

HEWITSONS

WHEN SOMEONE DIES



A "To Do" checklist and what happens in an Administration of an Estate

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Introduction

The death of a relation or close friend presents a new set of practical problems at a time when the family may be least able to cope. This leaflet is written to provide guidance to those who will be involved in the period after someone dies, whether they are appointed as Executors under a Will or just close family who may be involved in organising a funeral. The guide is not meant to be comprehensive, but we hope it will outline the processes involved, help to remove some of the mystery and explain the jargon used in this area. We hope you find it useful and you may wish to keep it to refer to during the administration period. A "To Do" Checklist is printed at the back of this leaflet to take you through the initial steps. One of the most immediate questions to face is whether there is to be a cremation or a burial. The deceased person may have expressed a preference in their Will - some people, in fact, leave quite detailed funeral arrangements in their Wills. If you contact the family's solicitor (who probably has the Will in safe-keeping), they will be able to advise. If you find a Will or a copy amongst the papers, make sure it is delivered to the solicitors as soon as possible.

1. Registration of Death

It is usually best to telephone the Registry of Births, Deaths and Marriages for the area in which the person died to make an appointment. The death should be registered within five days unless there are special circumstances and the Registrar says this period can be exceeded. Only the next of kin are entitled to register the death (or, if they are unable, the person organising the funeral may do so). Certain information about the deceased will be required, including their full name, date and place of birth, occupation and, if appropriate, their maiden name and the name of any surviving spouse. You should obtain sufficient copies of the death certificate for registration with each institution needing to be notified e.g. each bank, building society, insurance company etc. Death certificates are now copyright and photocopies cannot be used.



2. Funeral Arrangements

Once the death certificate has been obtained, the next important decision is the appointment of a Funeral Director who will take the body to a chapel of rest and make the funeral arrangements. The National Association of Funeral Directors (NAFD), which regulates almost two-thirds of the UK's funeral directors, provides a code of conduct, lists of accredited members and advice. Make sure that you know what will be included in the Funeral Director's basic costs. There will probably also be additional fees, including those paid for cremation certificates, newspaper notices, crematorium or burial charges, fees paid to the vicar, organist and the church and, maybe, the cost of an urn for storing cremated remains, and the cost of erecting a memorial, such as a headstone, or an entry in a Book of Remembrance. See "Other useful material and agencies" at the back of the leaflet for more help in these initial stages.

3. Security of Property

So far as the deceased's affairs are concerned, there is usually nothing which needs urgent attention (unless household deliveries to be cancelled). However, if the deceased lived alone, the house insurers should be notified immediately to preserve insurance cover in the event of a burglary or damage to the property while it stands empty. Insurers usually specify certain requirements for cover to be maintained (e.g. frequent visits to the property/water to be turned off at the mains etc.). Any known "portable" valuables would best be removed to a safe place. Care should be taken over death notices in local papers. Thieves are alert to the advertising of empty properties and have been known to strike while the funeral is actually taking place. If there is a trusted neighbour who can have a key and keep an eye on the property, that is always advisable. Motor vehicles owned by the deceased must not be driven unless they are covered by their own insurance.

The present insurers of the vehicles will need to be notified of the changed circumstances and if the vehicles are transferred or disposed of, there may well be a refund of part of the premium to the estate. If the deceased owned firearms of any kind, they need to be kept under the conditions of a firearms/shotgun licence which may mean removing them to premises where there is a licence holder. The local police will advise.

4. Administration of the Estate

What follows is not intended to be an exhaustive account of all that can occur during the administration. It is a guide to the major areas, some of which will need consideration in all estates.

4.1 The Executors or Administrators

If there is a Will, there will normally be Executors appointed by the Will. It is their job to submit the Will for probate (see 4.2) and deal with the estate. "Estate" is usually meant to represent the assets and debts of the deceased. If they are lay people rather than professionals, they will be unpaid (although they may benefit under the Will and be reimbursed for out of pocket expenses) and sometimes it is a time consuming and onerous responsibility. Very often solicitors will be appointed to act on their behalf. If there is no Will, the deceased is sometimes referred to as an "intestate" and Administrators will be appointed. Who they are is usually defined by which relatives survive, but we can offer advice on who those should be. The process of administering the estate is thereafter usually similar to one where there is a Will. Unfortunately an intestacy will often mean delays and difficulties in an administration and because of this, very often, additional costs. Both Executors and Administrators are sometimes called "Personal Representatives" and for ease of reference in this publication they will all be referred to as Executors.

4.2 The Grant of Probate

This is the process of "proving" the Will to be "the last Will and testament" of the deceased. Details of their assets (including jointly owned and foreign assets) need to be collected, as well as details of any debts, before the grant can be obtained. Sometimes an account of these is needed for HM Revenue and Customs. This is quite different from the annual tax return and is best prepared by professionals. They will ensure that only the correct amount of tax is paid by applying the correct exemptions or perhaps suggesting a deed of variation (see 4.6). If there is no Will then the process is known as obtaining Letters of Administration. Both grants of probate and letters of administration are dealt with by the probate registry and there is a court fee to be paid to get the grant. You should be aware that once it has been submitted for probate, the Will (together with figures for the value of the gross and net estate) becomes a public document and anyone can obtain a copy from public records on payment of a small fee.

