

## Wills, Trusts and Probate Briefings

# What to do when a relative dies and being an executor

### First steps

The first step is to contact the family doctor (or the doctor who was looking after the deceased). In most cases, the family doctor will be able to issue a medical certificate showing the cause of death and a notice explaining what you need to do to register it. The doctor will let you know if a post mortem is needed to clarify the cause of death, or if the case needs to be referred to the coroner.

At the same time, you will probably want to contact:

- Immediate family members
- The deceased's employer or business partners (if any)
- Any relevant religious minister
- Any funeral director you plan to use
- The executors named in the will, if any

If you cannot find a will, or think that a more recent will might exist than the one you have, you should contact anyone who might have it in safekeeping (if it exists), such as the deceased's solicitor or bank.

### Registering the death

The death should be registered with the Registrar of Births, Marriages and Deaths as soon as possible. Normally the death must be registered within five days, by a relative of the deceased. The death must be registered at the register office for the area where the death occurred, but you can do this through another register office (which will forward the information) if you prefer.

You should contact the Registrar in advance to make an appointment. You will need the medical certificate provided by the doctor and will also need to provide the following information:

- Name of the deceased (including maiden name for a woman who married)
- Address
- Occupation
- Date and place of death
- Date and place of birth
- Name, date of birth and occupation of any spouse or civil partner; name and occupation of any deceased spouse (or civil partner)
- Whether the deceased was receiving a public pension

It may help if you take the deceased's NHS medical card, birth certificate and any certificate of marriage (or civil partnership).

The Registrar will give you a certificate allowing the body to be buried or cremated, and a certificate for you to use to sort out social security issues (eg if the deceased was receiving a state pension or other benefits). You will not automatically be given a death certificate, but may well want to purchase one (plus additional copies) for a small fee as these are likely to be needed to sort out the deceased's financial affairs.

Different procedures may apply if the coroner has been involved and for stillborn babies. If the death occurred overseas, you should contact the local British Consul for advice.

### Funeral arrangements

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Funeral arrangements are typically made by the nearest relative (or someone acting on their behalf), or by the executors dealing with the deceased's estate. You should check the will (if any) to see whether the deceased left any instructions - though these are not binding. You should also check through any other paperwork to see whether the deceased had made any arrangements for dealing with funeral expenses (eg a pre-paid funeral plan).

Considerations include:

- Where and when the funeral will take place
- Whether the deceased will be cremated (and what will be done with the ashes) or buried (a local burial space may not be available unless the deceased made prior arrangements)
- What form of religious service (if any) to hold
- Whether to have flowers (or ask for donations to a charity instead), and how any flowers should be disposed of (eg given to a local hospice)

Most people choose to use a funeral director to handle the funeral arrangements. Although you cannot finalise the funeral arrangements until the death has been registered, you may want to contact a funeral director as soon as possible. They can take care of the body prior to the funeral, and make provisional bookings for any facilities needed (eg the crematorium). If you plan a religious service you may also need to liaise with the relevant minister.

Make sure you know how the funeral costs will be paid. Whoever arranges the funeral is responsible for paying the bills. Although the costs can generally be reclaimed from the deceased's estate, you may not be able to get money released (eg from the deceased's bank) until probate has been granted (see below). A reputable funeral director should provide an estimate of costs on request.

Finally, you will want to contact friends and family, to let them know and invite them to the funeral (if wished). As well as checking through any address books and contact lists, it may help to contact one or two individuals from key groups of friends (work colleagues, members of different social groups, etc) and family and asking them to spread the word.

### **Who takes responsibility?**

If the deceased left a will, it is likely to name one or more executors. These executors would normally take responsibility for sorting out the deceased's financial affairs, provided they are willing and capable. This includes collecting in all the assets that are part of the deceased's "estate", paying any debts (including any inheritance tax) and distributing the remainder in accordance with the terms of the will.

Although the executors are jointly responsible, it is normal practice to agree that one individual will take a leading role. The executors may also decide to appoint a solicitor to give them advice and handle the paperwork involved - particularly if inheritance tax is payable.

