WANSBROUGHS

ESTD. 1882

ESTATE ADMINISTRATION

wansbroughs.com

HOW TO DEAL WITH THE ESTATE OF SOMEONE WHO HAS DIED

Losing a loved one is a difficult and emotional time. Added to which there can be the complexities of dealing with their estate; various assets (bank accounts, property, etc) need to be ascertained, debts settled and the balance distributed according to the terms of the deceased's Will or, if there is no Will, as set down by the law. This can be a lot to take on. You or another family member may feel in a position to do all of this, or you may wish to involve a solicitor. The steps to be taken include:

PRACTICAL STEPS

Registration of death must take place within 5 days of the representative(s) being notified that the registrar has received the Medical Certificate of Cause of Death (MCCD). During this period, a death certificate must be obtained. The person who does this need not be a personal representative and is very often a relative.

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 need to be made and so a funeral director should be contacted. The deceased's Will may include funeral wishes and so it is important to check this. Often the cost of funeral arrangements can be reimbursed from the estate, or met from the deceased's bank account directly.

Inform family members, friends, employers and educational establishments where relevant, health professionals and any care services.

Financial institutions (banks and building societies) should also be notified, together with government institutions such as the Department for Work and Pensions, HMRC, the local council, the DVLA and the passport agency. Any bank accounts in the deceased's name will be frozen to prevent fraud (joint accounts usually remain accessible by the remaining account holder).

Property matters must also be addressed; home insurance should remain in place to protect the value of the home and contents as an asset of the estate, and utility providers should be notified and arrangements made for payment if the deceased's bank accounts have been frozen.

HM REVENUE & CUSTOMS ACCOUNT

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 bear 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).

APPLICATION FOR GRANT

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.

If the deceased left a Will then the executors appointed under that Will make the application to Court for the Grant. If the deceased died intestate, i.e. left no Will, then the law sets down who can apply to the Court, and who is entitled to share in the deceased's estate.

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, for example, be because the estate is of low value or exempt from inheritance tax).

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. Please note that interest may be charged on any IHT that isn't paid within 6 months of death.

POST GRANT STEPS

Once the Grant has been issued you may wish to arrange for an advertisement for any unknown creditors of the deceased to be placed in both the London Gazette and a local newspaper. This step offers you as the executors of a Will (or the administrators of an intestate estate) protection against creditors of whom you are not aware making claims against the estate after it has been distributed to the beneficiaries. A solicitor can help you to arrange placing these advertisements.

An official copy of the Grant is sent to each bank, building society, etc along 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.

FINAL STEPS

If there is inheritance tax 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, executors/administrators may 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.

INCOME TAX AND CAPITAL GAINS TAX DURING THE ESTATE ADMINISTRATION

The 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 you would like more information about the topics covered by this guide please email us at wealth@wansbroughs.com or phone 01380 733300.

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

OUR LEGAL SERVICES FOR YOU, YOUR FAMILY AND YOUR BUSINESS:

- WILLS, TAX, TRUSTS & PROBATE
- RESIDENTIAL PROPERTY
- RELATIONSHIP BREAKDOWN
- FAMILY
- FARMING & AGRICULTURE
- COMMERCIAL PROPERTY
- BUSINESS & CORPORATE
- EMPLOYMENT & HR
- DISPUTE RESOLUTION
- PERSONAL INJURY LITIGATION

Northgate House
Devizes, Wiltshire
SN10 1JX

t. +44 (0) 1380 733300
f. +44 (0) 1380 733600
e. wealth@wansbroughs.com
w. wansbroughs.com