

Guide to being a personal representative (executor or administrator)

If you are appointed to be the executor of a person's estate, you are legally responsible for dealing with the administration and ultimately the distribution of that estate. Similarly, if you take on the role of administrator of a deceased's estate who did not leave a Will (called an intestacy) you have a similar role and responsibilities. In either role you will be answerable to the deceased person's creditors and beneficiaries, both of whom can bring a claim against you personally if you do not administer the estate correctly.

You may feel happy to take on this task yourself, or you may opt to involve a solicitor to ease the burden. In either case, Wansbroughs' Private Client team has some tips for you...

Prior to the death

It is important to know what you are going to be dealing with when you assume your role as executor or administrator. Ideally you will have talked through the deceased's assets and any debts whilst they are still alive, so that you know which institutions you will need to contact after their death.

Bank account details, reference numbers and balances come in very handy and so if the testator or testatrix (the person who made the Will) can maintain lists of these that will make your job easier, later down the line.

Lists of assets and any debts are not necessarily where record keeping should cease. A testator or testatrix may also wish to note down the following:

- Their digital assets (such as social media and other online accounts). Details of accounts and what should happen to them are increasingly important, although often overlooked. Do note that websites may have specific rules when it comes to the death of a user (Facebook, for example, allows a user to choose a Facebook friend to access their account after their death and this friend should be chosen during the user's lifetime). Care should also be taken about recording and sharing passwords so beware.
- Details of any gifts made, as these could be important when it comes to submitting an Inheritance Tax Account to HMRC (see further, below).
- If they are a widow or widower, details of their marriage (i.e. marriage certificate) and details of their deceased spouse's estate. This is important if any inheritance tax allowances that are transferable between spouses are to be claimed on death.
- A copy of their last tax return, if they submit them, as well as details of their National Insurance number and any State Pension or other benefits they receive.
- Details of their private pensions and any life insurance in place.
- Check you know what, if any, funeral wishes the testator or testatrix has.

Another asset to discuss with the testator or testatrix is any property they own. If their property is not already registered with the Land Registry (recent figures suggest around 85% of land in the UK is registered which means 15% is still not), it makes sense to consider voluntary first registration whilst the testator is still alive. First registration after the property owner has died can not only prove a cumbersome task but also requires evidence about the property ownership, which is likely known to the testator and not necessarily known to you as an executor.

It is also useful to ask who, if anyone, is appointed to act alongside you as an executor, as you will need to work together when the time comes.

After death

There are some matters which should be dealt with as a priority after death.

- **Register the death**

This step is not necessarily conducted by an executor (often it is the next of kin, who may not be an executor). That said, an executor may be faced with this task.

To register the death, you will need to obtain the Medical Certificate of Cause of Death or Coroner's Certificate of Death from the deceased's doctor or the hospital where the deceased was pronounced dead.

With this certificate in hand, you should arrange an appointment with the Registrar of Births and Deaths so that the death is registered and you can obtain a death certificate. It is wise to get several copies of the death certificate (their cost can be reimbursed by the estate later) as institutions with whom the deceased held assets will need to see a copy. In all likelihood you will be dealing with several institutions and so by obtaining multiple copies you will be able to deal with them all at once whilst retaining a copy for safekeeping. Five copies are usually sufficient but we can advise.

You should check the death certificate to confirm that the deceased's name is correct (and any other names they were known by, and under which they may have held assets, are included). The cause of death is also important. If the death was as a result of an accident or medical negligence a claim might be pursued later, and so the death certificate must reflect it. If the death was as a result of Covid-19, the deceased's occupation is important especially if they were a Key Worker (and the death certificate should reflect this).

As well as the formal death certificate and copies requested, the Registrar will also provide a certificate which states whether the deceased is to be buried or cremated, which should be passed to the funeral director.

The Registrar will also provide you with a Notification of Registration of Death (BD8) Form. This form, or the online Tell Us Once service, are useful tools to inform government institutions about the death (state pension, tax offices, DVLA etc). We would always recommend contacting the institutions directly, too, to avoid any delays.

- **Funeral arrangements**

The deceased's Will may include funeral wishes and so you should check this (although funeral wishes expressed in a Will are not legally binding on you, the fact you have been chosen as an executor shows you have been entrusted by the executor to carry out their wishes). Usually the cost of funeral arrangements can be reimbursed from the estate or met by the deceased's bank account directly and are deductible for inheritance tax purposes so keep all receipts.

- **Notification of death**

Family, friends and employers of the deceased, together with educational establishments, health professionals and care services, if relevant, should be notified of the death. So too should institutions with whom the deceased held assets (banks, building societies and investment managers) and government institutions like the Department for Work and Pensions, HMRC, the local council and the DVLA (albeit they may also be notified by the Tell Us Once service).

Banks and building societies freeze accounts after the death of the account holder to prevent fraud (although joint accounts usually remain accessible to the remaining account holder into whose sole name the joint account is transferred upon production of the death certificate).

You should also return any passport to the Passport Office, driving licence to the DVLA and any registered Lasting Power of Attorney to the Office of the Public Guardian. Any attorneys the deceased appointed will no longer be able to act, as executors take over (of course, they may be the same people).

- **Property and insurance**

Utility providers should be notified of the death, as should building and contents insurance providers as a matter of urgency if the deceased's property is now unoccupied. As an executor or administrator, you are responsible for safeguarding estate assets and so it is absolutely essential that cover continues to protect the value of the property and any possessions. The death of the policy holder may count as a change in circumstances and render the existing policy void, so do not assume that cover put in place by the deceased is sufficient.