If the will does not name any executors, or none of the named individuals agrees to act as the executor, then a relative can administer the estate. If the relatives cannot agree among themselves who should take this role, priority is usually given to the closest adult relative or primary beneficiary - starting with the spouse (or registered civil partner).

### **Assessing the finances**

Unless the deceased's estate was small and straightforward, dealing with the finances can be a complicated and drawn out process. You normally need to satisfy the tax authorities and get authorisation from the Probate Registry before you can take control of the estate. To start with, you need to identify all the different financial affairs that need to be dealt with.

1. Contact the deceased's bank(s) as soon as possible. They can freeze any bank accounts and will also be able to provide you with a list of any direct debits or standing orders related to the account. (You can also check through past bank statements.)
2. Make sure you have a supply of copies of the death certificate. Almost everyone you deal with will want to see a copy of the

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death certificate; in most cases, this will need to be an official copy (provided by the Registrar) rather than a photocopy.

3. Decide what help you want. Most people use a solicitor, either to handle as much of the paperwork as possible or at least to deal with inheritance tax. If you are dealing with the estate yourself, you may want to take advice on exactly what your duties are and how to go about it. If the deceased left a will, it will normally state that executors' costs (including professional fees) will be met by the estate.

4. Check through any paperwork to help identify organisations you need to contact. These may include:

- financial institutions - banks, building societies, investment managers, life insurance companies, registrars named on any share certificates
- any sources of income - eg employer, pension provider, social security office, any trust of which the deceased was a beneficiary
- HM Revenue and Customs (for income tax and National Insurance)
- insurers - eg car, home and any life insurance policies
- suppliers and landlord - eg utilities (phone, power etc) and rent
- loans and credit - credit cards, Hire Purchase agreements etc
- business financial contacts - if the deceased was self-employed

5. Consider advertising for unknown creditors or beneficiaries. You may want to advertise the death locally and in the London Gazette, giving unidentified creditors and beneficiaries two months to make themselves known. This protects the executors against future claims.

6. Start building a file to keep track of what needs to be done about each different organisation.

- Some organisations may want you to provide a copy of the grant of probate before releasing money or other assets.
- Some banks and building societies may be willing to release funds for specific purposes. For example, it may be possible to have payments made towards funeral expenses, probate registry fees and inheritance tax liabilities.
- Banks and building societies may also release relatively small amounts (eg up to £5,000), particularly where the total value of the estate is small. The executor may need to produce a statutory declaration, or to sign an indemnity (guaranteeing to repay the money if it turns out to have been paid out wrongly).
- Normally, any money in a joint account automatically passes to the other account holder, who can access it immediately. The deceased's share may still be liable to inheritance tax.
- Control of other joint property (eg a house) passes automatically to the joint owner only if the property was owned as "joint tenants" - otherwise, the deceased's share must be dealt with by the executors just like other assets. In either case, the deceased's share may be liable to inheritance tax.
- Payments from pension schemes and life insurance policies will depend on the individual circumstances. For example, some pension schemes (and life insurance policies written in trust) may just need to see the death certificate before paying death benefits or a spouse's pension; others may not pay out until probate has been granted.
- Creditors will want payment, but may be prepared to wait. If funds are available, the simplest course may be to pay them immediately, provided that the executors are sure that the estate will have sufficient funds to pay all the creditors.
- Someone else may need to take responsibility for continuing bills: for example, where the spouse continues to live in the house and becomes responsible for utility bills etc.

7. You will probably want to open a new bank account to handle all the money relating to the estate. This helps you keep the estate finances separate from your own personal affairs and maintain a record of everything.

8. Monitor the post and keep following up.

- You may need to return any payments received (eg social security or pension payments), explaining what the situation is.
- You may identify new assets or debts that need to be dealt with.

### Dealing with inheritance tax

Once you have got to grips with the finances, you should be in a position to deal with inheritance tax (IHT).

