

## Notes on the administration of a deceased person's estate

### Private Client Department

Please note that these notes are in no way intended to be exhaustive. Their purpose is to give clients some insight into the amount of work involved in the administration of an estate.

#### 1. Registering the death and arranging the funeral

The death of a person must be registered by the Registrar of Births and Deaths for the area in which it occurred.

When the next of kin goes to the Registrar the following should be taken:

- the Medical Certificate of the cause of death
- the deceased's Medical Card, if possible

The Registrar will need to know:

- the date and place of death
- the deceased's last usual address
- the deceased's first names and surname (and the maiden name where appropriate)
- the deceased's date and place of birth
- the deceased's occupation and the name and occupation of his/her spouse or civil partner (where appropriate)
- whether the deceased was getting a pension or allowance from Public Funds
- if the deceased was married, the date of birth of the surviving widow or widower

One of the forms that the Registrar will give the next of kin is the Certificate for burial or cremation (known as the green form) which gives permission for the body to be buried or cremated and is required by the Funeral Directors.

The next step is to determine whether or not the deceased made a Will since this

may include directions about the funeral arrangements.

The Funeral Directors will be able to assist with these arrangements.

When a person dies their assets are effectively frozen. However, Banks and Building Societies are willing to arrange for settlement of the funeral account out of funds which they are holding on behalf of the deceased prior to sight of the Grant of Representation.

If the deceased held a joint Bank or Building Society account with another person then normally the balance on this account will be transferred into the sole name of the surviving joint holder on production of the deceased's Death Certificate.

#### 2. Ascertaining the Estate

These notes are based on the assumption that the deceased has died leaving a Will. If the deceased has died without a Will then he or she is treated as having died intestate. The rules governing intestacies are dealt with briefly at the end of these notes.

However, the procedure for administering the estate is basically the same whether a person has died leaving a Will or intestate and therefore much of the information set out below is general to both situations.

In the Will the deceased will have appointed Executors. In many cases a professional Executor such as a partner in this firm will have been appointed. Where non-professional Executors have been appointed they will in most cases instruct a firm of solicitors to assist with the administration.

It is the job of the Executors to gather together details of the deceased's assets. If our firm has been instructed to act in the administration we will be able to assist and give guidance in this regard. We as the solicitors acting in the administration will be able to assist and give guidance in this regard. Once details of the assets

have been obtained the Executors will contact us to make an initial appointment to go through the assets in the estate.

We will need to obtain valuations of all of the deceased's assets as at the date of death.

In the case of the deceased's home it will be necessary to instruct a surveyor or alternatively three reputable independent local estate agents to provide a valuation unless there is a pending sale. Where the estate is taxable it will be necessary to arrange for a formal valuation of the deceased's personal possessions.

Many assets such as stocks and shares, Bank and Building Society accounts, life policies etc., can be valued precisely. Certain assets such as shares in a private company or a family business are more difficult to value. In the latter case there will be accountants who can be instructed to provide the necessary valuation which will have to be agreed subsequently with the Inland Revenue.

### **3. Inheritance Tax, Income Tax and Capital Gains Tax**

There is no Inheritance Tax on assets passing to the surviving spouse or civil partner or a registered charity.

Inheritance tax is chargeable on assets passing to any remaining beneficiaries where the value of these assets exceed the nil rate band for all individuals and the Residence nil rate band for spouses and civil partners.

The nil rate band for the tax year 2018/2019 amounts to £325,000. The Residence nil rate band amounts to £125,000 for spouses and civil partners for the tax year 2018/2019.

There are a number of conditions that need to be met in order to determine whether or not the Residence nil rate band will apply. We will provide advice on this aspect as appropriate.

Traditionally this tax free amount has been increased each year in the Chancellor's budget.

The deceased's estate consists of all assets held at the date of death but it also includes the value of any lifetime transfers made within seven years of his death. Lifetime transfers made more than seven

years prior to the deceased's death are ignored provided that the gift was made outright with no benefit at all having been reserved by the deceased. There is tapering relief for taxable transfers made more than three years prior to the deceased's death but within seven years of his/her death. However taper relief will only apply if the amount of the gift exceeds the amount of the deceased's available nil rate band.

If the estate is taxable then Inheritance Tax becomes due and payable six months after the date of death. Interest is chargeable on any unpaid tax as from this date.

Tax on the deceased's personal estate, in other words all assets apart from the deceased's land or private business interests is due on the application for the Grant of Representation.

Banks and building societies are generally prepared to advance the Inheritance Tax and Probate Court fees due on the application for the Grant of Representation provided there are sufficient funds in the account. In the case of quoted shares, these are increasingly held by stockbrokers on behalf of clients in the brokers' nominee names. This means that it may be possible to sell shares prior to probate, in particular, in order to raise funds to help pay Inheritance Tax. This is something that will need to be explored early in the administration.