Dealing with the estate – before Grant of Representation

Once the initial steps above have been taken, the administration period of the estate will be underway and your role, as executor or administrator, is to ascertain the value of the deceased's assets and liabilities, report those to HMRC and apply for a Grant of Representation (if necessary) with a view to distributing the estate to the deceased's chosen beneficiaries.

1. **The Will**

As an executor, it is a good idea to be clear on what is required under the deceased's Will as a starting point. Wills are not always easy to understand and so you may wish to consult a solicitor to help you interpret the Will and identify any issues that may arise (perhaps potential claims against the estate, or areas where there is not sufficient clarity). It also helps to identify beneficiaries early on so that, if the beneficiary had lost contact with the deceased or has died, tracing agents can be consulted to find the lost beneficiary or if relevant, their descendants.

2. **Reporting to HMRC**

The value of the estate needs to be reported to the Revenue for inheritance tax ('IHT') purposes. There are different IHT Returns depending upon the value of the estate and certain other factors. Depending upon which type of IHT Return is required, it will either be submitted direct to the Probate Registry or to HMRC for their review and

agreement. If you are unsure which Return you need to use, you should consult a solicitor.

To ascertain the value of the estate you should notify all relevant institutions such as banks and building societies, as mentioned above, and possibly arrange formal valuations of property and personal possessions. There could also be property abroad, or property held in certain trusts, the values of which need to be reported. The cost of valuations are estate expenses and can be reimbursed by the estate in due course. They are not however deductible for IHT purposes. The values of all assets and liabilities at the deceased's date of death are then submitted to the Revenue with supporting evidence, if required. HMRC is able to raise questions and investigate values and may even consult their own valuers (a RICS qualified 'District Valuer' can be asked to provide their own valuations of any property within the estate).

Gifts made by the deceased, principally in the seven years prior to their death, should also be declared to the Revenue. A solicitor can advise you on the extent to which any such gifts may qualify for exemption from inheritance tax and the extent to which the rest of the estate may be liable to inheritance tax. A solicitor can also advise you as to whether the estate qualifies for relief from inheritance tax.. On submission of the Revenue Account, any inheritance tax that is due will be payable insofar as it is attributable to assets other than land and buildings (where different rules apply).

3. Application for Grant of Representation

A Grant is used to prove that you as the executor or administrator, have the legal right to administer the estate (and is required for dealing with the deceased's property and in some cases is required by banks and other institutions). You may not need to apply for a Grant and can seek the advice of a solicitor if you are unsure.

If a Grant is required, you will need to submit the necessary paperwork to the Probate Registry. If no IHT is payable, the relevant IHT Return and form PA1P can be sent direct to the Probate Registry. Form PA1P is the application for the Grant, and incorporates a statement that you need to sign. If IHT is payable, you will need to provide the Probate Registry with a receipt from HMRC confirming you have settled the IHT payable on submission, together with form PA1P. At present, HMRC is sending all receipts direct to Probate Registries.

In terms of the fees charged by the Probate Registry for issuing a Grant, solicitors pay a set fee of £155 for the application, with any additional copies of the Grant priced at £1.50 each. If you choose to make the application for a Grant yourself, without the assistance of a solicitor, then the fee is £215 with the same charge of £1.50 for each additional copy. Please note that the Ministry of Justice regularly reviews the fees associated with Grants of Representation and while no increase in fees is currently proposed, it is possible that fees will increase in the future.

Dealing with the estate – post Grant of Representation

Once the Grant has been issued, it is likely that the beneficiaries of the deceased's estate will be calling on you for their gifts or shares of the deceased's estate (as, armed with the Grant, you will now be able to access any estate assets that you were not able to previously).

- Before you advance funds to beneficiaries, and at the first opportunity on receipt of the Grant, you should consider **placing an advertisement for any unknown creditors** in both the London Gazette and a local newspaper. This step offers you protection against creditors of whom you are not aware but who could make claims against the estate after it has been distributed to the beneficiaries. A solicitor can help you to arrange these advertisements.
- An **official copy of the Grant should be sent to each bank, building society, etc** together with authorities from the executors/administrators as appropriate to release the funds which are then used to settle outstanding liabilities. Depending on the wishes of beneficiaries some of the assets, for example shares, may be retained and distributed to beneficiaries, rather than those being cashed in.
- If there is IHT to pay on the estate then, depending upon the assets involved, it **may take some time to reach agreement with HMRC as to the final tax liability**.
- Once the position has been agreed, final distributions to the beneficiaries can be made. If matters are likely to go on for some time, you may choose to **make interim distributions to the beneficiaries, after allowing for a more than adequate reserve** to cover any outstanding liabilities.
- If you instruct a **solicitor** to assist with the estate administration they **will prepare full accounts of the estate for you**, detailing for each beneficiary how their entitlement has been calculated.

Final comment on tax...

As inheritance tax is so central to estate administration, it is easy to let other taxes (income tax and capital gains tax) pass you by.

Executors/administrators are liable for basic rate tax on income from the estate and capital gains tax on gains made on the disposal of assets during the estate administration. If a solicitor is instructed they can assist you with this.

If paying inheritance tax, you need to calculate how much tax is due and when it is payable. If you are late, interest and penalties may be payable.

Acting as a personal representative is a big undertaking and should not be taken lightly. If done properly it takes time and organisation (as well as a few spreadsheets!). If you need assistance, either throughout the process or for specific aspects of the estate administration, please ask the Wansbroughs Private Client team, email us at wealth@wansbroughs.com.