The first step is to value the estate. Different assets may need to be valued in different ways:

- Valuing bank accounts etc is straightforward - eg the balance on the account.
- Most financial assets such as shares are easy to value - for example, number of shares multiplied by their closing price on the day of the death. If investments were held with an investment manager (eg in an ISA), the manager can normally provide a valuation, though some may charge a valuation fee.
- You can normally estimate the value of personal and household goods, though you may want to get a professional valuation for assets worth more than a few hundred pounds. The valuation should be based on the sale value of the assets (which may be substantially lower than their insurance value).
- You would normally get a professional valuation of any substantial asset (eg a house) - if you choose to estimate the value yourself, you must take reasonable steps to get an accurate valuation. Again, the valuation should be an open market sale value.
- Gifts or payments into trust made during the seven years prior to the death may also need to be included in the value of the deceased's estate, unless they are covered by an exemption (see our guide to Inheritance tax planning). The recipient of the gift is liable for the tax due.
- You can deduct the value of any legally-enforceable debts (eg mortgage, outstanding bills) owed by the estate, and the funeral expenses, from the total value of the assets.

All valuations should be the values at the date of death. (If assets are subsequently sold by the executors for less than the value on which IHT was calculated, you may be able to claim a reduction in the IHT payable.)

Once the estate has been valued, you need to submit the appropriate forms to HM Revenue & Customs (HMRC). You should normally do this within twelve months from the end of the month in which the death occurred - otherwise a penalty may be payable.

IHT will only be payable if the value of the estate is over the IHT threshold (£312,000 in 2008/9 rising to £350,000 in 2010/11). If the deceased was pre-deceased by a spouse (or registered civil partner), this threshold may be increased if the full value of their IHT allowance was not used up when they died.

If IHT is payable, it becomes due six months from the end of the month in which the death occurred. Interest is generally charged on any outstanding balance from that date. However, the IHT due on houses, land and some other assets can be paid in instalments over 10 years (plus interest). The full amount of IHT becomes immediately payable if the asset is sold.

Until HMRC is satisfied in relation to IHT (eg the IHT - excluding any instalments that have been agreed - has been paid), the executors cannot obtain probate. This means that the executors will not be able to sell off assets such as a house and distribute the estate to the beneficiaries. In some cases, this may mean that the executors need to arrange a loan in order to meet the immediate IHT liability before being able to access the remaining assets.

### Getting probate

Unless the estate is small, you will normally need to apply to the Probate Registry for a grant of representation. This gives you the legal authority to deal with the estate, and will be accepted by organisations such as banks as proof that you have the authority to collect money and other assets.

Normally, one or more of the executors named in the will applies for the grant of representation (known in this case as probate). Otherwise, a relative can apply for "letters of administration". (See the section above on who takes responsibility.)

Where the executors are applying for probate, they can decide whether they all wish to do so jointly:

- If several executors apply together, all of them will need to sign documents to deal with assets and they will all need to attend any interview needed (see below).
- The executors can agree that only some of them will apply - and deal with the estate - while the others reserve the right to apply later if necessary.
- Individual executors can choose to renounce their rights to probate altogether (and have no more to do with the administration of the estate).
- Normally, a single individual can apply for the grant of representation, though at least two are needed in some circumstances (eg when children under the age of 18 will inherit part of the estate). The maximum number is four.

Applying for the grant requires completing the appropriate form and sending it with the will, death certificate, inheritance tax paperwork and a small fee. You will then normally be given an appointment for an interview, where you will be asked to clarify any queries and to swear that the information you have given is true.

### **Distributing the estate**

The executors (or personal representatives with letters of administration) have the authority to deal with the estate. Typically, this involves:

- Collecting money and assets
- Selling assets (unless the assets themselves are being passed on to beneficiaries)
- Paying debts and taxes
- Distributing the estate

The executors should ensure that they pay any debts and taxes before distributing the estate. A negligent executor could become personally liable for unpaid debts and taxes.

The executors must distribute the estate in accordance with the terms of the will. If there is no will, the estate is distributed according to the rules of intestacy. The shares depend on the amount of the estate, whether the deceased was married (or in a civil partnership) and whether there were any children.

If all the beneficiaries agree, the terms of a will (or intestacy) can be varied for up to two years following the death. This may have advantages (eg reducing likely tax liabilities) but legal advice should be taken.

The executors should keep clear records of what they have done, so that they can answer any future questions or challenges over their administration of the estate.