

BACKHOUSE

GUIDE

TO BEREAVEMENT

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IMMEDIATE STEPS FOLLOWING A DEATH

This document provides general guidance on the immediate steps following a death and introduces the probate procedure for non-professional personal representatives and bereaved family members. Your probate practitioner will be able to provide specific advice based on your circumstances.

Dealing with the death of a loved one can involve many challenges, both emotional and practical. If you are also a personal representative (PR) officially dealing with the estate (the property and possessions of the person who has died) as either an executor or an administrator, you may find yourself in an alien situation with unusual and confusing terminology. In the days following a death, there are a number of practicalities which may arise.

This note aims to assist you in working out what needs to be dealt with immediately and what can be left for the subsequent weeks.

Taking time off work

While there is no statutory right to bereavement leave, 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 as paid or unpaid leave a set amount of time off for a bereavement, including attending the funeral. Check your contract or office manual/handbook or ask your HR department. Where children will be taking time off school, the school should be informed in accordance with its authorised absence policy.

Registering the death

Generally the registration is dealt with by a relative or someone who was present at the death, but if you are a PR who is going to arrange the funeral but you are not a family member, you can also register the death. Unless there is special consent from the coroner, you must register within five days of the death. The hospital where the deceased person died or otherwise the coroner will usually give some guidance about registering the death when they provide the medical certificate of cause of death. Otherwise, the address and appointment system for the register office in the sub-district where the death occurred can be found online at the Gov.uk website: Register a death.

Take along the medical certificate of cause of death (from the doctor or coroner), as well as any of the following that you have available: the deceased person's birth certificate, any marriage/civil partnership certificate(s), the deceased person's passport and driving licence, proof of deceased person's address and the deceased person's pension or state benefit book (including their NI number).

You will also need to provide any other names that the deceased person was known by, their occupation and the occupation of their widow(er). You will also need ID for yourself. Once the registration is complete, in addition to the death certificate you will also be provided with a green form (which then needs to be passed on to the funeral director) and a registration form relating to state pension or benefits. You should ask for several certified copies of the death certificate as certified copies are the only copies accepted by banks and other financial institutions as proof of the death. Keep the receipt as this money can eventually be reclaimed from the estate.

The Tell Us Once service is offered by many local authorities in the UK and allows PRs to inform central and local government services of the person's death in one go. This is a free service and can save a lot of time and effort. The registrar will indicate if the Tell Us Once service is available in your area when you register the death.

Locating the Will (if any)

If no one knows if the deceased person had a Will or where it is located, you should check the personal effects for a copy of the Will which should help identify where the original is held or, indeed, the original may be found. An original Will is often lodged with a solicitor or bank, so they should be approached. Only the executors appointed in the Will should know the contents of the Will at this stage as it is confidential, at least until probate has been granted. If you find the Will, you are able to check it only to establish the identity of the executors and any funeral wishes, including any organ donation wishes. If the Will is lodged with a solicitor or bank they are able to tell you who the executors are and any directions for the funeral and organ donation (if noted).

If there is no Will the people entitled to administer the estate as PRs are established under legal rules—known as the intestacy rules—and officially appointed in the grant of letters of administration. Your probate practitioner will help you establish the next steps if there is no Will and explain how the intestacy rules apply.

Arranging the funeral

Generally the deceased person's next of kin will arrange the funeral, but it may fall to the PRs (if not the same person) to make the arrangements. Before proceeding, make sure you are aware of any wishes made known by the deceased person as to organ donation, burial or cremation wishes, type of funeral and memorial etc. Also check the wishes of (other) immediate family members if appropriate. There is no statutory obligation to follow the deceased person's wishes but if there is disagreement between family members the PRs will need to decide, and the deceased person's wishes should be given due weight.

A list of funeral directors can be provided by the National Association of Funeral Directors (NAFD) or the National Society of Allied and Independent Funeral Directors (SAIF).

Whatever funeral is decided on, it is sensible to confirm what the costs will cover and whether the cremation certificate, crematorium charges, church fees, memorials etc are included. The person arranging the funeral will be responsible for the cost in the first instance so check to see if the deceased person set up a funeral plan (either independently or through their place of worship, if applicable), life insurance policy or a lump sum payment from a pension scheme. It is also possible to use monies from the deceased person's bank or building society account(s) and if this is required, discuss this with the funeral directors directly. Otherwise the receipt can be submitted as a debt to be paid from the deceased person's estate once the grant of representation has been issued.

