

MILLS & REEVE



When someone dies

A guide to the procedures and practicalities



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Introduction

Most people will at some stage suffer the sad experience of a death in the family, and be faced with the problems of dealing with the estate of a relative or close friend.

It is often a difficult time. There can be a lot to think about and a lot to do, and many people are uncertain of the steps to be taken:

- o The death has to be registered.
- o The coroner may be involved.
- o Executors or administrators will be appointed to deal with the assets.
- o A grant of probate may have to be obtained.
- o The assets must be properly handled and distributed to the beneficiaries.
- o Tax may need to be paid.

This guide aims to provide a simple guide to each of these matters, to answer some of the important questions that are most frequently asked, and to help you understand the requirements and the formalities that have to be followed when a death occurs.

What to do first

If someone dies at home the family doctor should be contacted immediately. If the death was not unexpected, the doctor will give you a Medical Certificate showing the cause of death together with a note of how to register the death. If the person is to be cremated two doctors will need to sign the certificate but this can be done later. You should then contact the chosen funeral director who will come to collect the body.

If the person died in hospital the body will usually be kept there until collection by the funeral director and the Medical Certificate is issued as above.

Security and insurance

If the person lived alone in their own home (owned or rented) then you should make sure the property is secure. Take the normal precautions that you would take when leaving your own house empty for a while, such as locking doors and windows, stopping the newspaper and milk deliveries and moving valuable items out of sight. Generally, everything that is in the home of the deceased person should remain there to be valued, however if there are very valuable items, particularly smaller items, you should consider moving them to a safer place. You should find details of the buildings and contents insurance for the deceased person and notify the insurance company of the death as soon as possible. Make sure that the cover is adequate and ask them to send details of any restrictions on the cover following death. Most insurance companies have requirements such as frequent visits to the property and keeping the heating on or turning the water off at the mains.

If the deceased had any firearms the death should be reported to the local police and arrangements made for the items to be kept by another person with a licence.

Registering the death

A death must be registered within five days after the date of death. The address can be found in the telephone book or you can ask the doctor or local council. If you are unable to visit the office for this district then you can make a formal declaration in any district and this will be forwarded to the correct one.

The death can be registered by any of the following individuals:

- o a relative;
- o someone present at the death who was not a relative;
- o anyone who has take responsibility for organising the funeral; or
- o someone representing the “occupier” of the building where the person died (such as the manager of a residential home, the warden of a block of sheltered flats, or an official from the hospital).

When you go to register the death you should take the following documents or information with you:

- o The Medical Certificate issued by the doctor.
- o The person’s birth certificate and marriage or civil partnership certificate.
- o Details of the person’s date and place of birth if their birth certificate is not available.
- o Details of any other names by which the person was known.
- o The persons’ usual address.
- o Their last occupation.
- o The name, occupation and date of birth or their spouse or civil partner.
- o Their medical or NHS card or number.
- o Details of any state benefits they were receiving.

The registrar will give you the following:

- o Certificate for burial or cremation (called a “Green Form”).
- o A form for state benefits (called a “BD8”).
- o As many copies of the death certificate as you request.

You will have to pay for these, but you can be reimbursed from the estate. The cost varies between different local councils. We recommend that you obtain several copies of the death certificate as each separate institution with whom the deceased person had an investment will want to see a one and the certificates cannot be photocopied.

What if the coroner is involved

Unexpected deaths are reported to the coroner, sometimes by the police but usually by the doctor who was called when the person died.

A death is regarded as unexpected if:

- o The person died within 24 hours of being admitted to hospital or during an operation.
- o The doctor does not know the cause of death and so cannot issue a medical certificate.
- o The person who has died was not seen by a doctor within the last 14 days.

The majority of deaths reported to the coroner lead to a post mortem and in some cases an inquest is held.

It is helpful to keep in touch with the registrar, so as to know when notification from the coroner has been received, but the undertaker can do this on behalf of the family.

Holding an inquest

The primary purpose of an inquest is to establish the cause of death. The coroner needs medical evidence for this and, having established the cause of death, may adjourn the inquest so that further enquiries can be made.

When the coroner adjourns an inquest, he will send the next-of-kin, or other responsible person, a certificate for cremation or an order for burial.

The coroner will also send a certificate to the registrar so that the death may be registered.

Arranging the funeral

The deceased may have left instructions in their will or a letter about their funeral wishes. Check whether they left an organ donor card or a request for their body to be given for medical research. You should also check whether they had a “pre-paid” funeral plan to cover some of the cost. As well as the funeral itself there will usually be additional fees such as for newspaper notices, fees paid to the vicar or church, or for a memorial. Most banks or building societies are prepared to pay the funeral bill out of the deceased person’s account before probate, assuming sufficient funds are held.

