



WILLS JACOBSEN

LEGAL

PROBATE

Dealing with the death of a loved one is hard enough; it is a shock, often sudden and cannot really be planned for. If you are also the Personal Representative officially dealing with the estate (the property and possessions of the person who has died) as either an executor or an administrator (these terms are explained below) you are suddenly thrust into an alien situation with unusual and confusing terminology.

This guide aims to help you feel more comfortable about your obligations as a Personal Representative.

1 PRACTICALITIES REGARDING THE DEATH.

- 1.1 Caution** Beware of giving too much information in death notices in local papers if the deceased's property is empty, the 'obits' is a common hunting ground for thieves.
- 1.2 Time off from work.** If a dependant dies you can take unpaid leave to arrange and attend the funeral. You must notify your employer as soon as possible and the time you take must be 'reasonable'. Some employers will allow this time off as paid leave, check your contract or office manual/handbook or ask your HR department.
- 1.3 Registering the Death.** This should be dealt with by a relative or someone present at the death but if as the personal representative you are going to be arranging the funeral you can also register the death. Unless there is special consent from the Coroner, you must register within five days of the death at any Register Office (registry of Births Deaths and Marriages) but the local registry is preferable and the process is generally swifter. The address and appointment system can be found by contacting the local council or online at the government site. It is advisable to take along the death certificate (from the doctor or coroner), the birth certificate, any marriage certificate(s) and the pension or state benefit book of the deceased. You will also need to know of any other names that the deceased was known by, their occupation and the occupation of their spouse or widow(er). Ask for several certified copies of the death certificate. There is a fee to be paid but certified copies are the only copies accepted by banks and other financial institutions as proof of the death. For example, if the deceased had four different bank accounts, a building society account, a pension and a life policy you should probably ask for eight or ten copies. Keep the receipt as this money can eventually be reclaimed from the estate assets.
- 1.4 Finding a Will.** A will is often lodged with the deceased's solicitor or bank. Check the deceased's personal effects for a copy Will which should help identify where the original is held or, indeed, the original may be found amongst the personal possessions of the deceased. Only the executors can read the Will at this stage as it is confidential until Probate has been granted. If you find a Will, you are able to check it only to establish the identity of the Executors and any funeral wishes. If the Will is lodged with a solicitor or bank they are able to tell you who the executors are and any special requirements for the funeral (if noted) but nothing else.

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- 1.5 What if there is no Will?** If there is no Will the personal representatives are established under legal rules - known as the rules on intestacy - and officially appointed in the Grant of Letters of Administration. Your solicitor will help you establish if there is no will and explain how the rules of intestacy work.
- 1.6 Arranging the funeral.** Before arranging the funeral make sure you are aware of any requests by the deceased as to organ donation, type of funeral etc. There is no legal obligation to follow the deceased's wishes, but there may be a moral obligation. A list of funeral directors can be provided by the National Association of Funeral Directors or the National Society of Allied and Independent Funeral Directors. The National Association requires its members to have a basic funeral available but whatever funeral is decided upon ensure that you know exactly what the costs will cover and whether the cremation certificate, crematorium charges, church fees, memorials etc are included. It is not uncommon for the Personal Representatives to get a quote from more than one company. The person arranging the funeral will be responsible for the cost so do check to see if the deceased set up a funeral plan, life insurance policy or a lump sum payment from a pension scheme. It is also possible to use monies from the deceased's bank or building society account and if this is required the Personal Representatives should discuss this with the Funeral Directors directly. Otherwise the receipt can be submitted as a debt to be paid once probate has been granted.
- 1.7 Informing Friends and Family** about the death and the funeral. Check the address book or e-mail account of the deceased to make sure everyone who needs to be, is informed.
- 1.8 The Property** If the deceased died other than in a residential or nursing home, make sure the deceased's property is secure as soon as possible and notify the insurance company about the death, checking whether the current insurance is sufficient and valid. Make a full note of the conversation and put this with the insurance certificate. Make sure any pets are being cared for; check to see if the animals are registered with the RSPCA Home for Life Scheme or if no friends or family can help contact the local police station.
- 1.9 Any small valuable items** should not be left at the property but taken into safe keeping by the personal representatives.

2 GETTING USED TO THE TERMINOLOGY

When someone dies, one or more people are appointed by the court (officially 'the Probate Office') to deal with the property and affairs ('the estate') of the person who has died. If the deceased left a will those people are called 'executors' and if no will can be found or the executors are unwilling or unable to take the role they are called 'administrators'.

In a Will the Executor is appointed from the date of death. Although their appointment is not confirmed until the Probate Office issue an official document authorizing the executors to collect in assets and pay debts (the 'Grant of Probate'), the executor has the authority to make decisions and deal with many aspects of the estate. The role of an executor is an important, lifelong position. If any claims come up in the future from the estate, it will still be up to the original executors to sort them out. If you are appointed in the Will as an executor and you are uncertain about taking on the role you should contact us immediately. We can help explain the role and hopefully deal with any misgivings. If not, and you still do not wish to take the role, we will let the family and Probate Registry know straight away. Please note; you may not be able to 'renounce' (step down from being an executor) if you have done anything which indicates that you have accepted the role so please contact us straight away.

If there is no will the situation is a little more complex. No-one can make any real decisions until the Probate Office issues the official document appointing the administrators and authorizing them to collect in the assets and pay debts (the 'Grant the Letters of Administration'). The Grant cannot be applied for until the estate has been properly valued and any tax paid and there is nobody officially in charge until that point. Accordingly it can be a lot more complex, time consuming and expensive.