Informing family & friends

Check the deceased person's address book, phone and e-mail account to make sure everyone who needs to be is informed about the death and the funeral arrangements. The deceased person's immediate family may wish to place a notice of death in the announcements section of local or national newspapers and this can be done online or by telephone. Such notices are different to the 'section 27 notices' which are placed to protect a PR's position before distributing the estate (described in the Probate — client guide).

However, beware of giving too much information in death notices to avoid drawing attention to an unoccupied property.

Securing the property and other assets

If the deceased person lived alone, make sure that their 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.

Any cash and small valuable items should not be left at the property unless locked away in a safe. The PRs should take such items into their possession to hold as part of the deceased person's estate.

Ensure that any pets are being cared for in the short term and, if you have access to the deceased person's Will, check if the deceased person expressed any wishes relating to their pets. Otherwise check to see if the animals are registered with the RSPCA Home for Life Scheme or if friends or family can help longer term. If no other arrangements have been made for the pets, they are the responsibility of the PRs. As a last resort, contact a local animal shelter about rehoming the animals.

NEXT STEPS

In time, it is necessary to start dealing with the legal aspects of administering the deceased person's estate, which includes working out what assets they owned, any debts they owed and anything owed to them. Unless there are immediate financial concerns and/or property needs to be dealt with for commercial reasons, there should be no harm in waiting for a few weeks. However, note that interest starts to accrue on unpaid inheritance tax (IHT) from six months after the end of month in which the person died and the filing deadline for the IHT account is twelve months from the end of the month in which the person died.

THE PROBATE PROCESS

This document provides general guidance regarding the probate procedure for non-professional personal representatives and bereaved family members. Your probate practitioner will be able to provide specific advice based on your circumstances.

Introduction to Probate

There are a number of things that must be dealt with immediately following a person's death, such as registering the death and arranging the funeral. In time, it is necessary to start dealing with the legal aspects of administering the deceased person's estate. Unless there are immediate financial concerns and/or property needs to be dealt with for commercial reasons, there should be no harm in waiting for a few weeks.

However, note that interest starts to accrue on unpaid inheritance tax (IHT) from six months after the end of month in which the person died and the filing deadline for the IHT account is twelve months from the end of the month in which the person died.

Terminology

When someone dies, one or more people are appointed by the court (officially 'the probate registry') to deal with the property and affairs ('the estate') of the person who has died. If the deceased person 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, those who act in the estate administration are called 'administrators'. Some implications of the deceased person leaving a Will or not are explained below.

Many of the obligations will be the same for both the executor and the administrator and both are called the 'personal representatives' (PRs) of the deceased person.

The deceased person's estate is likely to be made up of a combination of their home (and perhaps other properties, described as 'real property'), money and investments in bank, building society and investment accounts, cash, chattels (which includes all of the deceased person's personal effects, such as jewellery, clothing, furniture, artwork, cars etc). It may also include jointly owned assets, foreign assets, business assets and agricultural assets. There may be trust assets in which the deceased person had an interest and which are affected by their death. The deceased person may also have had a pension and life assurance products which pay out a lump sum or annuity as a result of their death.

If there is a Will, it may include 'pecuniary legacies' (sums of money left to specified individuals or charities) and 'specific legacies' (particular chattels or other items left to specified individuals or charities).

It will also usually provide for who is to receive the deceased person's remaining chattels. What is left after all IHT, other taxes and debts and any administration expenses have been paid and any legacies have been distributed is called the 'residuary estate'. The Will will provide for the residuary estate to pass to individuals or charities in specified shares.

The position on intestacy is similar, except that the chattels and sometimes a 'fixed net sum' will pass to the deceased person's surviving spouse or civil partner and the residuary estate will pass according to the intestacy rules.

Where there is a Will and where there is not

An executor's appointment in the Will operates from the date of death. Although their appointment is not confirmed until the probate registry issues an official document authorising 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 immediately. The role of an executor is an important, lifelong position. If any claims come up in the future from the estate, it will 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 your probate practitioner who can help explain the role to you and hopefully deal with any misgivings. If you still do not wish to take the role, the deceased person's (other) family members and probate registry should be informed. Please note; you may not be able to 'renounce' probate (step down from being an executor) if you have done anything which indicates that you have accepted the role so contact your probate practitioner as soon as possible.

