

WHAT TO DO WHEN SOMEONE DIES

A guide to the administration of an estate

England & Wales

The death of a relative or close friend is a difficult time even before you start thinking of dealing with the deceased's financial affairs.



This guide summarises the steps involved in administering an estate. The glossary at the back explains some of the legal terms that you may come across.

No two estates are the same, so what is explained may not be applicable in every case.

If either the estate or the deceased's personal situation is complicated, you may want to consider taking professional advice to ensure it is dealt with correctly.

KEY DEADLINES

There is no specific deadline for completing the administration of an estate and, in practice, the amount of time required will vary according to factors such as the size and complexity of the estate and the family situation.

However, it is worth being aware of the following:

- The death must be registered within five days (not doing so is a criminal offence).
- Any inheritance tax must be paid within six months after the end of the month of death (unless the 'instalment option' is available) otherwise interest will begin to accrue.
- The inheritance tax return must be filed within 12 months after the end of the month of death.
- Personal representatives have one year from the date of death to distribute the estate. After that year, they may need to pay interest on distributions and there can be other associated costs.

FIRST STEPS

When you register the death (search ‘register a death’ on gov.uk for how), it is sensible to obtain several death certificates.

If the estate includes a property that is unoccupied, steps should be taken to ensure its security and check the insurance position.

The funeral will also need to be arranged. If there is a will, you should see if it contains any funeral or burial wishes. Banks may allow for funeral costs to be paid from the deceased’s account before probate if necessary.

The will could be held by the deceased’s solicitor, bank, or other professional advisor, or may be at their home.

If there is a will, it will usually appoint one or more ‘executors’ who, if they accept the role, will be legally responsible for administering the estate. It should also tell you who is to inherit what.

If there is no will, then a set of rules known as the ‘Rules of Intestacy’ dictate who inherits what. If there are no executors, then the people who inherit under these rules are also appointed as ‘administrators’ to administer the estate.

‘Executors’ and ‘administrators’ have essentially identical roles and are referred to jointly as ‘personal representatives’. This guide assumes that you are a personal representative.

At this stage, you may want to consider obtaining legal advice, particularly if:

- any part of the will is not clear;
- there is not a will, or it does not cover the whole estate;
- a trust is involved;
- the estate includes a business or foreign property;
- someone is likely to dispute the will; or
- the estate might be insolvent.

NOTIFYING RELEVANT PEOPLE

You should notify government departments as soon as practical. This can be done in one go using the ‘Tell us once’ service, if it is available in your area. Otherwise, you will need to notify departments such as the Passport Office, HMRC, the DVLA, the DWP and the local council individually.

You should also think about notifying any other people or organisations with which the deceased had a financial arrangement. For example, their landlord or mortgage provider, bank, any insurance providers, utilities providers and employers.

ASCERTAINING DETAILS OF THE ESTATE

You will need to calculate the total value of the estate and work out whether any inheritance tax is due.

You should review the deceased's personal papers (including their last tax return) and any accessible electronic records to find out what they owned. Speak to their accountant if they had one.

You should also contact any relevant organisations (such as banks and asset managers) to confirm what was held with them and to obtain 'probate valuations' for the assets. In some cases, such as for houses or expensive jewellery, a professional valuation may be required.

Friends and family should be asked whether the deceased made any gifts to them in the seven years prior to death (if any gifts have been made to trusts it is necessary to go back 14 years) as these may have an impact on the amount of inheritance tax due.

Similarly, any jointly held assets or other property in which the deceased had a financial interest, such as a partnership or trust, must be considered.

Any debts, such as household bills, mortgages, loans and funeral expenses, are liabilities that reduce the taxable value of the estate.

If, at any stage, you believe that an estate is 'insolvent' (i.e. the value of the assets in the estate amounts to less than the debts left by the deceased), we recommend seeking professional advice immediately, as not following the correct procedures could result in significant personal liability.

Once you know the value of the estate you can work out whether any inheritance tax is due. Consider whether any tax reliefs are applicable. Common reliefs include the nil-rate band, the residence nil-rate band, the spouse exemption, business property relief and agricultural property relief.

APPLYING FOR PROBATE

'Probate' is the name commonly given to the formal documents issued by the Court that confirm that the personal representatives are entitled to collect in the deceased's assets and distribute them.

Many organisations will require probate to have been obtained before they release the deceased's assets, but it is not always necessary. If the estate only contains certain types of assets (such as jointly owned assets or low-value bank accounts) then it may be possible to administer without probate.