Many of the UK’s funeral directors are members of the National Association of Funeral Directors which has a code of practice.

You do not have to use a funeral director as many people now have “do-it-yourself” funerals, often using coffins made of alternative materials such as wicker or cardboard. These funerals are often less expensive and can be more personal and intimate. If you would like to know more contact the Natural Death Centre.

Finding the will

Wills and codicils are often held by the deceased person’s solicitor or in a bank deposit box. A copy is often kept with the deceased person’s other important papers. If the person did not have a will they are said to have died “intestate” and their assets pass in accordance with certain legal rules.

What happens to the assets?

If there is a will, legal ownership of the deceased's assets passes immediately to the executors. If there is no will, ownership passes to the administrators when letters of administration have been issued.

Personal representative is a general term that covers both executors and administrators. The beneficiaries, who will eventually benefit from the estate, do not own anything until it is handed over to them by the executor or the administrator. The rights of the beneficiaries at this stage are to have the estate properly administered for their benefit.

Surviving spouse or civil partner

The survivor should send off the state benefits form BD8 given to them by the registrar as soon as possible so that their state pension can be increased if appropriate. If the survivor now lives alone they should also contact the local council to obtain a reduction to their Council Tax bill.

Joint accounts

If the deceased had a joint bank or building society account with someone else, the bank or building society will change the account into the survivor's sole name once they have seen the death certificate. However you should still give details of the account to the executors and the money in the account may still belong to the deceased person's estate.

Duties of the personal representatives

The personal representatives have a heavy responsibility to:

- o safeguard all the assets;
- o collect the assets into their control; and
- o administer the estate in accordance with the law and make sure that the correct taxes are paid.

They will need to find out very detailed information about the estate including:

- o Obtaining valuations of all assets owned by the deceased, including their property, personal possessions and investments. We can advise if you need to instruct an estate agent or other valuer or whether an informal valuation will be sufficient.
- o Details of any gifts made by the deceased in the seven years before their death. This includes gifts of particular items such as jewellery, cars or investments as well as gifts of cash. Sometimes it is necessary to provide details of gifts made up to fourteen years before the death; we can advise further on when this requirement applies.
- o Any outstanding bills or debts owed by the deceased person.

All the assets are "frozen" until a grant of probate or letters of administration are obtained. The personal representatives should keep receipts for, and details of, all out of pocket expenditure so that they can be refunded from the deceased's estate.

The grant of probate

A grant of probate is issued by the court to the executors of the last will of the deceased. Its effect is to "prove" the will and confirm that it is valid. It provides evidence to everyone that the executors are entitled to collect the assets and administer the estate.

Letters of administration

If someone dies without leaving a will, or without executors, the court will issue letters of administration to one or more of the nearest of kin, who then become administrators. Administrators have basically the same powers as executors, to administer the estate in line with the legal requirements that apply where someone has died without leaving a will. Special rules apply to the distribution of the estate of someone who dies without a will, and to the rights of the surviving relatives to apply for letters of administration.

There must be at least two administrators if the beneficiaries include children under 18 or if the estate is to remain in trust for the benefit of the surviving spouse for life.

How are these obtained?

When using a solicitor there is no need to attend at court. The whole process can be dealt with by post and telephone, although you may find it useful to have a meeting with your solicitor soon after the death.

When the full details of the estate are known:

- o the executors, or intending administrators, submit an application on oath to the court; and
- o an account of the estate will usually be filed with HM Revenue & Customs giving details and valuations of all assets and liabilities and calculations of any inheritance tax liability. There is a very strict obligation on the executors/administrators to report to HMRC all of the deceased's assets and all gifts made within the seven years before death. They should be very careful to obtain full details as HMRC may impose penalties for providing inaccurate information.

Inheritance tax

If the net estate (the value of all assets less any liabilities) is above a certain limit there may be inheritance tax to pay. The value of gifts made by the deceased person during the last seven years of their life and any trust interest can affect the amount of tax payable too.

Liability to pay inheritance tax will depend on:

- o the value and nature of the estate; and
- o to whom the estate passes.

Any part of the estate passing to a surviving spouse, or to a charity, will be exempt from inheritance tax.

Certain assets such as an interest in a business or agricultural property may attract relief and therefore qualify for a reduction in their value for the purposes of calculating inheritance tax.

Part (or sometimes all) of the tax must be paid before the grant of representation can be obtained but this can often be paid direct from the deceased's bank accounts or share portfolio. Otherwise it may be necessary to obtain a short term loan. This first tax payment must be paid at the end of six months from the month of death, otherwise interest will normally have to be paid. Tax on some parts of the estate, such as on land or unquoted private company shares, may be paid by 10 annual instalments. We can advise you how to deal with this.