If there is no Will, the situation is a little more complex. No-one can make any real decisions until the probate registry issues the official document appointing the administrators and authorising them to collect in the assets and pay debts (the 'grant of 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 more complex, time consuming and expensive than the position where the deceased person left a Will. Administrators are effectively governed by the intestacy rules. These rules establish the person or people entitled to take out the grant and who will inherit the estate. Your probate practitioner can help explain the rules, but in many cases it will be the deceased person's surviving spouse or civil partner and/or their children who are able to apply to be administrators.

Personal representatives' obligations and responsibilities

The PRs must:

- keep the property and possessions of the deceased person safe and secure during the administration process
- find out exactly what the deceased person owned, owed or was owed,
- submit the details of the deceased person's estate along with any IHT due to HMRC and the probate registry
- collect in the deceased person's assets and pay off any debts, including your own out of pocket expenses and any tax owed in relation to the deceased's lifetime tax position and tax relating to the administration period
- advertise for creditors and consider if any claims may be made against the estate
- finalise the IHT position for the estate and settle any additional IHT liability
- distribute the remainder of the estate in accordance with the Will or by following the intestacy rules. Those who inherit under the Will or intestacy rules 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.

Sometimes there is doubt about the validity of a Will. If you are concerned that there is something amiss with the deceased person's Will (either on the face of it or the circumstances in which it was made) or think that someone else may challenge its validity, you should consult a professional adviser as soon as possible. Apart from starting to ascertain the deceased person's assets and liabilities, you should take professional advice before starting the administration process.

Involving professionals

If no professional has been appointed as a PR alongside you, the first administrative step is to decide whether or not to instruct a probate practitioner to act or assist you in the estate administration. A probate practitioner must advertise their standard fees and, on discussing the particular circumstances, should be able to give you an idea of their firm's likely fees in your case, which will depend on factors such as the size and complexity of the deceased person's estate, whether there is a Will, whether there are any overseas, trust, jointly owned, business or agricultural assets passing as a result of their death and of course it will also depend on the extent to which the probate practitioner is to be involved. If any claims are anticipated or have already been brought against the estate, this is likely to significantly impact on the level of professional fees.

A probate practitioner may be instructed to complete the entire administration of the deceased person's estate, including constituting any trusts set up in the Will or on intestacy and dealing with any income tax or capital gains tax liabilities which arise during the administration period.

It is worth considering the amount of time this will involve, as well as the emotional strain of dealing with the deceased person's estate yourself. What may seem straightforward at the outset may become a more complex probate matter as the deceased person's assets and liabilities are investigated. A trusted probate practitioner can assist you with most if not all of your obligations in administering the estate. Where the deceased person's estate contains overseas assets, trust interests, business or agricultural assets, if there is any foreign element or if it is suspected that a claim may be brought against the estate, professional advice should be sought at the outset.

Reasonable legal or other professional fees incurred by the PRs in the administration of the estate can be paid out of the estate itself. The position is slightly different where professionals act as PRs themselves, but there will usually be an appropriate charging clause in the deceased person's Will or otherwise this can be agreed with the residuary beneficiaries.

LIST OF INFORMATION & DOCUMENTATION RELATING TO DECEASED'S ESTATE

- ✔ **DETAILS OF PROPERTY**
(with valuation and title deeds if available)

- ✔ **DETAILS OF BANK ACCOUNTS**

- ✔ **DETAILS OF PREMIUM BONDS**

- ✔ **DETAILS OF STOCKS AND SHARES**
(with SHARE CERTIFICATES)

- ✔ **DETAILS OF LIFE POLICIES**

- ✔ **DETAILS OF PENSIONS**
(both State and Private)

- ✔ **NATIONAL INSURANCE NUMBER**

SUMMARY OF THE LEGAL ADMINISTRATION OF THE DECEASED PERSON'S ESTATE

Ascertaining what is in the estate

A thorough search will need to be made through all of the deceased's papers and property to establish everything the deceased person owned or owed and the approximate value of each asset or debt (and sometimes the whereabouts of tangible assets, like cars, jewellery, furniture, artwork and other chattels). This will include, amongst other things, gathering details of bank and building society accounts, chattels (see below), life insurance, tax records (particularly the last tax return and P60 of the deceased person), 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 person 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 or memorandum of digital assets. This may be lodged with the solicitor who drafted the Will (if applicable). Otherwise just knowing that there are online accounts is important.

