A Church for the Future

Help for MAC's on Legacies and Wills

Why the Church encourages people to review their wills

Decisions for your MAC about wills and legacies

Why the MAC's should make a legacy policy

Receiving a Legacy

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THE CHURCH IN WALES

Why every Christian should have a will

Why are you as a MAC being encouraged to think about legacies? How is this part of our Christian faith?

Do we believe that everything we have comes from God and that He has an interest in how we use what He has given us. If so, then it follows that how we plan for our assets and money to be used after we die is also of interest to God.

As a Church we have a good reason to be thankful to the many generations who have gone before us. Through their good Christian stewardship and generous legacies they have provided for the mission and ministry of the Church over many centuries, the fruits of which we continue to enjoy today.

Every year thousands of people die without leaving a will. This can cause unnecessary complications for their families and friends and can often mean that their wishes are not carried out. There are several good reasons we should encourage people to make a will; pastoral care, good personal financial management, and teaching on Christian stewardship.
Making a will and keeping it up to date is often a simpler and less expensive process than many people imagine.

ACTION

The MAC is asked to affirm its commitment to encouraging people to make and review their wills as part of their Christian stewardship.

A policy on legacies

Most people will only leave gifts in their wills if they think their church will use them for development projects, not simply to fund current operating expenses. It is best for MAC's to agree a policy on how legacy income will be spent, and then how this will be communicated to the congregation. It is advisable to discourage restricted legacies since the needs of their church will change over time.

So the policy might be something like:

> The policy of the MAC is to use legacies to help fund significant development projects in the Church, whether buildings, equipment or staff. As circumstances change over the years, it may not be possible to fulfil specific donor requests, so church members are encouraged to leave gifts in their wills for the general purposes of the Church.

ACTION

The MAC should agree on a simple policy on using legacies, and communicate this to the congregation.

Promoting legacy gifts

Legacies can make a vital difference to your church's local mission and ministry, whether used for additional staffing or to improve church buildings and facilities. The key aim is to encourage people to review their wills regularly as part of their everyday Christian discipleship.

Promoting the opportunity to leave a gift to your church should be sensitive and low key, drip feeding messages in different ways over the years. Messages for different groups (e.g. young families, empty nesters, very elderly) should be tailored to their particular needs.

ACTION

The MAC may find it beneficial to appoint someone willing to encourage legacies and giving in the Church. There are lots of resources available to help them in this important ministry.

Why a MAC should consider wills and legacies

During the past ten years nearly half the Mission Areas in the Church in Wales have benefited from a legacy. Some accept these as a welcome but unexpected gift, whilst others actively encourage people to leave a legacy to their church.

For many people, leaving a gift in their will is a final opportunity to say thank you to God for his blessings and to help the future development of their church family.

ACTION

The MAC is encouraged to put a review of legacy giving progress on its agenda for a future meeting.

A Guide to Receiving a Legacy

Introduction

This resource provides guidance to MACs on the process of receiving a legacy, as well as further information on charitable legacies.

We begin with a Terminology List for your reference:

TESTATOR/TESTATRIX:	A person who has made a will.
BENEFICIARY:	A person or organisation that is left something in a will.
EXECUTOR:	Person(s) appointed to carry out the terms of the will.
INTESTATE:	Used to describe someone who has died without a will.
PROBATE:	The official proving of a will.
ESTATE:	The total sum of possessions, property and money left at death after debts have been paid.
CODICIL:	A document used to change an already made will.
LEGACY:	A gift by will, usually money left to a person or organisation.
RESIDUARY LEGACY:	A gift (total or of the remainder) of the estate after all other gifts have been made and debts cleared.
PECUNIARY LEGACY:	A gift of a fixed sum of money.
SPECIFIC LEGACY:	A particular named item left as a gift in the will. For example, a piece of jewellery, furniture or painting etc.

Introduction to Receiving a Legacy

What is a Legacy?

A legacy is a gift made by will, usually an amount of money or property left to a person or organisation. Legacies are a lifeline for our Church. Each year around thousands of people leave a legacy to a part of the Church in Wales; gifts to finance mission projects, maintain beautiful church buildings and grow faithful communities. If your church (technically the MAC) is the recipient of a legacy, you will be referred to as a 'charity beneficiary'.

Multiple Beneficiaries

There is usually more than one charitable/church beneficiary named in a will. Therefore you should try to work together to resolve any issues about the estate and work through one solicitor to maximise the amount that is available to distribute between them.

