

# gifts in wills to charity



## information for executors and administrators

Thank you for administering the estate in which IFAW is a beneficiary. We understand that this can be a particularly difficult time and appreciate that administering an estate can be complex.

To help keep things straightforward for you, we have prepared this leaflet to guide you through common areas of estate administration which need to be dealt with in a particular way where a beneficiary is a charity.



**If you encounter any problems during the administration, please inform the beneficiaries.**

**Many years' experience may mean that we have already met a similar issue and may be able to help.**

### **IFAW Legacy Team**

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### **a gift of residue**

You will be aware that Executors are obliged to seek the maximum benefit from an estate for the beneficiaries. Similarly, charity trustees are required by law to seek maximum benefit from gifts left to their charities through Wills and will need to request documentation from you for their files to meet regulatory and audit requirements.

Such requests are routinely made in all estates. A checklist of the minimum information charities must request can be found on the last page of this leaflet.

It is very useful to let the charities have a copy of the Will and a list of the estate's assets and liabilities early on, so that they may consider whether there are any assets which need to be treated in a particular way, such as to use the charity exemption from Capital Gains Tax.

IFAW is made up of two sister organisation so the copy Will is crucial to help us identify which is the correct beneficiary between the two.

Charities will usually enquire of the estates progress every few months. If there are multiple charities it may be helpful to request a 'lead' charity who can act as a single point of contact between you and the rest of the charities.

At the end of the estate, please provide a copy of the Estate Accounts to the beneficiaries, before making distributions.

Further details about the points above and others are provided in the rest of this leaflet.

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## **tax matters**

As Executor, you have a duty not only to deal with the outstanding tax affairs but also to pay all taxes due as a result of the death or arising during the administration. Where a charity benefits from a share (or all) of the residue of the estate, you need to be particularly aware of certain charity tax exemptions which can benefit the estate.

## **inheritance tax (IHT)**

If the estate is liable to IHT, please provide a copy of the calculation or copy IHT form. UK-registered charities are exempt from IHT payable in the UK and if 10% or more of an estate is left to charity then the whole estate's IHT rate can be reduced to 36%. Charitable relief should be claimed in the return you make (they will not otherwise volunteer it). IHT currently affects estates of net value above £325,000.

Where the residue of an estate is divided by the Will between both exempt and non-exempt beneficiaries (for instance, between charities and individuals), you must take care to consider which beneficiaries' gifts bear the tax before you distribute. Before deducting the tax from residue, you should divide the residue into exempt and non-exempt parts and then deduct the tax only from the non-exempt share. This ensures that the charity concession is applied properly.

If there are specific gifts left to individuals in the Will before residue is dealt with, the situation is more complicated. You are advised to seek professional advice. In addition, most charity Legacy Officers will be able to offer assistance on this point.



## **capital gains tax (CGT)**

Charities have an exemption from CGT. However, it may be payable when assets such as investments or property are sold which have gained in value since death. This is because the Executor is deemed to be selling as an individual, even though the assets will benefit charities.

During the tax year of the death and the following two years, there is an annual allowance of £12,300 for the executor to make a gain on an asset without needing to pay CGT. If the gain is more than the allowance, then CGT will be payable.

Accordingly, if there is a danger of Capital Gain which will exceed the annual exemption, you can use your power to appropriate. This is a simple book-keeping exercise. You do not need to transfer the assets to the charity(ies) before sale. Instead, you confirm to the charities that you will appropriate the assets on their behalves with their agreement, and then sell as agent (Bare Trustee) for the charities. The easiest way to do this is by a Memorandum of Appropriation. Some Legacy Officers may be able to provide you with a template Memorandum to use, which simply needs to be filled in and signed in order complete the exercise and use the charity's exemption.

If property is being appropriated, be aware that the legal procedures will be slightly different in that the property may need a special valuation to be completed (known as a s. 119 valuation) and that appropriation needs to take place before contracts are exchanged.

Again, Legacy Officers will be able to advise you on how to proceed.





## **claims against the estate**

If you are notified that a claim may be brought against the estate please contact the charities immediately, providing as much information as possible. Any payment made from the estate to meet a claim comes from residue, directly affecting the charities' benefit. Charity Legacy Officers are experienced in these matters and would wish to be involved in any negotiations from the beginning.

