

## **Estate administration - what we do**

What do solicitors do when they are instructed to deal with the administration of the estate of someone who has died? This is a brief guide to what information we need when taking instructions and how we make sure that all necessary legal duties are carried out. It is naturally distressing to most people when a relative or close friend dies we try to ensure that legal instructions to deal with estates are carried out sensitively, sympathetically, with a minimum of fuss and maximum efficiency.

### **First We Take Instructions**

Usually at the first meeting we would take instructions as to what you would wish us to do in relation to obtaining the Grant of Probate and Grant of Letters of administration and dealing with the administration of the estate. It would be useful if you brought the following with you:

- The original Will (if kept at home by the deceased)
- The original death certificate (as issued by the Registrar of Birth and Deaths)

*Please note that it is a good idea to get extra copies of the death certificate when registering the death.*

The cost of this is £3.50 each if purchased at the time of registration but rises to £7.00 after registration. In the past it was the practice of many solicitors to photocopy and certify the original certified copy death certificate. This is no longer allowed and many financial institutions now insist on having original death certificates. For this reason it is probably advisable to have approximately five extra original death certificates. Obviously, if the deceased has all of his assets in one account with one institution then there is no need to obtain more than a couple of original death certificates.

- Any building society passbooks
- Details of any cheque account with a bank or building society including:
  - statements; - the last used cheque book (because unused cheques are sometimes asked to be returned); - any bank cards; and - any deposit account passbook
  - Any other credit card, charge card or store card and statements for the accounts
  - National Savings Bank passbooks
  - Premium Savings Bond certificates including the premium saving bondholder's card.
  - Savings certificates
  - Any pension or benefit books
  - Any rent book (if the deceased was in rented accommodation)
  - Details of buildings and contents insurance
  - Shares, stocks, gilts, unit trusts and investment certificates including:
- Any document showing that the certificates were held by a nominee; - any papers showing the CREST pin number for any of these investments; and - any contract note for any investments which have been sold

- Insurance Policy documents
- for any car and/or motorbike owned; - the deceased's driver's licence (which needs to be returned to the DVLC); - the insurance documents; - log book and MOT certificate - any extended guarantee certificate; and - any HP or loan documentation
- Any policy documents and correspondence of pension policies
- Any income tax, vouchers and certificates together with payslip for salary or pension receipts
- Copies of last bills for the house, for example utility bills, council tax, TV licence, telephone, mobile phone
- Copies of any contracts in relation to HP agreements, loan agreements, cable TV, catalogues or clubs
- Any other bills - Where the deceased was involved in a business or partnership:
  - details concerning loans made by the deceased to the business;
  - details concerning monies owed by the business to the deceased, for example a director's loan account (if the business was a limited company any share certificates);
  - details concerning any personal guarantees given by the deceased to assist the business; and
  - copies of the last two financial years' accounts
- The Title Deeds of any property owned by the deceased if kept at home together with any papers relating to any second mortgage or loan that relates to any property

If any property is leasehold (flat) we will also need:

- receipts for the last ground rent and service charge payment; and - any correspondence in relation to service charge and/or the management company

Don't worry if you can't locate all the documents right away. Just bring with you what you can find - further enquiries can be made if necessary.

## **Why do we need these documents?**

We will need to check with each financial institution as to the balances on accounts and debts owing to prepare a list of the assets and liabilities of the estate.

### **Obtaining a Grant of Probate / Grant of Letters of Administration**

In simpler estates (if no Inland Revenue account is required) we would probably be able to set up a subsequent meeting within the next 4-6 weeks to enable the oath to be sworn. The oath is then submitted to the Probate Registry

In more complex estates it will not be possible to apply for the grant until an Inland Revenue account has been filed and any inheritance tax paid. The Inland Revenue account is very detailed and the Inland Revenue expect the fullest enquiries to have been made so that the account is accurate. Obviously, the time taken from initial

instructions to completion of the Inland Revenue account will depend on how quickly the various institutions respond to our initial letters requesting information.

## **Dealing with the Estate once the Grant is received**

It takes approximately two to three weeks for the grant to be issued by the Probate Registry. Once the grant has been received it needs to be sent to every financial institution where the deceased had assets to enable encashment or transfer of those assets. When the estate is in funds we would then be in a position to pay the deceased's debts including the funeral account. Once all the taxes have been paid, assets dealt with, debts and any legacies have been paid then the estate can be finalised. If it is likely that the estate cannot be finished for some time (for example, because an income tax return is required) then an interim payment on account will be made to the residuary beneficiaries.

We will then prepare Estate Accounts to show you how all the monies have been accounted for. Once the Estate Accounts have been approved we can make the final distribution of the residuary estate.