It can be helpful if a **'Lead Charity'** is identified and agreed upon. The Lead Charity will act as the main contact and represent all charitable beneficiaries thereby cutting down the number of letters both written and received, and inevitably speeding up the process. The Lead Charity is usually the charitable beneficiary first named in the will. Alternatively, it can be the largest charity or charity most greatly benefiting from the estate. Many national charities have specialist legacy officers and are willing to act as Lead Charity to help smaller charities like churches.

Please note that if a lead charity manages estate administration, it is still appropriate to respond to the executor to offer your condolences, prayers and appreciation of both their time and the gift received.

Record Keeping

It is important to keep all letters, photocopies and papers relating to each legacy together in a file in chronological sequence.

If you receive a residuary legacy, you are strongly advised to keep a diary sheet on which you can make a log of all actions, correspondence and phone calls received.

Introduction to the Executors Role

What is an Executor?

An Executor is the person appointed by the testator (person who makes a will) to administer the estate and carry out the terms of the will. Being an executor isn't easy, the role can be demanding but it can also be rewarding. Although it is an upsetting time, administering an estate will resolve all outstanding issues – leaving space and peace for those left behind.

Professional Executors such as Solicitors or Banks are paid for their service and their legal fees will be deducted from the deceased's estate.

Lay Executors are non-professionals and therefore may have little knowledge of how to administer an estate. However, through their voluntary time and effort little or no legal fees are deducted from the deceased's estate.

Please be aware that a lay executor could have a full-time job, family responsibilities and often themselves be mourning the loss of the benefactor. Therefore, please be sympathetic and patient in such circumstances.

We also encourage the MAC to pray for the executor and the important work they have generously undertaken in administering the estate.

Guidance is available for Lay Executors: Where a will contains a Legacy to a Church

Establishing the Testator's Connection

The MAC may not know or remember who their generous benefactor is, but that's not always what is important – what is important is that they remembered you!

The executors may be able to shine some light on the testator's connection with the church. It can be a good idea to ask your Church Committee and congregation if anyone knew the testator. If not, check past records of your electoral roll, the visitor's book, baptisms and weddings, funerals taken and/or gravestones in the churchyard with the same family name.

MAC's Response to Notification

Notification of a Legacy

The executor will notify the church of the death and that it benefits under the will of the deceased at the start of the estate administration.

The executor usually includes the following in their introductory letter:

- The deceased's name and address.
- The deceased's date of death.
- Confirmation that the church benefits under the will of the deceased.
- Date when they expect to have Probate granted.
- Clarification of Charitable Status.

As soon as you are notified, write to the executors including the following:

- Expressing the church's condolences, prayers and appreciation of the gift.
- Include up-to date contact details of the MAC Treasurer and/or Incumbent.
- Provide your bank details if you wish to receive direct payment.
- Confirm Charity Status and Registered Charity Number (if applicable).
- Request a photocopy of the will/ part of the will and any codicils.

Once you have received notification of a legacy, you may wish to bring the MAC together to prayerfully consider the differing possibilities for the legacy.

Copy of the Will

Until Probate has been granted, a will is confidential which the MAC must acknowledge and respect. After the Grant of Probate, a will becomes a public document. To ensure that the church receives the full amount due, please check the will carefully to ensure that it appears to be valid. Check that the will and codicils have been properly signed and witnessed by two independent persons who are not beneficiaries, both present at the time of signing. Codicils need to refer to the original will and its date and have two witnesses. Executors can be (and often are) beneficiaries.

Once you have received a copy of the will, you can identify:

1. The type of legacy the church will receive (residuary, pecuniary, specific).
2. If there are any restrictions on the gift for a particular use or fund.

3. That the named details are correct (name, address, charity number, diocese).
4. If there are any other charitable beneficiaries named.

Check the Details are Correct

St Mary's and St Mary's

If there is any ambiguity over the naming of the church as the intended beneficiary, the executors may ask you to produce some evidence of the testator's connection to the church. It can be a good idea to ask your MAC and congregation if anyone knew the testator. If not, check past records of your electoral roll, the visitor's book, baptisms and weddings, funerals taken and/or gravestones in the churchyard with the same family name.

The standard wording for a legacy clause asks for the name of the church, address, registered charity number (if applicable) and name of diocese to avoid ambiguity. When you receive a copy of the will, it is important to check that these details are correct.