If you are instructing a probate practitioner to handle the estate administration then you might just make a list of all of the assets (including digital assets) and liabilities, with approximate values and provide them with copies of relevant bank, building society and investment account statements and other records, in order that they can write to the relevant institutions to get accurate valuations as at the date of the death and deal with collecting in or transferring the assets to beneficiaries in due course.

Lifetime gifts and trust interests

The PRs have to establish whether any gifts or transfers were made by the deceased person in their lifetime. You will also need to establish whether the deceased person was entitled to benefit from another person's estate which hadn't been distributed at the time of their death, or if they were a beneficiary of a trust. This information is required by HMRC and might affect the amount of IHT the estate has to pay.

Overseas interests and domicile

If the deceased person was born or lived abroad for significant periods of their life or even if they just owned assets outside the UK, this information will need to be included in the IHT return and may impact on the type of IHT return required, as well as the amount of IHT payable. Your probate practitioner will be able to advise you on the deceased person's domicile for IHT purposes as well as how the overseas assets will be dealt with.

Jointly owned assets

The deceased person might have owned some assets jointly with another person. While this may simplify the procedure for dealing with the asset after their death (as some assets might pass automatically, by 'survivorship' rather than having to be administered once the grant has been issued), the value of their interest will still be relevant for IHT purposes and will need to be included in the IHT return. Gather as much information as you can about the background to jointly owned assets, including when the deceased person's interest arose, who contributed what and when the asset was acquired and what their share was at the time of their death.

Business and agricultural assets

If the deceased person owned a business or agricultural assets or woodland, these interests will need to be valued as at the date of their death and are likely to require specialist involvement. Your probate practitioner will be able to explain how these assets are to be dealt with and whether or not any IHT reliefs or exemptions might be available.

Pensions and life insurance policies

If the deceased contributed to a pension scheme or had taken out life insurance during their lifetime, you will need some details of these interests. Often the deceased person may have completed a declaration of wishes or nomination, which allows a lump sum to be paid out to the nominated person outside the estate administration process (and without the need to wait for the grant to be issued). Often, but not always, these amounts will fall outside the deceased person's estate for IHT purposes. This means that they may not be subject to IHT as a result of the deceased person's death. However, the IHT account often requires the PRs to give some, if minor, details of such policies. If you are in any doubt about how these interests should be dealt with, you should seek professional advice.

Accounting to HMRC

Once the deceased person's assets and liabilities and any other interests have been ascertained and at least estimated values are available, the PRs will usually need to complete an IHT return (commonly Form IHT400 and related schedules) and account for any IHT due on the estate to HMRC. If the net value of the estate (what is left after any debts due to be paid by the deceased person) is over the IHT nil rate band threshold (which is £325,000 for deaths in 2019–20 and 2020–21), there are several exemptions and reliefs which might apply to reduce the IHT actually payable. There is also an option to pay IHT on the deceased person's house or other real property in instalments in some circumstances. Your probate practitioner can help you with the IHT return and calculations but will need to know, amongst other things, whether the deceased person had ever been a widow or widower as it may be possible to use a previous spouse's nil rate band, even if they had remarried.

Whoever prepares the IHT account, you and any other PRs will each need to sign it to confirm that the information and statements contained in it is correct and complete to the best of your knowledge.

The IHT calculated as due at this stage (even if based on estimated values) needs to be paid to HMRC in order for them to provide a code together with the net and gross values of the estate. The application can then be made to the probate registry who can then process and issue the grant of probate or grant of letters of administration. However many assets cannot be dealt with (ie transferred to the PRs or sold as necessary) without the grant of probate or grant of letters of administration. This can lead to a circular problem of PRs not having access to sufficient funds to pay the IHT due to the lack of a grant.

Some of the deceased person's assets (such as accounts with relatively small values) might be accessed without needing to have a grant and you should try to collect these in as soon as possible. If the deceased person held bank or building society or National Savings & Investment accounts, you may be able to apply for those funds to be paid directly to HMRC to settle IHT prior to the grant, under the direct payment scheme. The deceased person may have held a life insurance policy or there may be a lump sum payable from the deceased person's pension without the need for the grant. Depending on the identity of the recipients and the beneficiaries under the Will or on intestacy, these funds might be used to settle the IHT. Alternatively, a family member or bank may agree to loan you the funds to settle the IHT on the basis that they can be refunded from the estate once the assets have been collected in after the grant is issued.

