Guide to being a personal representative (executor or administrator)

A personal representative is the collective term for a person who has responsibility for administering a deceased's estate, either as executor (where the deceased left a Will) or administrator (where the deceased did not and died intestate). In either case, you will be legally responsible for dealing with the estate administration and ultimately the distribution of the estate. You will also be answerable to the deceased person's creditors and beneficiaries, all of whom may be able to bring a claim against you personally if you do not perform your role 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 personal representative. Ideally, the deceased will have made a Will (in which case they are known as a testator or testatrix), and you will be able to talk through the deceased's assets and any debts with them 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. If the individual has maintained lists of these prior to death, that will make your job much easier later down the line.

However, record keeping should go beyond maintaining lists of assets and potential liabilities. The following should also be recorded:

- Information pertaining to digital assets and digital devices in the form of an inventory. This could include social media and other online accounts. Details of an individual's digital estate are increasingly important, although often overlooked in the estate planning process. 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 individual has.

It will also be important to discuss not only what property the individual owns but also how they own it. 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 also makes sense to consider voluntary first registration whilst the owner 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 to be known to the deceased but not necessarily known to you as personal representative.

Where the deceased made a Will, it will also be useful to ask who, if anyone, is appointed to act alongside you as 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 a personal representative (often it is a relative who may or may not also be a personal representative). Immediately following the death, an attending medical practitioner will complete a medical certification of cause of death (MCCD), which will also be reviewed by a medical examiner. Once complete, the MCCD is sent to the Registrar, and this triggers a five-day statutory timeframe in which to register the death. This is best done with your local register office through appointment. They will tell you what information will be needed, and you will also be able to purchase death certificates.

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. You will most likely 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 the result of an accident or medical negligence, a claim may be pursued later and so the death certificate must reflect the facts.

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 delay.

- **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, if you have been chosen as an executor, this shows you have been entrusted by the executor to carry out their wishes. Ordinarily, 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 mentioned above).

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 – pre-Grant

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 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 HMRC for inheritance tax ('IHT') purposes. The process differs depending upon the value of the estate and certain other factors. You should consult a solicitor if unsure.

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 HMRC with supporting evidence, if required. HMRC can raise

questions, 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 HMRC. A solicitor can advise you on the extent to which any such gifts may qualify for exemption from inheritance tax and who may bare the liability for any tax payable. More widely, a solicitor can also advise you as to whether the estate qualifies for relief from inheritance tax. On submission of the IHT return to HMRC, any inheritance tax that is due will be payable insofar as it is attributable to assets other than land and buildings (where different rules may apply).

3. Application for Grant of Representation or Grant of Letters of Administration
A Grant of Representation is used to prove that you as the executor have the legal right to administer the estate (the equivalent for an administrator is a Grant of Letters of Administration). It is required for dealing with the deceased's property and in some cases may be 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 (in some circumstances, personal representatives are not required to submit a full inheritance tax account to HMRC. This is referred to as an 'excepted estate' and may be because the estate is of low value, exempt from inheritance tax or the deceased was not domiciled or deemed domiciled in the UK).

Assuming a Grant is required, the grant application is either made online or in paper form depending on the type of application. Form PA1P is used where the deceased left a valid Will and PA1A if there is no Will. This will need to be sent to the Probate Registry with supporting documentation and a set application fee of £300 (assuming the value of the estate is over £5,000). The grant application form sets out the values of the estate for IHT purposes and, where IHT is payable, you will need to provide the unique code from HMRC confirming its receipt and processing of the IHT return.

If you instruct a solicitor to assist in the estate administration, then they will prepare the necessary paperwork that you will need to sign and submit the application for the Grant on your behalf.

The personal representatives will be required to pay all or part of the IHT before they can obtain the grant and realise assts. Where there are insufficient liquid assets in the estate, commercial lenders may loan monies to finance the IHT liability. If that is not possible, HMRC may be willing to issue a 'grant on credit' and in which case the collection of IHT may be postponed until after the grant has been issued, giving time for the personal representatives to realise assets to settle the outstanding tax due.

Dealing with the estate – post Grant

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 accrue.

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, by emailing us at **wealth@wansbroughs.com**.

This guide is for information purposes only and is not a substitute for taking legal advice.