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## A Practical Guide for Executors

- The initial steps to be taken after someone has died.
- Understand an Executor's duties and responsibilities.
- Understand what a Grant of Probate is.



## Introduction

We understand that when someone close to you passes away it can be a very difficult time, not least because of the emotion involved but also because of the number of matters that have to be given attention.

This Guide highlights the steps that may need to be taken when somebody passes away by the Executors (who are the persons who have been appointed in the Will to administer the estate of the deceased).

## Finding the Will

It is usual to find a photocopy of the deceased's Will amongst their personal papers. The original Will is often stored with a Solicitor or in a Bank safe deposit box.

If the deceased did not leave a Will then they are said to have died 'intestate' and their assets pass subject to certain legal rules. See our '*What happens if I die without making a Will?*' flow chart for more information on this aspect of things.

## Arranging the Funeral

As an Executor it is technically your duty to arrange the funeral, although in practice this is usually done by members of the family. It is a good idea to make contact with a funeral director as soon as possible after the death.

You should check the deceased's Will to see if any funeral directions have been included such as whether they wished to be cremated or buried. You should also check the deceased's papers to see if they had a pre-paid funeral plan. If the deceased carried a donor card or left any instructions concerning the use of their body for medical research it is necessary to contact the appropriate authorities immediately.

The deceased's bank will normally release money to pay for the funeral before the 'Grant of Probate' is obtained from the Court, provided there is enough money in the bank account. The payment will be made from the bank direct to the funeral director.

## Registering the Death

The first step is to obtain the Medical Certificate from the Doctor (either the deceased's GP or from the Hospital). Once you have the Medical Certificate then you need to contact the local Registrar of Births, Deaths & Marriages office where the person has died as soon as possible to make an appointment to register the death. They will tell you what information you need to provide.

A death must be registered within 5 working days of the death. You should obtain several copies of the death certificate (the actual number you need to request will depend on the number of assets in the estate) from the Registrar and we will need at least two or three (if you wish us to attend to the administration of the estate).

Each copy of the death certificate costs £11 (at the time of registration, it costs more if you request extra copies later) so do remember to take sufficient cash with you to the Registrar's office.

In November 2011, the government launched the "Tell Us Once" Service which means on registering a death a number of different government departments are automatically told of the change of circumstances.

Once you have registered the death the Registrar will give you a special green form depending on whether the deceased is being cremated or buried, which you will need to give to the funeral director.

## **Secure the Property and Insurance**

If the person who died owned their own home or other property the Executors should make sure that there is proper insurance cover in place and that the premises are secure.

Insurance may cease to be valid on death so it is essential that an Executor makes contact with the household Insurance Company swiftly to ensure that the cover continues, particularly if the property is empty.

The Executor must inform the Insurer straight away if the owner of the vehicle has died. Before driving a car or other vehicle, the driver must first check with their own Insurance Company that he or she is insured to drive it.

The Will may make gifts of specific assets such as jewellery, porcelain, furniture or a car and the Executors must identify these items and keep them safe.

## **Ascertaining the Assets and Liabilities**

When a person dies having made a Will, all his or her assets, including the home and any land, shares, cash, the car and all other personal belongings immediately become the responsibility of the Executors who were named in the Will. From this point onwards, the Executors are responsible for the estate of the deceased.

To administer the estate, all relevant documents must be found, such as bank statements, building society passbooks, share certificates, insurance policies, tax returns, utility accounts and pension details.

As Executor, it is your duty to ascertain all the deceased's assets and liabilities, to preserve those assets pending encashment (or transfer

to a beneficiary), to discharge the deceased's liabilities, ensure that the deceased's tax affairs are finalised and ultimately deal with the assets in accordance with the deceased's Will or the intestacy rules if there is no Will.

Failure to comply with your obligations can render you personally liable and a lack of success in managing the expectations of the beneficiaries can cause unnecessary stress.

All the organisations with whom the deceased held assets or liabilities, must be contacted and professional valuations undertaken of assets, such as the deceased's home and contents and stocks and shares. It is very important to contact the deceased's tax office to ensure that the tax matters are completed correctly.

The deceased's debts must also be listed such as the funeral account, funeral expenses, care accounts, nursing home fees, rent, utility bills, credit cards etc. The Executors are responsible for paying the debts of the estate as soon as possible after obtaining the Grant of Probate. Debts should always be paid quickly to stop interest accruing on them.

The Executor must also provide details of any gifts made by the deceased in the 7 years before their death. This includes gifts of particular items such as cars, jewellery, property, investments as well as gifts of cash.

As Executor you should be very careful to obtain full details of the assets, liabilities and lifetime gifts to the Revenue as they may impose penalties on you for providing inaccurate information.

If an Executor is not fully aware of the extent of the deceased's financial affairs, it is advisable to advertise for creditors in the local newspaper and the London Gazette.

## **What is a Grant of Probate?**

A Grant of Probate is an official document issued by the Probate Court to the Executors of the last Will of the deceased. Its effect is to "prove" the Will and confirm that it is valid. It provides evidence to everyone that the Executors are entitled to collect the assets and administer the estate.

To obtain the Grant of Probate it is necessary to prepare and submit the appropriate Inheritance Tax form to HM Revenue and Customs specifying the deceased's assets and liabilities.