Proper Receiving Body

The Mission Area Conference is the preferred recipient of any legacy gift. Previously common variants include the vicar and churchwardens (V&C). This practice dates back to the days before PCC's and MAC's existed; now MAC's are the legal trustees of Church funds

A Registered Charity Number

All MAC's hold charitable status but some are currently excepted from registration with the Charity Commission, apart from those whose annual income exceeds £100,000. Those will be registered and have individual Charity Numbers. It is important to provide the executor with your registered charity number if you have one OR confirm that you do not have a registered charity number but do hold charitable status.

Unrestricted and Restricted Legacies

Establishing the Testator's Interests

Many MAC's have a Legacy Policy on how potential legacy income will be spent. Since needs change over the years, many MAC's encourage gifts to be left for the general purposes of the Church rather than a restricted purpose.

Unrestricted Legacy: Most legacies to churches do not contain any restrictions on how the MAC can spend the gift. Depending on the testator's connection with the church, you may want to discuss possible uses with the executor and, if appropriate family members.

Ask the executor if the donor had expressed any non-binding preferences about how the gift might be spent, or whether it would be particularly appropriate to remember the testator's connection in some way based on the deceased's known areas of interest in the church and the church's priorities at the time. For example, if the testator was involved in the musical ministry of the church, and new choir robes or hymnbooks were currently needed.

Letter of Wishes: A Letter of Wishes may have been included alongside the will. The expressed wishes do not legally bind the MAC; however, they should be met where feasible. Again, speak with the executor about the best way to use the gift to honour the deceased's wishes and meet the church's current funding priorities.

Restricted Legacy: If the gift is restricted, the MAC will need to ensure that the gift can be used in line with the restriction. If it cannot meet the specific charitable intention outlined in the will, you should approach the executor to discuss how the terms of the gift could be changed, so that the gift can be used for broadly similar purposes.

For example, a legacy may be restricted to 'repairing the tower' but, the church repaired the tower 5 years prior and it will not need repairing for another 100 years. However, the church is currently raising funds to repair the roof and might suggest that the terms of the gift are broadened to 'repairing the roof', a similar purpose to the testator's original intention.

Charity Schemes: If the executor and MAC cannot reach an agreement, the MAC may apply to the Charity Commission for a "scheme" to reapply the legacy funds. For more information, please click here http://www.parishresources.org.uk/wpcontent/uploads/restrictedfunds.pdf

Receiving a Pecuniary Legacy

Legacies of a fixed amount (pecuniary legacies)

If the legacy is a specified lump sum or a specific item, you simply need a photocopy of that part of the will, which states your benefit.

Pecuniary legacies tend to be paid by the executors within a few months of the death. The executor will usually send a cheque (made out to the Mission Area Conference) or bank transfer for the correct amount, with a covering letter confirming the deceased's name, address and any other helpful information.

Receiving less than expected on a pecuniary legacy

It is possible that the testator has spent most of their wealth before death (e.g. on nursing home fees), and the estate may not be large enough to pay all the beneficiaries. The estate is then abated, and any pecuniary legacies reduced in proportion to the available estate. In such circumstances kindly ask the executor for a schedule of assets and liabilities and estate accounts, and do not approve them until you have checked them carefully against the will and codicils.

In Remembrance and Receiving Payment

Please see the Receiving Payment section to view the final stages of receiving payment from a pecuniary legacy and remembering the testator and their generous gift.

Receiving a Residuary Legacy

Legacies of a share of what is left (residuary legacies)

Residue is that which remains after all the testamentary debts, tax due, pecuniary legacies and administration costs have been paid. Residual legacies can take several months or years for complete payment, as the estate may take some time to administer and wind up.

Charity residuary beneficiaries are required by the Charity Commission to ask the executor for certain basic estate documents and for more detailed information in due course as the administration unfolds.

These will include:

- **A Photocopy of the Will** with your first letter, if possible.
- **A Copy of the Schedule of Assets and Liabilities.** These include real estate, shares, valuable antiques, art and jewellery.
- **Valuations of Significant Assets** – such as property or land.
- **Estate Accounts** – these are a requirement under law for any beneficiary who requests them.
- **Tax Deduction Certificates**

As the administration proceeds, the executor should inform you of any significant problems such as claims on the estate, unforeseen or relatively large costs, any possibly litigious or contentious disputes, or any simple requests by the family which are not covered by the will but could quickly be dealt with.

If you have not heard anything within what is considered to be a reasonable period, you may wish to enquire on how matters are progressing. Ensure this does not come across as hastening matters or putting pressure on the executor, but rather to receive reassurance that everything is moving along satisfactorily.