While quoted shares remain unsold, their value may rise or fall depending on fluctuations in the stock market. Where shares are sold at a loss on their probate value within twelve months of the date of death then the Executors can in effect substitute the value of the shares at the date of sale for their value at the date of death and apply for a repayment of Inheritance Tax. The same relief is available for land sold at a loss on its probate value generally within four years of the date of death.

The tax due on the land or private business interest can be paid by ten annual instalments with interest being due on the outstanding tax.

In many cases the deceased's Income Tax affairs will not be up-to-date to date of death and it will be necessary for the deceased's accountants or for this firm to assist with preparing Income Tax returns.

In the case of most estates we will deal with preparation of the Income Tax returns which are needed for the period of the administration.

Where a beneficiary acquires assets such as shares under the terms of the Will then the acquisition value of such assets for Capital Gains Tax purposes will be their probate value.

If during the course of the administration the Executors dispose of assets resulting in a gain then Capital Gains Tax will be chargeable at the Trustee rate of 28%. There may be ways of mitigating this liability.

### **4. Applying for the Grant of Representation**

Once values have been obtained for the deceased's assets, the personal representatives may apply for the Grant of Representation. Where the deceased has left a Will his/her Executors will apply for a Grant of Probate. If the deceased has died intestate then an application is made for Letters of Administration.

We will prepare an Oath for Executors and the Inland Revenue account.

The Executors swear the Oath and the papers are then lodged with the Principal Probate Registry in London or one of the District Registries to obtain the Grant of Probate.

### **5. Administering the Will**

Once probate has been obtained we normally assist the Executors with collecting in the assets in the estate.

We will arrange for the closure of bank or building society accounts and where necessary arrange for the sale of shares and other securities.

In some cases, the beneficiaries under the Will may ask for an asset to be transferred to them rather than encashed. In particular, where an ISA holder dies on or after 3 December 2014 their surviving spouse or civil partner can inherit their ISA tax benefits. There is a time limit in which the claim must be made. We will assist with this.

In the case where the Executors are not the only residuary beneficiaries it is advisable for them to advertise for

creditors. There is a set procedure for placing the necessary advertisements.

Provided the Executors make no distribution in the estate for a period of at least two months from the date the advertisements appear, they will be protected against claims from creditors or beneficiaries of whom they have no notice.

Once we have assisted the Executors with collecting in funds in the estate we will arrange to pay any outstanding accounts which we are holding such as utility bills.

On occasion it may prove difficult to trace a beneficiary. In such a case there are specialist agencies that will assist.

In many estates where there is no surviving spouse it will be necessary to sell the deceased's house.

Once the house has been sold then the balance of the Inheritance Tax attributable to this asset becomes immediately payable.

Depending on the state of the property market it can take several months for a purchaser to be found and for the sale to proceed to a successful completion.

If for any reason the Executors are prevented from completing the administration and if they are holding sufficient funds they may elect to make an interim distribution to the residuary beneficiaries. The final distribution cannot be made until the administration of the estate has been completed.

Once the Executors are satisfied that all of the Inheritance Tax has been paid they will apply for a clearance certificate from the Revenue which is their confirmation that no further tax is due.

We, as the solicitors dealing with the administration of the estate, will then prepare administration accounts for approval by the Executors.

Once the Executors approve the accounts then we will be in a position to make the final distribution of funds to those entitled to the residue of the estate. We will send to the residuary beneficiaries a copy of the approved administration accounts.

The administration of the estate will then be complete.

## 6. Events which may delay the completion of the administration of the estate

It can take time for the Revenue to agree the valuations provided for a deceased person's interest in land or that person's private company shareholding or family business interests.

On rare occasions someone may contest the deceased's Will. This usually occurs where the person who is contesting the Will believes that the deceased lacked the necessary mental capacity when they made the Will or they believe that the Will was made under duress. This form of dispute is usually resolved in the Courts.

Alternatively, a person may not wish to challenge the Will itself but may wish to challenge the fact that insufficient provision was made for him or her in the Will. In such a case an application can be made to the Courts for provision to be made for that person out of the deceased's estate. Most applicants are spouses, former spouses, a child of the deceased or someone who was being maintained financially by the deceased.

## 7. Intestacy

Where a person dies without making a Will, they are treated as having died intestate. There are statutory rules governing the division of that person's estate.

Under the intestacy rules only the surviving spouse and the deceased's remaining blood relatives may benefit.

The surviving spouse or, where there is no spouse, the nearest next of kin, provided they are adults have the power to apply for a Grant of Letters of Administration (the equivalent of a Grant of Probate where there is a Will) which empowers them to deal with assets of the intestate.

## 8. Bereavement Counselling

A bereavement will affect people in different ways. Anyone can contact Cruse Bereavement Care if they want to talk about themselves or someone they know who has been affected by a death.

For more information Cruse can be contacted on 0808 808 1677 [www.cruse.org.uk](http://www.cruse.org.uk).

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If clients wish to discuss any of the above please contact our Private Client Department (T: 020 8940 4051)

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**IMPORTANT: this information is intended to be a general statement of the law. No action should be taken in reliance on it without seeking specific legal advice.**

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