If probate is required, it is now possible to apply online. At the same time you will usually need to submit an inheritance tax return reporting the estate's value to HMRC (again, this can be done online) and pay the tax. Inheritance tax on land and certain other assets can be paid in instalments over ten years.

This can create a difficult situation in which assets are not available to pay inheritance tax until probate but probate cannot be obtained until the inheritance tax is paid.

Banks and other financial institutions may be prepared to release funds from the deceased's bank accounts to pay inheritance tax before probate under the 'Direct Payment Scheme'. Otherwise it may be necessary to arrange a loan.

The amount of time required for probate is heavily dependent on the Court's workload. It can be a matter of weeks or months.

COLLECTING THE ASSETS

Once probate has been issued, it can be used to collect in the deceased's assets (usually by sending it to the holders of those assets, such as banks and asset managers) and pay the deceased's liabilities. If there is a property in the estate and it is to be sold, then this will probably involve the appointment of estate agents to handle the sale. The sale process can be begun prior to probate being obtained, although completion cannot take place until afterwards.

BENEFICIARIES

'Beneficiaries' are the people entitled to inherit all or part of the estate.

The amount they receive will be determined either by the will (if there is one) or the rules of intestacy (if there is not).

It is good practice to notify beneficiaries of their entitlement early on.

Some beneficiaries may be entitled to specific assets from the estate. Others may be entitled to a share of whatever is left once all of the specific legacies, taxes and other costs have been settled. The latter are known as 'residuary beneficiaries' because they are entitled to a share of the residuary estate.

It is usual to discharge the cash legacies and gifts of specific items before making payments to the residuary beneficiaries as the former have a higher priority.

Residuary beneficiaries should be given a copy of the will and details of the assets and liabilities of the estate, as well as the estate accounts that record what has been done with the assets.

DISTRIBUTING THE ESTATE

Before distributing the estate you should consider 'advertising for creditors' to protect against unknown claims to the estate. You should also consider any possible challenges to the estate and ensure that these have been addressed before distribution.

If there are any further outgoings expected (such as any taxes and the expenses), then a reserve can be kept back to fund them.

It is also sensible to run bankruptcy searches on beneficiaries (failing to do so can result in personal liability).

If income has arisen in the estate between the date of death and the date of distribution, then this should be reported to the residuary beneficiaries, who may be able to reclaim some of the taxes paid by the personal representatives.

OTHER MATTERS

The deceased's tax affairs need to be regularised up to the date of death. Because any income tax and capital gains tax liabilities can have an impact on the amount of inheritance tax due, it is sensible to address this matter at an early stage. If an accountant or other advisor had been employed by the deceased, it is usually practical to arrange for them to complete this.

The personal representatives will also need to report any income or gains from the administration period. If the income and gains are small this can often be dealt with via a simple letter to HMRC. If not, the personal representatives will need to register for self-assessment and submit a full tax return.

Assets abroad can often require legal steps to be taken in the country concerned, and there may be foreign taxes to pay. It is usually necessary to appoint lawyers or other agents there to deal with such aspects.

AND FINALLY

Once the estate has been finalised, you can contact HMRC to update the inheritance tax position (and either claim a refund or make any extra payments as appropriate).

You should also consider submitting a form IHT30 to request a 'clearance certificate'. This is a formal confirmation from HMRC that all of the inheritance tax due has been paid.

Any reserve that is left can then be paid out to the residuary beneficiaries.

Finally, the personal representatives should prepare a full statement of account, showing how they have dealt with the estate. The residuary beneficiaries are entitled to a copy of this.

If the estate is not to be fully distributed because some or all of it is to be held in trust, then it is at this stage that the duties of the trustees commence.

It is worth noting that no two estates are quite the same, and the time required to complete administration is very context specific.

SOME COMMON LEGAL TERMS EXPLAINED

Administrator

The person(s) appointed to distribute the estate in the absence of executors

Bequest

A gift under a will (also known as a legacy)

Codicil

A document amending a will

Estate

A person's assets at the date of their death

Executor

The person(s) appointed in a will to administer the estate

Intestate/Intestacy

When a person dies without a valid will.

Legacy

A gift under a will

Pecuniary Legacy

A fixed sum of money given under a will

Personal Representative

Generic term for executors and administrators

Probate

Official confirmation by the Court of who is entitled to collect in and distribute the estate (technically a 'grant of probate' for executors and 'letters of administration' for administrators)

Probate Court

The part of the High Court that deals with probates.

Residuary Beneficiary

The person(s) who receives what remains of an estate after all other legacies, liabilities, tax and expenses have been paid.

Testator/Testatrix

The person making a will (male/female)

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