Assets and Liabilities

If you are the recipient of a residuary legacy, it is the MAC's responsibility to ensure that the value of the residuary estate is maximised. You need to examine two areas: Assets and Liabilities.

Assets

The main assets are likely to be property, investments and savings. You should ask for independent valuations of significant items (e.g. property or valuable possessions) and if there is any doubt, ask for two independent valuations.

Property: If there are significant property assets, which are not to be sold immediately, you should check that the executors are insuring and maintaining the property adequately and ask for evidence if necessary.

Stocks and Shares: If there are significant holdings of stocks and shares in the estate, the executors may have to pay Capital Gains Tax (CGT) on any rise in value since the death of the testator. This can reduce the value of the estate. The executors can appropriate the relevant proportion of the stocks or shares to the charitable beneficiaries, including the church. As the MAC is a charity, it does not pay CGT.

Possessions: It often happens that the benefactor has not left any specific instructions about the disposal of household items such as furniture, photographs and jewellery. Most charities have a policy agreeing that items of sentimental value may pass directly to close relatives and friends providing that the executor approves. However, any individual items thought to be worth more than £100 should be independently valued and offered to relatives who are interested at that valuation.

Liabilities

Any estate has a number of liabilities. To arrive at the residuary value of the estate, and certain items reduce the gross value of the sum of the assets.

- Funeral expenses, death certificates and related fees.
- Debts, mortgages and outstanding bills owed at the time of death.
- Taxes on Inheritance, Income and Capital Gains.
- Professional Fees.
- Legacies itemised in the will.

You can find details of the liabilities in the schedule of assets and liabilities, and in the final estate accounts. The duty of the MAC is to try and ensure that the value of the liabilities is minimised, to maximise the residual value. However, you should only challenge liabilities that appear to be significantly excessive or unreasonable.

Ex-Gratia Payments
Charities can be approached with requests to agree a payment to someone benefiting under the will of a deceased. There may appear to be a very good moral reason why the payment (known as an 'ex gratia' payment) should be made. However, it is important to recognise that as a charity, the MAC does not have the same freedom and discretion as a private individual to give away part of its legal entitlement.

As a residuary beneficiary, the MAC can only lawfully apply its funds for charitable (i.e. Christian Ecclesiastical) purposes. If after due consideration of the specific case by the MAC, they feel they would be acting immorally by not making the ex-gratia payment, despite the Church not benefiting, you can apply to the Charity Commission, who will decide on the merits of the case. Please download and read the Charity Commission's booklet CC7 Ex Gratia Payments by Charities.

Professional Fees
Professional executors are allowed to charge reasonable professional fees for their services. Most solicitors charge between 2.5% and 4.0% for the gross value of the estate (plus VAT and expenses), and the proportion may be higher for small or more complex estates. Banks tend to charge around 5%. If you believe the fees to be excessive, ask for an explanation. Lay executors are only allowed to charge for out-of-pocket expenses (e.g. travel, postage, legal fees), but not their time.

Estate Accounts
Executors must provide on request to residuary beneficiaries (charitable and noncharitable) a set of estate accounts at the end of the administration; professional estate administrators do so as a matter of course. The Charity Commission requires charities which benefit from residue to ask for estate accounts. This is not for them
to question the probity of the administration but to clarify that there is no outstanding matter that would create a liability on charity trustees. For the clearest arrangement, accounts should compromise the following:

- The capital asset and liabilities at the date of death
- An expenditure account, to include:
    - Any Inheritance Tax, administration expenses and pecuniary legacies
- An income account, details of payments since death (ideally by tax year)

    - Interest, dividends, rents paid
- A distribution account, i.e. how the estate has passed to all beneficiaries

Estate accounts should be sent to the residuary beneficiaries for their approval.

Other Types of Legacies Received

Capital Endowments

Sometimes legacies set up capital endowments, from which only income can be drawn.

Life interest Legacies

A life interest legacy (also known as reversionary interest or interest in remainder) occurs when a legacy to the MAC (the remainder) is subject to the interest of one or more individuals (life tenants). The MAC may not receive the legacy money until many years after the original testator's death. As well as properties, such trusts may include investment portfolios and other assets.

Life Tenant: It is important that the MAC maintains contact with the executors whilst the life tenancy exists, particularly if the legacy for the church is more than £30,000. If not already known, enquire the age of the life tenant. If the tenant is financially unable to maintain the property or asset, the MAC may offer to financially help to
ensure its long-term interests are reasonably protected.