You will sometimes see details of estates printed in the press and these are obtained from those records. This cannot be prevented, as it is simply a function of the Will becoming a public document. The press are only likely to print details of very wealthy or well-known individuals or where there is something of particular interest.

Once the grant of probate/letters of administration has been obtained in the form of a court sealed document, this will be the Executor's authority to deal with the assets which may need to be sold or transferred to individuals or into a trust.

4.3 Duties and responsibilities of Executors

Some estates are quite straightforward to administer, but some will have special problems and some will prove very onerous and lengthy indeed. Executors will need to consider very carefully:

- Any gifts made during the lifetime of the deceased. Please note that these may involve transfers which are not confined to gifts of cash and can include such items as a transfer into a settlement. If in doubt please tell us about any transactions which may have a gift element. There is a strict duty on Executors and recipients of gifts to report these and other information required by the Inheritance Tax Office of HM Revenue and Customs (HMRC). Substantial penalties are now levied for late, inaccurate or misleading reports.
- Are there likely to be any claims from people not mentioned in the Will or from those not benefiting under an intestacy? Such claims or even potential claims are likely to greatly increase both the time and costs of the administration.
- Are there debts not obvious from the deceased's records? Executors will probably be well advised to place notices in the press asking for creditors to contact them. If there is a professional Executor, they will insist on this, so that the estate can be safely distributed.
- Obtaining proper valuations and satisfactory sale prices for assets. If there are substantial debts these may need to be paid in a strict order.

4.4 Inheritance Tax

If the net estate (all the assets less any debts) is above a certain limit, there may be inheritance tax to pay. If this is the death of a surviving spouse or civil partner then there may be a transferable exemption (or part) from the estate of the first spouse/partner to die. This may require some investigation to establish the exact exempt amount. Some of the tax will be payable immediately. On certain items such as land and unquoted private company shares, it may be payable in 10 annual instalments. We will advise you of the best ways of paying or raising the money for Inheritance Tax. If the estate is subject to Inheritance Tax you can expect the administration to be quite lengthy and more expensive to deal with. HMRC will be involved and their response time does vary depending on current resources. For example if a District Valuer is involved in agreeing the value of a property, it can be as much as a year before this aspect is settled. Some more difficult aspects such as farms or other businesses could take even longer. Some or all of the following will need to be dealt with:

- HMRC account.
- Obtaining professional valuations and negotiating values with the Inheritance Tax Office of HMRC and various valuers reporting to HMRC.
- Payment of any Inheritance Tax on lifetime gifts.
- Payment of Inheritance Tax and instalments in the estate (interest and penalties are payable if time limits are missed).
- A final statement (a follow up to the original account) and application for a Clearance Certificate or letter confirming all tax paid from HMRC.

4.5 Reducing the Tax Liabilities

During the administration other taxes such as Income Tax and Capital Gains Tax are still payable. There should also be a final tax return made up to the date of death. See Appendix 2. There are various exemptions and allowances which may reduce the tax and you should certainly have our professional help to apply these properly, e.g.

- Offset all funeral/memorial expenses
- Adjust values when property is sold
- Adjust values when shares are sold
- A refund of Income Tax for the year of death (and maybe previous years)
- Minimise capital gains by appointing to specific beneficiaries
- Deed of variation of the Will.

4.6 Deeds of Variation

These are worth a special mention:

In certain circumstances it may be appropriate to vary or “rewrite” the Will to redirect some or all of the assets to different beneficiaries - for example, to use individual Capital Gains Tax exemptions or to claim exemption from IHT for charitable legacies. This needs our specialist advice but can save very large amounts of Inheritance Tax for the next generation. The different possibilities offered by deeds of variations are too numerous to list here but, if appropriate, we will discuss these with you at an early stage in the administration.

4.7 Distributing the Estate

■ Personal Items

Often it will be appropriate for the immediate family to deal with these, but it will depend on the terms of the Will and normally the Executors must agree on any division or sale.

■ Legacies of Cash

These will be paid from estate funds, normally shortly after receipt of the grant. It is wise to obtain receipts and sometimes children’s legacies need to have trustees appointed.

■ Specific Items

If there are specific items mentioned in the Will, it will sometimes be necessary to obtain proper valuations. If there are significant costs of transferring these items to the beneficiaries, these may need to be paid by them individually and not by the estate.

■ Dividing The Residue

It will often be appropriate to make interim distributions to those entitled, for example following the sale of a property. The Executors must always ensure that sufficient money is retained to pay all the debts and expenses and not to make final distributions until all matters have been cleared.

4.8 Winding Up The Estate

Formal clearance may be needed for the following:

- HMRC for Income Tax and Capital Gains Tax
- The Inheritance Tax Office of the HMRC for Inheritance Tax in the estate and possibly lifetime gifts
- DWP/Benefits Agency
- Pension providers
- Foreign jurisdictions where there have been foreign assets
- Some beneficiaries and particularly charities will require full estate accounts.

