is complete and demonstrates that the estate has been dealt with appropriately and that your charity's interest has been protected or even maximised?

1. Estate accounts should be sent to the residuary beneficiaries for their approval before the final distribution is made. If you are not asked to approve them, consider whether you are comfortable with this given your experience of dealing about the personal representatives or their solicitor during the administration. If you have any doubts, you are not obliged to just accept the position – advise the personal representatives that you have queries and cannot yet approve the accounts. The sooner you do this the better, as the executor may have already made distributions to other beneficiaries and you might need to ask for cheques to be stopped or – at worst – for funds to be reclaimed if it is found that the accounts are accurate or incorrect. At worst, if there has been any deliberate wrongdoing, it would be the personal representative who would need to correct the position if the other beneficiaries do not repay funds.
2. If the accounts produced appear to merely be a statement of cash transactions with no date of death figures, it is important to ask for more specific information. If the accounts were produced by a solicitor rather than a lay personal representative you could, refer them to the STEP Guidelines.
3. Ask for a copy of the IHT205 or IHT400 so that you can assess for yourself whether there is likely to be a gain or loss on sale or appropriation.
4. Ask for sight of any administration tax returns as these should provide confirmation of any bank interest, dividends or gains/losses reported by the personal representatives ... or not!
5. Consider whether anything is missing:
 - Is there a capital and income statement?
 - Has a distribution account been provided, and
 - Is there any form of reconciliation against cash held by the personal representative i.e. in an external bank account balance (ie not just a figure generated by the accounts themselves)?
 - Does the income statement match any R185 tax deduction certificates you have been sent?
 - Are there any gains over and above probate value shown?
 - Is a CGT tax liability shown within the accounts? If so, were you aware that this might occur? Was the option of appropriation made available to you or were you merely advised of the tax liability after the event?

There are frequent misunderstandings about how inheritance tax in a partially exempt estate should be apportioned between charities and non-exempt beneficiaries.

Do the accounts correctly apportion the tax liability in accordance with the wording of the Will? If there is any doubt, check this with the personal representatives as soon as possible as there may be a need to reclaim any overpaid sums from the non-exempt beneficiaries before the funds are spent!

Given your knowledge of the assets in the estate, consider whether the accounts are sufficiently detailed or are they inadequate in the context of the nature of the estate? An estate consisting of a share portfolio, multiple bank accounts, and a large number of properties, let or otherwise, sold or appropriated, is not likely to be properly accounted for in a one-page cash statement.

The personal representatives are obliged to provide a full accounting of the manner in which the estate has been administered and, if they cannot do so (even after some helpful prompting), consider asking for assistance in troubleshooting the accounts you have received.

Remedies

It is important to establish whether the nature and extent of the estate justifies an in-depth forensic review of the accounts you have received. If it is a small estate, the cost (in terms of time or money) of making copious enquiries may outweigh the benefit you receive as a result. However if, after making appropriate enquiries of the personal representatives or their Solicitors, you are still uncomfortable with the extent of the information provided to you, there are remedies.

1. Firstly, it may be the case that a lay personal representative has never had any experience of what is required, and often the provision of guidance (in writing, by telephone or in person) may be a simple way of rectifying the problems. Many lay personal representatives will struggle with producing 'appropriate' accounts but, with some guidance, may provide the detail required sufficient to allow the accounts to be approved, even if it is not perfect! An 'iron fist in a velvet glove' approach can also leave the personal representative with a favourable impression of your charity or your charity's advisors!
2. Secondly, ask questions and, if in doubt, ask again! A personal representative who is experienced in probate administration should have nothing to hide and therefore should have no objections to reasonable enquiries being made of them. If you do not receive appropriate (or correct) answers, consider asking a third party (such as another law firm or an accountant) to review the accounts on your behalf and to produce a list of enquiries for the personal representative to answer.
3. If this fails, or if considerable doubts remain once all of the queries have been 'answered', the next step is to consider making an application to the Court for an inventory and account order in respect of the administration (AEA s.25(b)). This is a cost-effective option which involves an application to the Probate Registry supported by an affidavit (as set out in NCPR 61). An account is often produced following the suggestion that such an application will be made, particularly where the personal representative is also given guidance about the way in which the information should be presented (see above).
4. If the information produced is not adequate you may question whether the personal representative is an appropriate person to continue with the administration of the estate. As a last resort, an application under *s.50 Administration of Justice Act 1985* to remove a personal representative might be the better option. The costs of doing so must be weighed carefully against the benefit to the charity'. Any publicity and the public relations impact must also be considered.

Summary

Those preparing estate accounts should review them as if they are the beneficiary, avoiding the use of jargon, or the summarising of figures where it is not appropriate to do so. For those in receipt of such accounts, do not be afraid to consider the information provided critically - be prepared to ask questions of the personal representative or their advisor as this may be your best opportunity to do so! If they are worth their salt, they should not object!



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Please contact Jane Robinson at Henmans LLP if you have any comments or queries relating to the issues raised in this document.