In the case of a property, you should try to establish:

- Whether it is registered with the Land Registry.
- Where the deeds (if any) are stored.
- Whether it is freehold or leasehold.
- Who is responsible for the buildings insurance and the cover provided.
- Who is responsible for building maintenance and how is it funded.
- Whether the life tenant actually resides at the property.

In the case of an investment portfolio, you should try to establish:

- Details of the investments and their values at death.
- Whether the portfolio is actively managed, and if so by whom.
- If professional investment managers are used.
- The trustee's actual powers over capital and income.

Tax Matters

Inheritance Tax (IHT)

Inheritance Tax (IHT) is a tax on a person's estate that is left behind after he or she has died. The estate includes money, property and possessions. IHT is therefore a tax on the transfer of assets from one individual to another. IHT is only owed if the value of the deceased's estate exceeds the Inheritance Tax Threshold (£325,000 in 2018 tax year), when he or she dies. The Executor or Personal Representative
usually pays the tax from the deceased's estate within 6 months after the death.

Gifts left to charities (also referred to as legacies) are exempt from IHT. All Charities have an HM Revenue and Customs (HMRC) charity reference number. This exempts them from paying tax on any gifts they receive. Legacies left to the Church in Wales's churches are also exempt from IHT as all MAC's are charities.

Capital Gains Tax (CGT)

Gifts to charities are exempt from Capital Gains Tax (CGT). To secure the exemption, executors can appropriate the assets into the name of the charity, and then sell the assets as "bare trustee" on behalf of the charity.

Appropriating is simply a note on the estate file that the executors have appropriated the assets and are now holding them as agents of the charity. For appropriation of land (as opposed to stocks or shares) a Declaration of Trust may be required, and appropriation must be carried out before exchange of contracts.

Variations

A Deed of Variation can vary the will where it is in the interests of all affected beneficiaries. The most common reason is that the will is poorly structured for tax. A Deed of Variation can be entered into once all the beneficiaries have agreed; however, if an affected beneficiary is a minor, a Deed of Variation cannot be used.

In Remembrance

Some legacies will specify anonymity; of the gift, the giver or sometimes both. However, many are happy for their generosity to be known and most importantly celebrated. For many people leaving a gift in their will is a final opportunity to make a lasting gift to God. It is also a way to make a difference to the future of their church and community.

The MAC should discuss the best way to honour the gift received. Each church is different; some churches have a Book of Remembrance, whilst others are able to erect more permanent memorials such as plaques, plant trees or engrave candles.

The MAC may wish to hold a special service in memory of the deceased, which the executor and family are invited to. If the MAC hold a thanksgiving or remembrance service, it may be appropriate to celebrate the gift then.

Keep in Touch

If the legacy is used to fund a specific project or role or if the church plans to hold a memorial/thanksgiving/remembrance service, why not invite the executor and family (if appropriate) to a celebratory service?

Continue to pray for the deceased, the family of the deceased and the executor. As a named beneficiary, the church should be truly grateful, not only to the deceased, by whose generosity their work can continue to grow God's Kingdom, but also to the executor, by whose time and effort the deceased's generosity may take effect.

Legacy Prayer

"Lord of the living and dead, we thank you for all those who have walked before us in the way of Christ; those who have shared their faith and love with us, and those who have been generous benefactors of the church, nation and world, by the way they have lived, and the inheritance they have left to us who come after.

May we, with them come to share the joy of your heavenly banquet and the blessings of life. Amen."

Receiving Payment

Receipt of Payment

A cheque will be made out to the Mission Area Conference of the Church and/or a BACS transfer to the Mission Area Conference Bank Account. The executor should already have received your preferred method (when responding to the notification of the legacy) however if requested again, please provide in a timely manner.

Please ensure that you provide a receipt of payment including the date, payee and payer's details, the amount received and signature of Vicar and/or Treasurer.

Thank you

It is appropriate to write to the executor and personally thank him/her for their services provided. The MAC should fully appreciate the time and effort professional and non-professional executors give to administer the estate.

Indemnified Payment

Once paid, the executor may ask the MAC to indemnify them against future claims on the estate (unknown liabilities come to light, or someone contests the will).

Resist such pressures by crossing out such requests on any receipts the executors provide you with. If they refuse to pay unless indemnified, add a restriction, which limits the MAC's liability to the value of the legacy paid, and to its fair share within the entire estate.

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