## **Registering the death**

If the death occurs in hospital a doctor will sign the appropriate initial medical death certificate. If the death occurs at home a GP will sign the form.

If the body is to be cremated a second doctor's signature is required and the first GP should arrange for that to be done.

The death must be registered in the registration sub-district in which the deceased died or in which the body was found. It is the place of death which is relevant, not the place where the person lived. The death should be registered within five days of the issue of the initial medical death certificate but an extension of a further nine days is allowed as long as the local registrar has received written confirmation that a medical certificate as to the cause of death has been signed by a doctor (registrars are listed in the business section of the telephone directory under Registration of Births, Deaths and Marriages).

The person registering the death (the informant) is usually a relative of the deceased. In the absence of a relative, the duty may be discharged by any person present where the death occurred or by the occupier of the house in which the death occurred (for example, in a nursing or residential home this would be the senior officer) or by anyone living in the house who knew about the death, or by the person responsible for making the funeral arrangements. If a person other than a relative is the one who registers the death it must be the person who is going to be responsible for disposing of the deceased's body. Registrar's Requirements

The registrar will need you to provide the following:

1. Date and place of death.
2. The full name of the deceased.

3. Any other name by which the deceased may have been known including the maiden name of a married woman.
4. The date and place of birth (it is helpful to take a birth certificate if this is available).
5. The deceased's most recent occupation.
6. The full name and occupation of any spouse.
7. The usual address of the deceased.

The registrar will also require the following information:

1. Full name of the informant, qualification as informant and usual address.
2. Cause of death (this will be on the medical certificate).
3. Whether the deceased is to be buried or cremated.
4. For statistical purposes only, not actually required, the date of birth of the surviving spouse (if any).
5. Whether the deceased had lived at the place of death for more than six months.
6. In the case of people dying under the age of 75 information in connection with his or her occupation including the type of industry in which the deceased was employed or whether he or she was self-employed.

The registrar will draft an entry for the register which the informant needs to check carefully to ensure that the deceased's name has been stated correctly (this will avoid complications later on when dealing with the deceased's assets). The registrar will then make the entry in the register which the informant and the registrar will both sign. The registrar will also usually take charge of the deceased's National Health Service medical card if this is available.

Following registration the registrar will issue the following:

1. A green form (certificate for burial or cremation), certificates B and C for the undertaker to pass on to the person responsible for the funeral (normally the parish priest or the superintendent of the crematorium for cremations). This certificate gives authorisation for the burial or cremation as appropriate.
2. A white form, 344, for the Department of Social Security. This informs the DSS of the death and is sufficient evidence for any claim for arrears of the deceased's state retirement pension or any other DSS benefits that may have been payable.
3. Copy death certificate which is a certified copy of the entry of death on the register. Extra copies cost £3.50 each. It is a good idea to get up to five extra certified copy death certificates. In the past it was the practice of many solicitors to photocopy and certify the original certified copy death certificates. This is not allowed and many financial institutions now insist on having original death certificates.

## **Arranging the Funeral**

It is the executors (where there is a valid Will appointing them) or the next of kin (in other cases) who are responsible for arranging the funeral. Whoever makes the arrangements with the funeral director will be responsible for the funeral costs. It may

be that the deceased took out a funeral insurance policy. The family doctor or local vicar can normally recommend a local funeral director. The funeral director will ask questions about the following:

- Do you wish the body to be taken to a Chapel of Rest pending the funeral?
- Did the deceased leave any instructions in a Will, if there was one? If there is a will the executors still have a right to decide whether there should be a burial or cremation even if there were specific directions in a Will. If there is no Will the next of kin should decide.
- Where and when will the funeral service take place? What form will it take (religious, non religious, etc)? Are there any members of the family who should be taken by car to the funeral and if so how many?
- Are there any special requests for readings or music?
- Would the family like someone to say a few words about the deceased and if so who should do it?
- Do you need to place an advertisement in the local or national press? If it is proposed to publish an obituary notice in newspapers giving such details, arrangements should be made for the house to be occupied at the time of the funeral for security reasons. If this is not possible it is advisable for the obituary notice to refer enquiries to the undertaker in order to provide at least a small measure of screening for people to whom such information is given.
- Do you want mourners to send flowers or would you rather they contributed to a charity?

You should ask the funeral director to provide a written estimate of the cost of the funeral. If you think it is too expensive ask him how he can help to reduce the cost.

## **Religion**

Strict Roman Catholics might normally wish to be buried in order so as not to deny the doctrine of the resurrection of the body.

Individual members of other churches may also have strong views on cremation or burial.

Jewish law requires the bodies of Jews to be buried promptly as does Islam law in respect of its own believers.