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## **ex-gratia payments**

You may find as Executor that you are asked to make payments to people, which are not part of the estate administration or gifts set out in the Will, but that you feel should be made on moral grounds.

Please do not approve any such requests until you have spoken to the beneficiaries. Charities do not have the legal freedom that individuals do to approve these payments and law on this area is quite strict. Whilst most charities will have the power to settle a legal claim, different considerations arise with an ex-gratia claim.

If a request for an ex-gratia payment is made, the charities will ask the Executors to provide a full explanation of the circumstances to help the charity's Trustees to make a decision. If they do feel that they are under a moral obligation, depending on the value, they must then apply to the Charity Commission for an Order to make the payment. They cannot agree to the payment without the sanction of the Charity Commission.

Further information can be found from the Charity Commission.

## income tax

The deceased could have paid too much or even too little Income Tax. As a result, the deceased's estate may owe Income Tax, or it could be owed a tax refund. To make sure that the correct amount of Income Tax is paid, you should contact HM Revenue & Customs (HMRC) so that they can adjust the deceased's tax calculation.

Furthermore, Income Tax may also be due on income received after the person's death, such as rent from a property or income from the person's business. For this type of income, the executor must report this to HMRC, so that appropriate amount of tax is calculated and paid by the estate. Please note that interest received by the estate after death, including the part accrued before the date of death, is part of the income of the estate.

Charities are able to recover most of the income tax paid on their share of residue. To assist in reclaiming income tax, at the end of the administration, you should provide to each charity tax deduction certificates {Form R185 (Estate Administration)} covering distributions you make during each tax year.

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## property and other major assets

If the estate includes land or buildings, it would be helpful if you would advise the charity beneficiaries at an early stage in the administration. Please consult them over the marketing, asking price and offers.

To ensure that you get the best price for the property, you should obtain written valuations from at least two firms of estate agents. We would be grateful to receive a copy.

In certain circumstances, a property may have development potential, in which case the charities would request to be closely involved in any decisions taken.

Please also gain valuations of other significant assets such as jewellery, paintings and investments.





## **executor's expenses**

We fully appreciate that, by acting in person, you are saving the estate costs which would otherwise be incurred by using a solicitor. In the absence of any clause in the will empowering the executor to make a charge for his or her services, executors are not legally permitted to charge for their acting as Executor, as this is regarded under law as profiting from a position of trust. You are, of course, entitled to reclaim all reasonable expenses actually incurred, such as the cost of travelling, fares, postages, telephone calls, photocopying and any payments made for such items as death certificates, swearing fees, etc. Charities are of course bound by the law and we trust that you will understand that a residuary beneficiary charity may need to query expenses, particularly where the claim appears to include a time element.

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## **estate accounts**

Executors are obliged to prepare and provide the residuary beneficiaries with a set of Estate Accounts at the end of the administration period. This is not to question the quality of the administration, but for the charity to satisfy itself that there is no outstanding matter which would create a liability on its Trustees. The Estate Accounts can be fairly top-line and need only show the assets of the estate, the payments made by the estate and how the final distributions have been calculated. When you have prepared the final estate accounts, please send them to the beneficiaries for approval before you distribute the funds. Although rare, this will save you having to recall funds if there is a problem.





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## **checklist of the information charities will ask for before they can give you proper receipt**

- A **copy of the Will** and any Codicils
- A **copy Inheritance Tax calculation** if there is an IHT liability
- Estate Accounts** (preferably prior to distribution)
- If appropriate, a **tax reclaim form** 'R185 (Estate Income)' which is available from HMRC or the charities

Full details of each of the above as well as other information that it may be useful to provide the charities are contained in this leaflet.

**The role of Executor is not always straightforward and we should like to express again our gratitude for your help. Thank you.**

*This guidance relates to the estates of people domiciled in England and Wales, but the principles (and all of the tax information) relates equally to Scotland. IFAW accepts no responsibility for the information above, this is meant as helpful guidance only and is correct at the time of writing. If in doubt, please consult a solicitor.*