



An elephant bull walking in an open plain in Etosha National Park, Namibia. World Animal Protection believes that wild animals should be left in the wild and not used for our entertainment. Credit: iStock. by Getty Images

## Gifts in Wills to charity - a gift of residue

### Information for executors and administrators

**We are grateful to you for administering the estate in which our charity is a residuary beneficiary. To help you in your task, we have prepared this leaflet to guide you through the common areas of estate administration which need to be dealt with in a particular way where a charity is a beneficiary.**

#### General Points

You will be aware that Executors are obliged to seek the maximum benefit from an estate; similarly, charity Trustees are required by law to seek maximum benefit from gifts left to their charities through Wills. When you are ready to apply for probate (or earlier, if possible) it is very useful to let the charity beneficiaries have a copy of the Will and a list of the estate's assets and liabilities so that they may consider whether there are any assets which need to be treated in a particular way, for example, to use the charities exemptions from Capital Gains Tax.

Please ensure that you place funds received in an income-bearing account until the funds are distributed. Most charities welcome interim distributions when possible and may enquire of the estates progress every few months.

If you encounter any problems during the administration, please inform the beneficiaries. Many years' experience may mean that they have already met a similar problem and may be able to help.

#### Tax Matters

As Executor, you have a duty not only to deal with the deceased's 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 concessions.

#### ► Inheritance Tax (IHT)

UK-registered charities are exempt from IHT payable in the UK. 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 (this may be double for married couples where both parties are now deceased, bearing in mind the transferable nil rate tax band).

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 £11,100 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 (and the funds from sale of the assets are not needed for administration purposes), 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 be completed and that appropriation needs to take place before contracts are exchanged. Again, Legacy Officers will be able to advise you on how to proceed.

### ► **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. However, they can only claim on income distributed and only at the tax rates in force in the year the Charity receives the distribution. Charities therefore appreciate regular distributions throughout the administration period. 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.

### **Notes on Property and Other Major Assets**

If the estate assets include any form of property, whether 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, sale price and offers received. To ensure that you get the best price for the property, you should obtain written valuation reports from at least two firms of estate agents. In certain circumstances, a property may have development potential, in which case the charities would expect to be closely involved in any decisions taken. Charity Legacy Officers may ask you to gain a valuation report on other significant assets such as jewellery, paintings and investments.

### ► **Property contents**

Many charities have a network of shops and are able to effect house clearances. Others have relationships with firms of auctioneers who will sell chattels left to charities at very favourable rates. It is very helpful to inform the charity beneficiaries as soon as possible so that they may make the necessary arrangements and so maximise the value of the bequest.

### Claims Against the Estate (legal claims)

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.

### Ex-gratia claims (moral claims)

You may find as Executor that you are asked to make payments to people, payments 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. Under no circumstances should you do so without the prior consent of all residuary beneficiaries. Law on this area is quite strict and if they have a legal claim available, they should pursue that route instead. Whilst most charities will have the power to settle a legal claim, different considerations arise with an ex-gratia claim.

If a claim for an ex-gratia payment is made, the charity (or charities) will seek their own legal advice. If it is confirmed that there is no legal remedy open to the claimant, each charity's Trustees will then decide whether they feel under a moral obligation to make a payment out of their charity's entitlement. The charity 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, (if the charity is based in England or Wales) they must then apply to the Charity Commission for an Order to make the payment. **They cannot make the payment without the sanction of the Charity Commission.** The Charity Commission will require full details of the circumstances together with a copy of the Will, Grant of Probate and Estate Accounts. It should be pointed out that this process often takes considerable time. Further information can be found from the Charity Commission.

### Executors' expenses

We fully appreciate that, by acting in person, you are saving the estate costs which would otherwise be incurred by using a solicitor. However, in the absence of any clause in the will empowering the executor to make a charge for his or her services, executors acting in person 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.

### 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. It would be helpful if the accounts contain separate capital and income statements and if you can subdivide the income statements into tax years. When you have prepared the final estate accounts, please send them to the beneficiaries for approval before you distribute the funds. This will save you having to recall funds if there is a problem.

### Checklist of the information charities will need before they can give you proper receipt and discharge:

- A **copy of the Will** and any Codicils
- A **Schedule of the Assets and Liabilities** of the Estate when known
- Where a property is to be sold, a copy of the **Estate Agents' sales particulars**
- Where there is any other significant asset, a copy of an **independent valuation**
- Estate Accounts** (preferably prior to distribution)
- If appropriate, a tax deduction certificate Form R185 (Estate Income) - available from HMRC or the charities

**The role of Executor is not always a straightforward one, and we should like to express again our gratitude for your help and co-operation.**

*Please note: 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. World Animal Protection accepts no responsibility for the information contained above, this is meant as helpful guidance only and is correct at the time of writing. If in doubt, please consult a solicitor.*