

**GUIDE FOR PERSONAL REPRESENTATIVES**

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## **INTRODUCTION**

**The appointment as an Executor or Administrator of an estate can be a daunting prospect.**

**Whether you have been appointed to act as a personal representative or you are a beneficiary, the technicalities of winding up of the estate can confuse and worry those who are left behind. The procedure and terms used can cause anxiety. We hope this booklet will help you understand what is involved. It is not exhaustive and cannot take the place of specific professional advice.**

## **1. REGISTERING THE DEATH AND OBTAINING THE DEATH CERTIFICATE**

The medical certificate will usually be issued by the doctor together with written instructions as to how the death is registered and by whom. The certificate needs to be taken to the local Registrar of Births, Deaths and Marriages who will register the death. You will need at least one copy of the death certificate which can be obtained at this time. It is now necessary to book an appointment with the Registrar.

It will also be necessary to arrange the funeral. It is a good idea to contact the Funeral Director even if there will be a delay in the issue of a death certificate, since this gives more time for arrangements to be made.

Funeral expenses are the first charge on any estate. This means that provided there is sufficient monies in the estate to cover the funeral account, family members will not have to ordinarily pay for the funeral. Banks and Building Societies will usually discharge the funeral account prior to issue of the Grant of Representation.

## **2. OBTAINING THE WILL**

Where there is a Will, this will ordinarily be stored with the Solicitor or Bank. It is unlikely but possible that it will be at the deceased's home.

The Executors appointed in a Will will be responsible for the administration of the estate, and it will be they who instruct a Solicitor.

Where there is no Will, the Solicitor can advise who is entitled to administer the estate.

## **3. NOTIFYING BENEFICIARIES**

It is not usual to have a formal reading of the Will. The Beneficiaries may already know of their entitlement. It is for the executors to decide whether it is necessary to write to them with details. When a person dies without a Will it is the beneficiaries who are entitled to the Grant and therefore they must be advised of their entitlement.

## **4. INITIAL APPOINTMENT**

When you are ready, it is useful to make an appointment to see the Solicitor. At this meeting we can discuss with you the procedure, the likely estimated cost and the time scale involved. This will obviously depend on the individual circumstances, for example what the assets are and the number of beneficiaries.

The "Client Check-list" on the final page indicates items which would be useful to your solicitor. DO NOT WORRY if you cannot find all of these.

## **PERSONAL REPRESENTATIVES**

This is the name given to all those persons entitled to administer the estate of a deceased.

Where there is a Will, the Personal Representatives are called Executors. If there is no Will, they are called Administrators. (There are exceptions).

Generally, asset holders will require proof that the Personal Representatives have got the right to administer the estate. This proof takes the form of a Grant issued by the Probate Registry.

A Grant issued to an Executor is called Probate and a Grant issued to an Administrator is called a Grant of Administration.

## **USE OF MONEY IN THE BANK OR BUILDING SOCIETY**

Monies in joint accounts pass immediately to the joint holders. The financial institutions will normally only require sight of the Death Certificate.

If the money is in the sole name of the deceased it is not usually possible to get any money from the account, other than the payment of the funeral account, until after the Grant is issued. This is because the Bank or Building Society need to see the Grant to make sure they are releasing funds to the appropriate person. This procedure often applies to other assets.

Building Societies may however agree to release funds direct to the Inland Revenue and H.M. Paymaster to discharge initial Inheritance Tax and Probate Court fees on application for a Grant. Banks do not usually do this.

## **PAYMENT OF BILLS**

Before the Grant is issued there is often concern over how to pay the outstanding liabilities. The options are:-

- (a) pay them from a joint account;
- (b) agree late payment with the creditor;
- (c) ask a beneficiary to pay the account and reimburse him or her when the estate has sufficient funds;
- (d) arrange a bank loan until funds are available from the estate.

## **THE HOME**

The sale of the house cannot be completed until after the Grant has been issued. It is possible however to place the house on the market immediately. It can take some time to find a purchaser and to complete the conveyancing transaction.

## **THE CONTENTS OF THE HOME**

The contents often referred to as chattels form part of the estate and in some circumstances it may be necessary for them to be valued. If chattels are given to a person by the Will then the Executors will arrange for the delivery or collection at the appropriate time. The chattels depending on the Will can be distributed to the beneficiaries or sold.

## **5. OBTAINING PROBATE VALUATION OF ASSETS AND LIABILITIES**

It is usual for the Solicitor to obtain valuations of all assets and liabilities as at the date of death. These are known as the "Probate Valuations". The figures are required in order that the Solicitor can prepare the Oath and, if relevant, the Inland Revenue Account.

## **6. THE OATH AND INHERITANCE FORMS**

When all the information is to hand the Solicitor will prepare the papers to make the application for the Grant.