Administrators are effectively governed by the rules on intestacy. These rules establish the person or people entitled to take out the Grant, usually the next of kin, and who will inherit the estate. We can help explain the rules as they are quite complicated, but in many cases it will be the spouse and/or children of the deceased.

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Many of the obligations will be the same for both the Executor and the Administrator and both are called the 'Personal Representatives' of the deceased.

3 THE PERSONAL REPRESENTATIVES WILL BE RESPONSIBLE FOR:

- 3.1 keeping the property and possessions of the deceased safer and secure during the administration process,
- 3.2 finding out exactly what the deceased owned, owed or was owed,
- 3.3 submitting the details along with any Inheritance Tax due to the Inland Revenue and the Probate Registry. This is achieved by swearing an Oath for Executors (the formal document confirming that you are the executors named in the Will, the Will is the last Will of the deceased and confirmation of the estate's value) or an Oath for Administrators (the formal document confirming that the deceased left no will, that you are the person or people entitled under the rules on intestacy to administer the estate and confirmation of the estate's value). You will swear the Oath in front of a solicitor (who cannot be a member of this firm). It sounds intimidating but shouldn't be more than a ten minute appointment dealt with quite informally. Once these details are accepted the Probate Registry will issue a Grant of Probate (to executors) or a Grant of Letters of Administration (to Administrators).
- 3.4 collecting in the assets and paying off any debts, including your own out of pocket expenses and most particularly any tax owed.
- 3.5 distributing the remainder of the estate in accordance with the Will or by following the rules on intestacy. Those who inherit under the Will or rules on intestacy are the 'beneficiaries'. If there are many debts, or more debts than money to cover gifts in the Will this process must be handled very carefully and in a specified order and will require specialist advice from a solicitor.

4 WHAT DO YOU DO NEXT?

We can assist you with most if not all of your following obligations in administering the estate.

- 4.1 **What makes up the estate?** A thorough search will need to be made through all of the deceased's papers and property to establish the correct value (and sometimes the whereabouts) of everything the deceased owned or owed. This will include, amongst other things, details of bank and building society accounts, life insurance, tax records (particularly the last tax return and P60 of the deceased), information about the property to include council tax and services, and mortgage, tenancy or title information, employer or pension information, shares and or stockbroker address and monies owed or owing. If the deceased had a computer or any other digital/storage device (including a mobile phone) there may be online accounts that also need to be considered. Check to see if there is a list of passwords. This may even be lodged with the solicitor. Otherwise just knowing that there are accounts is extremely important.
- 4.2 **Unexpected claims on the estate.** Be prepared. Are there any potential claims against the estate? Is there someone who was financially dependent upon the deceased but has not been adequately catered for in the Will for example or, an illegitimate child who could stake their claim in an intestacy? Are there any debts that are not obvious from the papers of the deceased? It is possible for the Personal Representatives to protect themselves by advertising in certain publications and local press.
- 4.3 **Other gifts.** The Personal Representatives have to establish whether any gifts or transfers were been made by the deceased not only in the last seven years but in their lifetime. You will also need to establish whether the deceased was to benefit under another as yet undistributed estate, or beneficially entitled under a trust. This information is required by the Inland Revenue and incomplete, inaccurate or even late reports can result in hefty penalties.

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- 4.4 What about HMRC?** If the estate is likely to attract Inheritance Tax, there are several exemptions which might apply. We can help you answer this question, but will need to know, amongst other things, whether the deceased owned a business, or any form of agricultural holding. We will also need to know if the deceased had ever been a widow or widower in the past as it may be possible to use a previous spouse's nil rate band exemption (currently £325,000.00), even if the deceased had remarried. If tax is payable it will need to be estimated (because assets will need to be sold after the grant and they are unlikely to realise the exact price anticipated) and a proportion, if not all of the tax, will have to be paid before a Grant is issued. Arrangements will need to be made with the deceased's bank or building society etc or possibly, the Personal Representatives may have to borrow, so that the tax can be paid. We will be able to assist you in dealing with this. In winding up the estate, an final account may have to be presented to the HMRC and accepted before everything is finalized. We can help with all communications with HMRC and can sometimes help in saving tax either now or in the future by advising you properly about various exemptions and reliefs and how they might apply. We can also help if a Deed of Variation is required. This is very useful to 'rewrite' a will after death if all beneficiaries agree. It can be advantageous with regard to tax but requires specialist advice.
- 4.5 Specific gifts.** Once the tax position has been confirmed, specific items gifted in the Will can often be dealt with very early on in proceedings as can specific gifts of money. It is not always necessary to wait until the estate has been concluded.
- 4.6 Interim Payments.** If an early payment out is necessary before the final winding up of the estate (for example if most assets were in the name of the deceased and the widow is in need of funds urgently), it is possible to agree an interim payment to one or all beneficiaries. Often this happens whilst waiting for a property to be sold.
- 4.7 Final Distribution and Winding up the Estate.** Once all valuations have been agreed, all tax paid and all assets distributed or sold final distribution can take place and the estate wound up. Often this can be a year or more after the death. Each estate is different with different complexities and time limits, your solicitor should be able to advise you about estimated times and will keep you updated so that you know where you are in the process at any one time. They will also be able to tell you if circumstances change which affect the time that it takes to finalise the estate.