In addition, some Wills produce trusts (or these may arise from deeds of variation) particularly for children and these must be considered at any early stage and set up properly at the close of an administration.

Appendix 1

Other useful material and agencies

We produce a range of other leaflets which are available to download from our website, in particular ‘Executorship’, ‘Deeds of Variation’ and ‘Inheritance Tax and Tax Planning - a Guide’.

“What to do after a death in England & Wales”

– Published by the Department of Work & Pensions (leaflet DWP011) <http://www.gov.uk>

“Planning for a funeral” and “Dealing with an Estate” both

published by Age UK (tel: 0800 169 6565) <http://www.ageuk.org.uk>

Cruse Bereavement Care

(tel: 0844 477 9400) <http://www.cruse.org.uk>

National Association of Funeral Directors

(tel: 0121 711 1343) <http://www.nafd.org.uk>

Appendix 2

Notes For Beneficiaries on Income Tax and Capital Gains Tax during the Administration

This note gives an outline of Income Tax and Capital Gains Tax so far as relevant in the administration of a deceased person's estate. It explains what the Executors must do and how it affects beneficiaries. This explanation relates to the beneficiaries who receive part of the residue of the estate and is not generally for a beneficiary who receives a legacy whether of cash or specific items.

■ The position up to the date of Death

When someone dies, generally an Income Tax return (or in certain cases a repayment claim) must be submitted by the Executors to HMRC. The return usually is for a part year, i.e. from the 6th April to the date of death. The Executors need to agree the deceased's Income and Capital Gains Tax affairs and obtain written confirmation of agreement from HMRC. They need to be sure that no further liability will arise once they have distributed the estate. For an estate which is subject to Inheritance Tax, the agreed liability or refund must be reported to HMRC as a liability or an asset to enable the final Inheritance Tax liability itself to be calculated.

■ Reporting Income for the Administration Period

For Income Tax the Executors may need to submit returns of income for the administration period.

■ Statement of Residuary Income

It should be noted that the Executors are liable each tax year (or part) for income arising in that year. They pay tax at whatever rate is applicable on the relevant income for the financial year. The position is more complicated for the beneficiary. The beneficiary is only treated as receiving income to the extent there has been a distribution to him during a financial year and the distribution need not be of that income. It can be a distribution of capital whether cash or the transfer of real property or the deceased's personal chattels (i.e. personal possessions).

■ Income Tax Certificates

These are produced on form R185EI. As explained, income in the estate is matched with any capital and income distributions and transfers of land or personal chattels as relevant. If no distribution is made in one year then income is treated as being paid out in the year in which a distribution is made.

The income is in effect grossed up and added to the top slice of the beneficiary's income, credit being given for Income Tax paid by the Executors in the estate. If the beneficiary is not a tax payer there is the possibility of a repayment claim in relation to Income Tax paid in the estate.

Under self-assessment a tax return must be submitted by the taxpayer prior to 31 October if the taxpayer wants HMRC to calculate his Income Tax liability. If a return is being submitted by a taxpayer who (whether professionally advised or not) is calculating his own Income Tax liability then the return must be submitted by 31 January after the end of the tax year in question or otherwise a £100 penalty is imposed by the HMRC.

We will endeavour to supply R185EI tax certificates to beneficiaries of deceased person's estates prior to 30 September each year. It should be noted that this sometimes is difficult depending on when the deceased person has died and how complicated the estate is. If a beneficiary wishes to submit a return of income before 30 October to enable the HMRC to calculate his tax liability he should contact us in advance so that the tax certificates can be despatched in good time.

■ Capital Gains Tax

The Executors are responsible for returning details of capital gains arising in the administration in the same way as income. The following should be noted:

The Executors have an annual allowance (the same as that for an individual) for the financial year in which death occurred and for the next two financial years if the estate is still under administration. If capital gains are made by the Executors in excess of the annual allowance they are liable to pay capital gains tax at the appropriate rate.

Capital losses incurred by Executors cannot be carried forward to the beneficiaries.

Hewitsons has a specialist Tax Compliance Department. We are able to complete and submit tax returns for individuals. We will generally complete the tax return up to the date of death of a deceased person. The Tax Compliance Department will deal with the submission of tax returns for the Executors' affairs.

Appendix 3

First Things First – A “To Do” Checklist

- Keep a list of names, addresses and telephone numbers of those who are going to be involved.
- Try to find the deceased's address book and ensure all close family and friends are informed of the death.
- Contact the Solicitor to find out if there are specific funeral wishes.
- Keep a note of any expenses such as death certificates, travelling and out of pocket expenses.
- Executors are entitled to be reimbursed for these.
- Decide on a burial or cremation ceremony and discuss funeral arrangements with close family.
- Appoint a Funeral Director. You will find most extremely helpful with a lot of practical details.

- Record death at Registrar's office and obtain copies of certificate.
- Instruct Funeral Director according to the family's wishes.
- Notify house insurers, if appropriate. Make regular checks of the property. If there is a car, retain the keys and notify the insurers.
- Executors should remove small valuable items to keep them safe.

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This document is written as an outline guide only and any action should not be based solely on the information given here. Appropriate professional advice should always be taken in specific instances.

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