

AN INTRODUCTION TO PROBATE – WHAT YOU NEED TO KNOW FIRST

This factsheet provides a basic outline or checklist of some of the things you need to do first when someone dies, as well as some of the highlights of the probate process. Not all of it may be relevant to every death. A separate note is available covering the more technical aspects of getting probate.

REGISTER AND ADVERTISE THE DEATH

Where and when do I register the death?

The death should be registered with the Registrar of Births, Deaths & Marriages in the area in which the death took place. The address will be listed in the telephone book under Registration of Births, Deaths & Marriages. It is advisable to telephone first to check the opening hours and to see whether you need an appointment.

The death must be registered within five days.

Who can register a death?

The people legally expected to register the death are:

- ◆ a relative of the deceased;
- ◆ a person present at the death;
- ◆ the occupier of the premises where the death occurred if they know that the death has occurred; or
- ◆ a person arranging the funeral.

Information required when you register a death

The Registrar will need you to bring the following document and information in order to register the death:

- ◆ the medical certificate of cause of death issued by the doctor who certified the death;
- ◆ the date and place of death;
- ◆ the deceased's full name (and maiden name if the deceased was a married woman) – it may be important here to deal with different spellings;
- ◆ the deceased's date and place of birth (usually just town and county);
- ◆ the deceased's occupation or former occupation;
- ◆ the deceased's usual address;

- ◆ if the deceased was married or in a civil partnership, the full name, occupation and date of birth of the late or surviving spouse or civil partner.

The death is recorded in a Register of Deaths. A certified copy of the original entry is called a death certificate. The banks and other organisations holding assets on behalf of the deceased will need to see the death certificate as official proof.

You should ask for at least three death certificates (your solicitor will need at least one copy, but preferably more). There will be a charge of £4 per copy.

The Registrar will also give you two important documents to pass on to other people:

- ◆ a green form (which the funeral director will need in order to arrange the burial or cremation); and
- ◆ a white certificate of registration of death (for social security purposes).

Once the death has been registered, the funeral arrangements can be made with a local funeral director (but see also the note below about organ donation etc). The funeral expenses will usually be paid out of the deceased's "estate" or assets in due course. Funeral directors are accustomed to waiting for the release of funds.

You may wish to place a notice of the death in local or national newspapers. This can usually be done by telephone: in the national newspapers, look for the "Court Circular" or "Court & Social" pages which will show the telephone number to ring.

PRELIMINARY MATTERS

Locate the will

Find out if there is a will. It may be with solicitors. If not it must be found and kept secure.

If there is a will, check it to see whether it contains any instructions about the funeral and whether burial or cremation is preferred. It is critical also to double-check early on any directions about organ donation or the use of the body for medical research. If this is not dealt with as a priority, it may be impossible to comply with.

Secure important papers

Go through the personal papers left by the deceased. Collect official and valuable documents, such as the passport, driving licence, any deeds or documents in the deceased's name, together with bank account statements, building society passbooks and all papers providing information about the assets and liabilities in the estate.

Practical steps

If the deceased lived alone:

- ◆ ensure the house and any valuables (especially if they are moveable) are made secure and collect up all sets of keys;
- ◆ cancel milk/newspaper deliveries; and
- ◆ arrange for any pets to be looked after.

Ascertain whether the deceased's house, contents and any cars are insured. Try to find the deceased's insurance policies and phone to notify the insurers of the death.

PROBATE CHECKLIST

In order to help deal properly with the assets and any debts left behind, your solicitor will need to have:

- ◆ the death certificate;
- ◆ the original will and any codicils;
- ◆ full details and supporting evidence of the deceased's assets and liabilities, e.g. pension book, passbooks, bank statements, share certificates, any relevant references and addresses; and
- ◆ full details (including addresses and references) of the deceased's professional advisers, and of the beneficiaries of the estate.

To help with this, ask for a probate information checklist to complete to provide your solicitor with a complete list of the deceased's assets and liabilities.