### **THE OATH**

The Oath is written evidence of the details of death and status of the Personal Representatives. The Court requires the Oath to be sworn on the bible (or affirmed).

Essentially, the Oath gives details of:-

- (a) the Applicants' names and addresses and their authority to obtain the Grant e.g. if they have been appointed in the Will
- (b) the full name and address of the Deceased and his or her date of death and age;
- (c) the value of the estate.

### **INHERITANCE TAX FORMS**

Estates below a certain limit (£312,000) will usually not be subject to Inheritance Tax.

There are also exemptions relating to surviving spouses and charities.

The Solicitor will tell you whether or not any Inheritance Tax is payable. Sometimes it may be necessary to fill in the forms even if there is no tax payable, since the Inland Revenue may need to be aware of the information, particularly if the Deceased was a beneficiary under a trust or gave away large sums of money during the seven years before death.

In the main, Inheritance Tax is a tax payable on the value of all assets transferred by reason of death (or within seven years before death) which exceed the statutory limit.

NOTE: The above points are simple outlines of complex tax legislation and expert advice should always be sought.

The Inheritance Tax form will have to be signed by the Applicant, usually when signing the Oath and applying for the Grant.

If tax is payable the Solicitor will discuss with you methods of payments as assets are not always available at this stage..

## **7. SECOND INTERVIEW**

After the papers are completed the Solicitor may ask you to come in to go through and sign them. Other things the Solicitor may discuss at this meeting are:-

- (1) The treatment of the assets, are these to be cashed when the Grant is obtained or, transferred direct to the beneficiaries?
- (2) the method of payment of Inheritance Tax (if appropriate) and whether it will be necessary to get a temporary loan;
- (3) unless the estate is under £5,000 there will also be a Probate Court fee payable and it may be necessary to discuss how it is to be funded.

The Solicitor will then arrange for you to swear the Oath before an independent Solicitor, that is a Solicitor who is not a member of the same firm.

## **APPLICATION FOR THE GRANT**

Once the Inheritance Tax has been paid and a receipt obtained from the Capital Taxes Office the Personal Representatives can then apply to the Probate Registry for the Grant. The application is submitted with the Probate Court fee where applicable.

## **8. RECEIVING THE GRANT**

The Grant should be received by the Solicitor relatively quickly. After application it is usual for an interim fee note to be submitted for work done at this stage.

## **9. REGISTERING THE GRANT**

To obtain the assets the Solicitor will have to register the Grant with the asset holders. The Grant is sent with the appropriate forms signed by the Personal Representatives.

It can take some time for the money to be received.

Since the Money Laundering Act, Banks and Building Societies may request proof of identity before transferring assets.

## **10. PAYMENTS**

It is usually when this stage has been reached that there are funds to discharge liabilities.

- (a) As funds become available the Personal Representatives can reimburse the bank loan or the Beneficiary if he or she has advanced money for the Court fees or Inheritance Tax.
- (b) The Personal Representatives can also then see to the payment of legacies; that is fixed amounts of money given in the Will.

After the above payments have been made, if it is appropriate an INTERIM distribution may be made to the Residuary Beneficiary(ies) being part of their eventual distribution.

Of course, if the Beneficiary is living in the property and intends to continue doing so, then much of the above will be simplified, for example the outgoings of the house will be transferred into the Beneficiary's name.

## **NOTICES FOR CREDITORS**

In many cases the Personal Representatives will require Statutory Notices to be inserted in the London Gazette and local paper to advertise for unknown creditors or beneficiaries. If no claim is received within two months, the Personal Representative(s) can distribute the estate without being personally liable.

Depending on the assets and circumstances, the finalisation of outstanding matters can take quite some time compared with the length of time taken to obtain the Grant. Ask the Solicitor for some indication of the time scale but bear in mind that it will depend on replies from people like the Inland Revenue and it can be difficult to predict.

## **FINAL BILLS ON HOUSE SALE**

Once the sale has been completed the Solicitor will usually arrange the final accounts for council tax, water rates, gas, electricity or telephone, if still outstanding. The house and contents insurance can be cancelled and there may be a refund.

## **THE HOUSE**

If the house was in the sole name of the deceased and is to be transferred to a beneficiary, a document (an Assent) will be required to complete the transfer and bring the title deeds up to date.

## **DEPARTMENT OF SOCIAL SECURITY QUERIES**

If the person who has died was in receipt of certain benefits, for example, Income Support, the DSS may write and ask for details of the estate to confirm there are no repayments due to them.

## **11. INCOME TAX**

It is often necessary to complete a final Tax Return up to the date of death, and sometimes for the period until the estate is wound up. The Income Tax Return is sent to the Inland Revenue. They may make a refund or raise a tax assessment and on payment will eventually write back with clearance.