Once the grant is issued and the assets are collected in, a corrective account might be required to update HMRC about any of the assets for which estimated values were submitted once updated values are known. If these result in further IHT being payable then the PRs will need to settle this. Additionally, HMRC may raise questions about the IHT return contents and some negotiation over asset valuations (eg real property) may ensue. Again it is helpful to have a professional involved at this stage, to negotiate with any specialist teams at HMRC such as the district valuer of the Valuation Office Agency.

Applying for the grant

Generally your probate practitioner will prepare the probate application for you and this may be done either online or using a paper application form. As PR, you will need to confirm the details and sign the probate. By signing the probate papers, you are confirming that you believe the facts to be true on the understanding that criminal proceedings for fraud may be brought against anyone found to have been deliberately untruthful or dishonest. Again, if you have any questions about the contents of the probate papers, you should check with your probate practitioner and notify them of any errors.

Once these details are accepted and provided there has been no delay in settling the IHT due on the estate, the probate registry will issue a grant of probate (to executors) or a grant of letters of administration (to administrators).

Collecting in assets and settling liabilities

Once the grant has been issued, a certified copy can be sent to the various banks and building societies with a request for the account to be closed and the proceeds paid to your PR's account or your probate practitioner's client account. It is advisable to discuss the position with the residuary beneficiaries of the deceased person's estate in advance in case they would prefer to have an asset (such as an investment account) transferred into their own name rather than for it to be sold or cashed in. However, you have a duty to settle any liabilities of the estate, including refunding yourself or family members for funeral expenses and any loans made to settle IHT. This will necessitate the cashing in of some of the estate assets.

Interim distributions

Once the IHT position has been confirmed and provided it is clear that the estate is solvent (ie there are sufficient assets to meet the liabilities), you can consider distributing specific items gifted in the Will early on in proceedings, as well as specific gifts of money. It is not always necessary to wait until the estate administration has been concluded. It is sensible to obtain a receipt from each beneficiary, which should be kept with the probate papers. You should also consider whether to conduct bankruptcy searches before making distributions to beneficiaries. Your probate practitioner will be able to explain whether or not this is appropriate in the circumstances.

Varying legacies and entitlements on intestacy

Sometimes a beneficiary might wish to redirect their legacy to another party. Depending on the facts, this may be done by way of a disclaimer or a variation of the Will or intestacy provisions. Your probate practitioner will be able to advise on the options and potential implications of varying the estate in this way. HMRC needs to be notified if there is more or less IHT to pay as a result of the variation.

Claims against the estate

Be prepared. Are there any potential claims against the estate? Is there someone who was financially dependent on the deceased person but has not been adequately provided for in the Will or on intestacy? Although it may be a sensitive subject, you need to consider if there is anyone who might bring a claim against the estate because of their relationship with the deceased person. You also need to consider if there are any debts that are not obvious from the papers?

It is possible for PRs to protect themselves against liability for claims made by creditors after the estate has been distributed by advertising in certain publications and local press in accordance with section 27 of the Trustee Act 1925 and waiting for the specified deadline to pass before distributing the estate. In order to protect against claims for financial provision from the estate under the Inheritance Act 1975, it is usual to wait for at least six months from the date of the grant before distributing the estate. Your probate practitioner can advise on the options for insurance and appropriate indemnities.

Final Distributions

Once HMRC has confirmed the IHT position, all tax and other liabilities have been paid and all assets transferred or sold, the final distributions can take place and the estate administration can be completed. This will include constituting any trusts set up by the deceased person's Will or on intestacy. Often this can be a year or more after the death. Each estate is different with different complexities and time limits. Your probate practitioner will be able to advise on the formalities in relation to any ongoing trusts. In relation to the estate administration, they will be able to 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.

As a PR, you need to be able to account to the probate registry for the estate administration should they require it (usually at the instigation of a beneficiary). Therefore, it is important to keep careful records of the assets which have been collected in, sold or transferred direct to beneficiaries, liabilities that have been paid and all interim and final distributions. Your probate practitioner will be able to advise you on the need for simple or formal estate accounts and arrange for these to be prepared.

HOW CAN BACKHOUSE SOLICITORS HELP?

Here at Backhouse Solicitors, we have a team of specialists who can explain the probate process and what to do once a loved one has passed away in simple terms and help you prepare and register the documents.

For more information, contact our expert team and book your free initial consultation.

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