



PROTECTING AGAINST LIABILITY IN A DIGITAL AGE

SCOPE OF DUTIES

Personal Representatives (PRs) owe duties to both creditors and beneficiaries of an estate – in fact, their duties owed to the creditors trump those owed to the beneficiaries, as creditors' claims must be satisfied first, with beneficiaries entitled only to what is left.

WRONGFUL ADMINISTRATION

PRs will be liable for a 'devastavit' if they mismanage 'the estate and effects of the deceased, in squandering and misapplying the assets contrary to the duties imposed on them, for which executors or administrators must answer out of their own pockets' (Re Stevens [1898] 1 Ch 162). Thus, if PRs pay the beneficiaries before they have paid all of the creditors, they will be liable to the creditors from their own pocket – even if the creditors were unknown to them.

THE PROBLEMS WITH IDENTIFYING CREDITORS

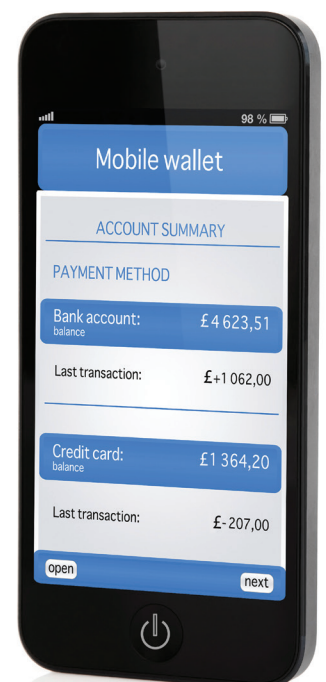
It has always been difficult to identify all of a deceased's creditors, given that the PR can only rely on such information as they can gather from the deceased's papers and any friends and relations. There has always been the possibility of the deceased having undocumented debts about which no-one else knows.

NEW CHALLENGES

This problem has been exacerbated by the rise of online banking and investments: the 'paperless' age. It is quite possible that the deceased will have liabilities for which the PR will find no evidence, resulting in a real risk that PRs will pay out the estate to the beneficiaries in the belief that all creditors have been paid, only for others to emerge, giving rise to personal liability of the PR.

PROTECTION BY ADVERTISING

Fortunately, protection from such risk may be gained from advertising for claims in The Gazette (and local newspapers) under s.27 of the Trustee Act 1925 and s.28 of the Trustee Act (Northern Ireland) 1958: provided a notice period of at least two months is given, the PRs may distribute to the beneficiaries after paying only those claims of which they have notice, without personal liability for any others.



FAQS

Q: What does s.27 and s.28 require?

A: Adverts must be placed in The Gazette and ‘in a newspaper circulating in the district in which the land is situated’ giving notice of the death and inviting claims within a period of at least two months.

Q: What claims does an advert protect against?

A: Provided distribution does not take place before the end of the period, the PR is protected from personal liability for any claim in respect of which they have not received notice at that time.

Q: Is placing an advert in The Gazette straightforward?

A: The process is very simple and adverts may be placed in The Gazette online.

Q: Do I need to place separate adverts in a local newspaper?

A: You can place both the notice and the advertisement in a local newspaper via The Gazette in one easy step.

Q: Do PRs need to give their own address in the advert?

A: No, an advert can give The Gazette’s postal box address.

Q: Is there a duty on PRs to place adverts?

A: It is in their own interests to do so, and is highly recommended. It is highly unlikely that a beneficiary would criticise a PR for placing adverts, and quite possible that they could claim a breach of duty for failing to do so.

Q: Should I advise lay client PRs to place adverts?

A: Yes, it is a simple step that avoids a foreseeable risk. If the PRs are not advised of the benefits of placing adverts and suffer personal liability as a result of not doing so, they are likely to seek to make their solicitor liable for the failure to advise.



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“If PRs distribute an estate to the beneficiaries without first paying all the creditors, they will be personally liable to the unpaid creditors, even if they had no knowledge of them: the risk of personal liability to unknown creditors is clearly foreseeable.

“Fortunately, placing adverts in The Gazette could not be simpler: it may be done online, and The Gazette can even place additional adverts for you in local papers. If this is not carried out, there is a very real possibility a solicitor would be liable for failing to advise their PR client of the possibility of placing adverts if the PR was exposed to personal liability as a result.

“I highly recommend advising all PRs of the benefits of placing adverts and encouraging them to do so, even if it has not previously been their usual practice. Of course, if the solicitor is the PR, they have a clear interest in placing adverts in The Gazette and it is difficult to see why they would not: certainly, I find it hard to envisage how a beneficiary could complain about this step being taken.”