The Revenue can require the Personal Representatives to provide information for the period 6 years prior to death in exceptional cases.

## **INHERITANCE TAX**

The Capital Taxes Office who deal with Inheritance Tax sometimes disagree with the valuations, particularly with an asset such as a house, where the value depends on the market. It is sometimes necessary for both sides to negotiate and agree a figure.

If there are additional assets and liabilities that come to light during the administration and after the first Inheritance Tax form has been sent, these have to be notified to the Capital Taxes Office and a revision made to the sum due.

Sometimes certain assets are sold for a price less than their probate value and this figure may be substituted in place of the original value if they are sold within the time limits.

Once all the figures are agreed and there is no balance outstanding, an application can be made for a discharge certificate.

## **12. ESTATE ACCOUNTS AND DISTRIBUTION**

After all the final figures are available, the Solicitor will be able to prepare the final Estate Accounts. This shows the receipts and payments made during the administration, and the amount to be distributed.

A copy of the Accounts are sent to the Personal Representative(s) for approval. After the approval of the Accounts, it is usual practice to send copies to the Residuary Beneficiaries. This enables them to see how their share has been arrived at and to raise any queries.

The final balance is then made to the Residuary Beneficiaries.

**REMEMBER, the Solicitor is there to help you and if you want any further explanation, or if you have other queries, please ask.**

### SOME USEFUL DEFINITIONS

<b>WILL</b>	Document properly signed and witnessed which sets out what is to happen after death – who is to deal with administering the estate and who is to inherit what is left.
<b>CODICIL</b>	Additional document, again properly signed and witnessed, which alters or amends the Will
<b>ESTATE</b>	General term covering the total sum of what is left on death. Until the administration is completed and the assets transferred to the beneficiaries the estate is treated as a “separate legal entity”
<b>ADMINISTER</b>	To administer an estate means to do all that is necessary to carry out the transfer to the beneficiaries. It includes complying with the formalities to obtain a Grant of Representation, collect in the assets, pay liabilities and carry out the terms of the Will or the intestacy provisions.
<b>GRANT OF REPRESENTATION</b>	A Grant of Probate (if there is a Will) or Letters of Administration (if there is no Will) is a document issued by the Court to prove the authority of the person administering the estate.
<b>PROBATE REGISTRY</b>	A division of the High Court
<b>EXECUTOR</b>	Male appointed by the Will to administer the estate
<b>EXECUTRIX</b>	As above, but female.
<b>ADMINISTRATOR</b>	Male appointed by the Probate Registry to administer the estate if there is no Will
<b>ADMINISTRATRIX</b>	As above, but female.
<b>PERSONAL REPRESENTATIVE</b>	General term for either Executor/Executrix or Administrator/Administratrix
<b>TESTATOR</b>	Male who makes a Will
<b>TESTATRIX</b>	Female who makes a Will
<b>INTESTATE</b>	Dying without leaving a valid Will
<b>INTESTACY RULES</b>	Say who is to inherit the estate if a person dies intestate
<b>BENEFICIARY</b>	General term for anyone who inherits (benefits) from the Will or under the Intestacy Rules.
<b>LEGACY</b>	A gift under a Will; can be a “specific legacy” that is a particular item, or a “pecuniary legacy”, that is a fixed sum of money
<b>RESIDUE</b>	That part of your estate (usually the largest part) left after all debts, expenses and legacies have been paid.

<b>TESTAMENTARY GUARDIAN</b>	A person appointed in the Will as guardian of any child or children under 18 years. He or she will have joint responsibility with the surviving parent or any guardian appointed by such parent.
<b>OATH</b>	An Oath is a legal document by which the Executor or Administrator swears that what he says is the truth or that what he promises to do he will do.

**CLIENT'S CHECK-LIST**

**It is useful to bring these in but don't worry if you cannot find all these items**

<b>Death Certificate</b>	
<b>The Will</b>	
<b>Title Deeds to House</b>	
<b>Building Society Passbooks</b>	
<b>Bank Books</b>	
<b>Insurance Policies</b>	
<b>Pension Slips</b>	
<b>Wage/Salary Slips</b>	
<b>Share Certificates</b>	
<b>Bond Certificates</b>	
<b>Unit Trust Certificates</b>	
<b>Details of Tax Affairs</b>	
<b>Accountant's Name</b>	
<b>Stockbroker's Name</b>	
<b>Post Office Books</b>	
<b>Cash</b>	
<b>Car Details</b>	
<b>Funeral Account</b>	
<b>Bills – Gas, Electricity etc.</b>	
<b>D.S.S. Pension Book</b>	
<b>Mortgage/Loan details</b>	
<b>Spare keys to House (only if house is to remain unoccupied)</b>	