Hinduism on the other hand requires cremation rather than burial.

## **Cremation**

If the body is to be cremated two doctors' signatures are required on the initial certificate of death.

Local Authorities have general powers to maintain the cemeteries that they control. They may charge such fees as they think proper for burials and maintenance of tombstones. Occasionally a person has reserved a burial plot in a cemetery and a

certificate may be found with the deceased's papers. However, lack of certificate does not necessarily mean that no plot was reserved.

In view of the demand for cremations arrangements should be made as soon as possible after death unless there is any reason for delay (for example, because of the involvement of the coroner) particularly in the winter months.

## **Burial on Other Land**

There are "green" sites where bodies may be buried in a simple shroud and where trees are planted in lieu of headstones. The registrar will be aware of a local site. Burial in private grounds is permitted provided that no nuisance is caused by it. Because of the very high risk to public health it is advisable to consult the local Environmental Health Department and in appropriate circumstances the Environment Agency. Of course, the consent of the landowner must be obtained and the burial must not be in breach of restrictive covenants.

The person effecting the disposal of the body must notify the Registrar of Deaths within two weeks as to the date, the place and the means of disposal of the body.

## **Burials at Sea**

Although burials at sea are recognised and acceptable practice, if the death occurred in England or Wales and the coroner is involved the body must not be removed outside England and Wales until the expiry of four days' notice to the coroner unless, of course, the coroner on receiving that notice states that he does not intend to hold an inquest.

## **The Scattering of Ashes**

The scattering of ashes on land must only be with the consent of the landowner.

Where ashes are scattered in a crematorium, the staff of the crematorium normally carry this out. A record is maintained by the crematorium staff as to the location and scattering of the ashes. Executors or next of kin should inform the crematorium staff as to whether the family wish to be present at the scattering.

The scattering of ashes within a Church of England churchyard or burial ground is not permitted.

If the personal representatives or family carry out the scattering of ashes it is advisable to check beforehand the design of the container from which the ashes are to be poured or scattered. If they are in a sealed plastic bag within the container the ashes can be poured or scattered more easily if they are taken out of the bag first. Ashes should always be poured or scattered away from the wind.

## **Donation of Body or Organs**

The executors or next of kin of the deceased must always make appropriate enquiries as to any wishes expressed by the deceased as to the donation of organs or the whole of the body. The four principal ways in which such wishes may have been expressed are:

- By carrying a donor card;
- In an appropriate place at home such as in a desk;
- By registering such wishes with the DVLA;
- In a Will or Codicil.

However sensitive it is the executors or next of kin should check the deceased's wallet or handbag to see whether there is a donor card. Similarly, a search should be made for such wishes in the appropriate places at home. They should also ask solicitors or other persons holding the Will to check at the earliest opportunity for any expression of wishes. If warning has been given that the person concerned does not have much time to live these enquiries should be made even before death. The donation of a body for anatomical research or for organ transplant is always subject to the suitability of the body or organs. Enquiries should be made immediately to: The Human Tissue Authority Finlaison House 15-17 Furnival Street London EC4A 1AB Tel: 020 7211 3400 The HTA will give details of the person to contact at the local medical school unless their wishes specify otherwise. In the case of anatomical research the medical school will make arrangements to collect the body and will be responsible for its later burial or cremation. The certificate received from the Registrar of Deaths should be sent to them.

## **The cost of Funerals**

### **Pre-payment Plan**

You should enquire as to whether the deceased purchased a pre-payment plan to cover the cost of the funeral. There is no central registration system for such plans so you should enquire of all appropriate undertakers as to the existence of a plan if it is thought that the deceased had paid for a funeral in advance. This should include the undertakers in the parts of the country where the deceased used to live if he or she has not always lived in the area where he or she died.

### **Public Funds**

There is no longer a death grant available for funerals, but a grant is available where the deceased was a "war" war pensioner. The DSS may provide a grant from the Social Fund if the deceased or deceased's partner were or are in receipt of Income Support, Family Credit, Disability Working Allowance, Housing Benefit or Council Tax Benefit. Such assistance may also be available if the deceased had no partner but the person who is paying for the cost of the funeral is a close relative or close friend and it is reasonable for him or her to accept the responsibility for the funeral costs. However, payment may not be made if there is another close relative who is not receiving the benefits mentioned above or who has savings of over £500.00 (£1,000.00 for relatives aged 60 or over).

A claim for this type of grant should be made to the local office of the Department of Social Security within three months of the date of the funeral.

