

Probate and Estates: The first steps after a death

Few experiences are more traumatic than the death of someone you know well, especially if you are the one who has to sort out the affairs of the deceased. The administration of an estate can take some months - even years in very complicated cases. Few people have the time to spare or the ready knowledge at hand which is why it makes sense to instruct a lawyer.

FIRST STEPS TO TAKE Registration of Death

The death must be registered at the local Registry of Births, Marriages and Deaths within five days (unless it has been reported to a coroner for a post-mortem by the family or hospital doctor).

Funeral Arrangements

Most people will wish to concentrate on the funeral and leave all the deceased's financial affairs to be sorted out afterwards. However, the person instructing the funeral director can arrange for the invoice to be sent to Warners if we are to administer the deceased's estate. The funeral costs could then be paid from the proceeds of the estate.

Is there a Will?

You will need to establish if a Will exists, its whereabouts and whether it is the last Will made by the deceased. If a Will was prepared by a solicitor, the original would normally be kept at his or her office, or maybe in the bank, but the deceased should have possessed a copy. Remember the Will may also contain funeral instructions. If there is no Will, the deceased is described as having died intestate. The initial procedure for winding up an estate will be determined by whether or not there is a Will.

WINDING UP AN ESTATE

Personal Representatives

Ownership of the deceased's estate passes first to their Personal Representatives (PR's) whose job it is to find out the value of the deceased's property and possessions, pay any debts and taxes, (which may involve selling some items to raise cash) and only then

transfer ownership to the beneficiaries.

There are certain situations which fall outside this rule. For example, pension entitlements and the proceeds of a life insurance policy may be so written that they pass automatically to the named beneficiary and never come to the PR's at all. We can advise on the other exceptions.

Who are the PR's? If appointed by a Will they are known as executors and if there is no Will they are called administrators (and chosen from a list which the law lays down of those entitled to act).

Responsibilities of PR's

In summary, PR's must:

- Take care of the deceased's assets as if they were their own.
- Consult with other PR's.
- Keep all beneficiaries fully informed.
- Keep accounts of estate dealings.
- Not make a profit from their position.
- Avoid a conflict of interest between themselves and the estate, for example if they are also beneficiaries.

Note that PR's are not required to act and may decide not to do so by renouncing their position or having their power reserved to them. However, once the administration has begun, a PR cannot then drop out other than for good reason such as ill-health.

The Grant of Representation

Whether or not there is a Will, the prospective executors or administrators will probably need to apply to the Probate Court for a "Grant of Probate" (if there is a Will) or "Letters of Administration" (if there is not) for which a fee is payable. The grant enables the

executors/ administrators to deal with the deceased's property.

Inheritance Tax

Although the operation of inheritance tax (IHT) is somewhat complex, the concept is simple enough. None is payable where the value of the estate is less than £312,000. Above this amount, in most cases IHT is payable at the rate of 40% on the net value of the rest of the estate. There is no tax at all, whatever the value of the estate, on property going to a UK domiciled widow or widower, or to a charity. (See our comprehensive leaflet on inheritance tax for further information).

The IHT calculations will be shown in the HM Revenue and Customs account, and subject to certain exceptions, the tax must actually be paid before the probate court will issue the grant. The exception is that tax which falls due on land and some business interests of the deceased can be spread over ten years, subject to interest payment, and to tax being paid at once if property is sold.

HOW CAN WARNERS HELP YOU?

Do not underestimate the legal expertise which is needed in winding up an estate such as knowledge of the laws of tax, trusts and property as well as of Wills and intestacy, and possibly other subjects such as partnership and company law.

If you instruct us to administer the estate, we will take care of all the routine work. We will clearly explain the action we will be taking and any action expected of yourself. We will discuss the timescale likely to be involved in winding up the estate and when the next contact will be.

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We will give you the best information we can as to the likely costs, let you know if that forecast needs revising and to what level. Our fees are likely to be less than institutions such as the banks.

So how can we ease the burden?

- By relieving the PR's of routine work, finding out about the estate, getting it valued, completing official forms and so on.
- By advising the PR's of the choices they have (for example about what property to sell and what to keep).
- By ensuring that the right information goes to the tax authorities and that only necessary amounts of inheritance, capital gains and income tax are paid.
- By drawing up any legal documents needed to transfer ownership to the beneficiaries and by preparing final estate accounts.
- By knowing exactly what to do next and how to deal with any problems which may arise.

Advice on opportunities

At Warners we not only help solve any legal problems but also aim to alert you to any positive opportunities, such as advice on tax savings and guidance on trust advantages.

If you are a beneficiary under a Will, we can help you to make the right choices when you come to invest the money you receive, if necessary by obtaining independent financial advice. You should also reconsider the terms of your own Will if you have inherited a substantial amount and take steps to minimise potential future tax liabilities payable on your own estate.