VERIFYING

Once your solicitor has all appropriate papers and necessary information, he can:

- ◆ notify the appropriate organisations of the death, e.g. banks, building societies, government departments such as the DVLA and DWP, etc; and

- ◆ check the extent and value of the assets and liabilities, obtaining professional valuations where necessary.

FROZEN ASSETS

It may take very little time in one case, or several months in another, to collect the information. It depends on the types of assets and liabilities involved. During this time all assets may be frozen to prevent this being incorrectly disposed of. The common exception is joint bank accounts, which can normally be immediately transferred to the surviving co-owner if a death certificate is shown to the bank.

PROBATE

Once solicitors have the necessary information, they prepare the "probate papers" for the personal representatives (PRs, normally executors) to sign and swear in front of a (different) solicitor.

What is probate?

When a person dies, their estate (i.e. the money, property and possessions left behind) has to be dealt with. The PRs take on the job of collecting in all the money, paying any debts and distributing to those people entitled to it what is left over. To get authority to do this, they usually need to obtain a legal document called a "Grant of Representation" from a court office known as a Probate Registry. Our separate factsheet explains this in more detail, but note that the PRs do not need to appear in court in person. Everything is normally done by filing papers in court and waiting a matter of a couple of weeks for court officials to process them. This is typically your last contact with the court.

Why is a grant necessary?

Organisations holding money or assets in the deceased's name need to know to whom money/assets should be paid or transferred. The grant provides proof that the PRs named in it are legally allowed to collect or deal with the deceased's money/assets.

FINANCING INHERITANCE TAX

PRs have to complete a tax return (even if there is no inheritance tax to pay). This is sent to HM Revenue & Customs, Trusts and Estates. Your solicitor will be able to prepare this for you once he has all the relevant information about the assets and debts in the estate. If any inheritance tax is due, this will have to be paid before the Probate Registry (who expect to see a receipt from the Revenue) will give the PRs the grant. Your solicitor will discuss with you how to finance any inheritance tax liability which might be payable (bearing in mind the assets themselves may be frozen).

REGISTERING THE GRANT

Once the grant has been issued by the Probate Registry, official copies are then sent to the organisations holding the assets, together with the PRs' instructions to close accounts and sell/transfer assets etc.

INHERITANCE TAX (AND DELAYS)

Whether an estate is taxable, and if so the amount payable, can depend on a number of factors, including whether the deceased:

- ◆ had an interest under a trust at any time during the seven years prior to death; or
- ◆ had made lifetime gifts.

The PRs must fully investigate these points and your solicitor needs complete information to help you get the papers right.

The delays in winding up a taxable estate may be due to the time taken to:

- ◆ obtain final clearance from the Revenue;
- ◆ negotiate asset values with the Revenue, because some asset values cannot be determined at the date of death;
- ◆ agree the income tax/capital gains tax position at the date of death. The final inheritance tax bill cannot in turn be agreed until this has been done.

COMPLETION OF THE ADMINISTRATION OR "WINDING UP THE ESTATE"

During the administration period, estate accounts are prepared and copies sent to the PRs for approval. Inheritance tax "clearance" must first be obtained from the Revenue before winding up a taxable estate. Once the PRs have approved the final estate accounts, they can wind up the estate and distribute what remains to the residuary beneficiaries or to the trustees of any continuing trust arising on the death.

COURT WORK

If a will is disputed, or claims made against an estate, PRs will need to get extra legal help to decide how to behave.

BEREAVEMENT CARE

A charity known as CRUSE is involved in bereavement counselling and publishes leaflets which you may find helpful. To obtain a copy of their publications list, you should contact them at:

CRUSE Bereavement Care (Reg. No. 208078)
PO Box 800
Richmond
Surrey TW9 1RG

T: 0844 477 9400
info@cruse.org.uk
www.cruse.org.uk

CONTACT DETAILS

If you would like further information or specific advice please contact:

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This note is intended to provide general information about some recent and anticipated developments which may be of interest. It is not intended to be comprehensive nor to provide any specific legal advice and should not be acted or relied upon as doing so. Professional advice appropriate to the specific situation should always be obtained.

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