### **War Pensioners**

The Social Fund of the DSS may help with the cost of a simple funeral if a war pensioner died from the disablement for which he was receiving a war pension or if he died in hospital while having treatment for that disablement or if he was receiving a War Pensioner's Constant Attendance Allowance at the date of his death. These payments do not have to be repaid from the estate. Claims for the help of cost of the funerals for war pensioners should be made within three months of the date of death to War Pensions Agency, Norcross, Blackpool, FY5 3WP. The War Pension Helpline is 0800 169 2277 and the website address is "<http://www.veteransagency.mod.uk>" [www.veteransagency.mod.uk](http://www.veteransagency.mod.uk).

### **Deaths of babies and children**

The Local Health Authority may offer to arrange the burial or cremation of a stillborn baby whether born in hospital or at home and this may be free of charge. You should discuss the arrangements with the hospital staff or with the Health Authority. Some undertakers do not charge for the funerals of children.

### **Grant of Probate**

1. Find out if there is any current Will appointing you as Executor. If further Executors have been appointed in the Will, send a copy of the Will to your Co-Executors. If there is no Will and you are the next of kin, you may be entitled to administer the Estate.
2. If there is unoccupied property, secure it and inform the insurers. Where necessary, ensure that the main services (gas, electricity, water) are safe, delivery stopped and mail re-directed.
3. Register the death (within 5 days) unless an inquest and/or Post Mortem is necessary with the Registrar in the area where it occurred. Consider how many additional death certificates to order, as they cost less if you ask for them when registering the death. You will need to send a death certificate to each assumed asset-holder, which is the bank or insurance company.
4. Advise family/friends of the death, arrange funeral in accordance with the Will or any known wishes and consider obituary notices in local/national press.
5. Stop payment of salary and pension. Advise insurers of credit/charge cards, passport, driver or TC licence etc and act on their directions.
6. Contact the deceased's Tax Office to settle tax up to the date of death.
7. Call the Probate and Inheritance Tax Helpline on 0845 302 0900 for advice on Probate and find out the current IHT threshold. This is currently £300,000 and will rise to £312,000 in 2007/2008. IHT is not payable on smaller estates or legacies left to a spouse or charity. If the estate is small, an application for probate may not be necessary.



8. A Grant of Probate may be required for jointly owned assets, which normally pass to the surviving owner.
9. Ascertain assets and liabilities and their date of death values. Send the death certificate to each assumed asset-holder such as banks, building societies or insurance companies. If there is IHT to be paid, obtain professional valuation on high value items such as houses, stock market and investments, personal chattels etc. Make a list of any major gift made by the deceased in the 7 years prior to the death as these may be liable for IHT.
10. If the estate is liable for IHT, obtain an Inland Revenue Account from the Capital Taxes Office, complete and submit it.
11. IHT has to be paid before probate is granted. If necessary, arrange an Executor's loan account with a bank to pay IHT. The deceased bank or building society may be willing to release money to pay IHT without requiring a loan arrangement.
12. Where the Will states that a specific item is to be transferred to a beneficiary you do not have to wait for probate before transferring the bequest, if you are sure that the Will is valid and that no one else will claim it.
13. Prepare probate forms, obtainable from a Probate Registry, or by calling the Helpline on 0845 302 900. Submit the completed probate application to the Principal or District Probate Registry, with the appropriate fee, requesting an official copy of the Grant of Probate for each asset holder.
14. When the grant of probate is obtained, send official copies with appropriate instructions to asset holders. When assets are released, encash assets that have not been specifically bequeathed.
15. Pay the funeral account, unless already paid, e.g. by arrangement with the bank or through a pre-paid funeral plan. Pay any other outstanding tax bills, bills. Consider inserting statutory notice for creditors in the Press, allowing 2 months for claims to be made. In the absence of financial help from elsewhere and contrary instructions in a valid Will or Codicil the cost of the funeral is a testamentary expense and is payable out of the residuary estate. The executors or next of kin should consider the size of the estate when making the funeral arrangements.
16. If you have not already done so, inform beneficiaries of their entitlement. Residuary beneficiaries, who are entitled to a share of the estate, rather than a specific sum or item, should be sent a copy of the Will.
17. Pay any fixed amount legacies and transfer any assets specifically bequeathed in the Will.
18. Pay any final bills and obtain clearance from any Inheritance Tax, Administration, Income Tax (Tax on Income that has accumulated since the date of death) or Capital Gains Tax liability.
19. Prepare Estate Accounts and submit them to the residuary beneficiaries. They are entitled to a full account of all the estate receipts and payments. When the residuary beneficiaries have approved the account, distribute the residue to those entitled (currently R185 Estate Income but check with the IHT and Probate Helpline on 0845 302 0900) for their share of the estate income. This is important for Charity beneficiaries, as they can reclaim some income tax.