HM Revenue and Customs will expect to see precise details of the assets and liabilities set out in the Inheritance Tax Account as well as a calculation of the inheritance tax due, if applicable. In most cases a professional valuation of the deceased's property and personal effects is required together with an accurate valuation of any business assets and unquoted shares.

The Executors must also submit an application on Oath to the Court along with the appropriate Revenue paperwork. This document, which is written in rather old-fashioned language, refers to the Will and sets out the facts, the Executors' duties and the Court's sanctions. It is a formal confirmation that you are entitled to probate and promise to do your job as Executor properly.

If someone dies without leaving a Will, or without Executors, the Probate Court will issue a Grant of 'Letters of Administration' to one or more of the nearest of kin, who then become Administrators. Administrators have basically the same powers as Executors, to administer the estate in line with the legal requirements that apply where someone has died without leaving a Will.

## **What happens when the Grant has been obtained?**

Once official sealed copies of the Grant have been issued by the Probate Court, the Executors are able to deal with matters such as the closure of bank accounts, the sale or transfer of a property or shares as well as the payment of any debts and taxes (inheritance tax, capital gains tax and income tax). The Executor should prepare Estate Accounts for approval by the beneficiaries of the estate before finalisation and distribution of the estate.

## **What are the main duties of an Executor?**

The law says an Executor should carry out his or her task 'with due diligence'. Executors who act wrongly may have to pay compensation to beneficiaries out of their own money. For this reason, it is wise to protect yourself by having the professional help and advice of a Solicitor.

The law expects you as Executors:

- To put the interests of the beneficiaries before your own interests;
- Not make a profit from your position unless authorised;
- To scrupulously account to the beneficiaries for all the money passing through your hands; and
- To act reasonably and prudently in relation to the estate property.

## Documents required for obtaining a Grant

To assist in the administration of an estate, we will need to see all original documents that relate to the deceased's financial affairs. These documents/items may include:

- Recent bank statements and building society passbooks;
- Share certificates or Share Account statements;
- Life policy documents;
- Recent utility account bills and Council Tax account;
- Statements of any asset portfolios;
- Title deeds to any land the deceased held an interest in;
- A list of all beneficiaries and Personal Representatives with their full names and up to date addresses;
- Recent correspondence from HMRC to do with the deceased's Income Tax returns/Capital Gain Tax matters;
- Details of any Private Pension or State Pension;
- A copy of the Funeral account;
- Details of any gifts which may have been given by the deceased in the 7 years prior to their death which have exceeded £3,000 (total of all gifts) in any one tax year; and
- Any other documents you think may be relevant. If you are unsure, it will be best for us to check the document to see if it is relevant or not.

## Do I need to use a Solicitor?

Where the total value of the estate exceeds £15,000 asset holders (e.g. the bank) will usually require production of a Grant of Probate before releasing monies due to the estate. As a general rule, if the estate is worth below £15,000 in total then you may be able to deal with closure of the asset direct with the company under the 'Small Estates Procedure'.

If the estate is very modest, if most assets were held in joint names with the surviving spouse or civil partner or if only close family are involved it may be unnecessary to use a Solicitor. If this is the case we will only charge for the advice and guidance given at the initial meeting. In many cases, however, it is strongly advisable to use a Solicitor. It is often possible to minimise or completely eliminate liability to inheritance tax by varying a person's Will after they die, saving many thousands of pounds. It is also an opportunity to consider whether surviving family members need to review their own Will arrangements.

In most cases, only professionals who administer estates can charge for acting as Executors but you are entitled to recover their out-of-pocket expenses. If you instruct Solicitors to help with the administration, the Solicitors' charges are paid from the estate (it is only the individual responsibility of the Executor if he or she has behaved recklessly or negligently in relation to the administration of the estate).

### What should I do now?

We understand that for the bereaved, the loss of a relative or loved one is a difficult time. That is why we always deal with the process of administering the estate sensitively and with care.

It can take time to administer an estate; time that not everybody will have.

Acting as an Executor must not be taken lightly. Executors are personally responsible for their actions and often control assets of significant value. Whatever the nature of the estate we are happy to help.

We can substantially reduce the workload of the Executor (in most cases you are not permitted to charge for your own time). We are experienced in dealing with estates, and know what to do and who to contact, and will advise the Executor if difficult situations arise.

If the Executors wish to instruct Band Hatton Button to act for them in the administration of the deceased's estate, please bring in with you all the financial paperwork and information that you have found together with a Registrar's copy of the death certificate and a copy of the Will and any title deeds.

**For individual advice and assistance contact our Wills, Trusts and Probate Team to find out how we can help.**

**Disclaimer - This guide contains information on current legal issues applicable at the time of printing. Note there may have been changes subsequently which have not been incorporated into the material. This guide is intended for information purposes only and its content should not be applied to any particular set of facts or relied upon without legal or other professional advice.**

### Why choose Band Hatton Button?

We deliver excellent legal services with a human touch and are proud to have a reputation for being approachable and going the extra mile for our clients. We provide high quality, pragmatic advice and offer a comprehensive range of legal services, delivered by experts and supported by our culture of respect and understanding.

#### Our expertise includes:

- Wills, estate and succession planning;
- Powers of Attorney and Court of Protection;
- Administration of estates and post death planning;
- Trust creation and administration;
- Will disputes;
- Matrimonial and family law; and
- Buying or selling a property.

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