If inheritance tax is payable on the estate, or if claims for relief from inheritance tax are made, the estate can take some time to administer, often a year or more.

Often tax calculations can be very complicated and it is necessary to negotiate the value of assets and the amount of any reductions with HMRC. We can help with this.

Public notices

The executors or their solicitors can arrange publication of legal notices in the *London Gazette* and the local paper where the deceased owned property requesting that any claims on the estate be made within a certain period. After the time limit has expired the executors can safely distribute the estate without any worries about personal liability from creditors of whom they couldn't reasonably have notice, although a claim can still be made against the beneficiaries who received the assets.

Once a will has been submitted for probate it becomes a public document and anyone can obtain a copy. Sometimes you will see details of a deceased person's will in the newspaper. This is usually because the deceased was very wealthy or well known or his will is of particular interest, perhaps because it includes large gifts to charity. As the will is a public document it is not possible to stop this kind of publication.

What happens when the grant has been obtained?

When the grant has been obtained, the executors and administrators are able to deal with:

- o any sale of assets;
- o collection of assets; and
- o payment of outstanding debts.

They may include the following:

- o transferring or selling the house;
- o closing building society or bank accounts;
- o selling or transferring shares, unit trusts, saving certificates;
- o claiming life assurance policy monies;
- o collecting pension arrears; and
- o selling personal effects.

There are also a good many other matters connected with daily life, such as:

- o Refunds on season tickets.
- o Cancelling subscriptions.
- o Changing membership records.
- o Cancelling passport.
- o Dealing with uncashed cheques.

Collection of some assets may be more difficult. Advice may well be needed when dealing with shares or interests in a private company or family business, or with assets outside the United Kingdom.

Payment of outstanding debts

The executors and administrators must pay all outstanding debts. They may be personally liable for any unpaid debts if they distribute the estate without making sure that all creditors have been paid. To protect themselves against this, a notice to creditors should be published (see Public notices above). If the executors are unsure whether the estate is large enough to pay all the debts in full they must be very careful not to prefer one creditor over another and should take specialist legal advice before agreeing to make any payments.

Deeds of variation

Also called Deeds of Family Arrangement, these are a very useful tax planning tool which can be used to “rewrite” part of the deceased person’s will or the distribution on intestacy. They can save large amounts of inheritance tax for the next generation and can be used to

pass assets to beneficiaries not named in the will or in different proportions to those set out in the will. Please ask if you are interested in this or future inheritance tax planning generally.

What happens next

Once all the liabilities have been paid the executors will then look at distributing the estate. Specific legacies are gifts of particular items in the will (such as jewellery or paintings) and these are dealt with first.

Cash legacies are usually paid once there is sufficient cash available. If they are not paid within one year of death then they start to accrue interest.

The residue

The residue is what is left after all the bills, tax and legacies have been paid. Often an interim payment is made to the beneficiaries with the balance being paid once all the other matters have been dealt with. The executors should be careful to make reserves for any remaining liabilities or future expenses.

Shares can be transferred to beneficiaries rather than being sold but if there is more than one beneficiary it is advisable to transfer a proportion of each holding to each beneficiary to maintain parity between them. Very often the value of assets changes significantly during the course of the administration and this is something which should be considered prior to their transfer or sale, together with the potential tax implications, as this may affect the decisions made.

Estate accounts should be produced showing receipts, payments and the division of the estate.

What if the beneficiaries cannot be traced?

The executors and administrators must make every effort to trace and find the beneficiaries. If it proves impossible to trace any of the beneficiaries, or those responsible for the estate believe that there may be others entitled to share in the estate but they cannot locate them, then an indemnity policy should be taken out to provide insurance cover. This enables the estate to be distributed among those beneficiaries who can be located.

Liability for other taxes

During the period of administration the executors may have to pay income tax (on the income received) and capital gains tax (on any uplift in value between the death of death and the date on which assets are sold).

The residuary beneficiaries will be given a certificate showing their share of income received during the period of administration after the payment of income tax. If the beneficiary is a non-taxpayer this enables him to recover the whole or part of the tax paid by the executors. If the beneficiary is subject to a higher rate of tax, he may have to pay additional tax on the income paid to him from the estate.

How long does it all take?

This really depends on the size and the complexity of the estate.

In straightforward cases, with no inheritance tax to pay, administration can be completed within a few months. In more complex estates the period needed for administration may be considerably longer (in some cases a number of years) while values are negotiated and agreed with the HMRC. If the deceased person had foreign assets these can take a long time to deal with, particularly as it may be necessary to take out a second or even third grant of probate in a foreign jurisdiction.

Further advice and useful organisations

Please contact Mills & Reeve for further advice or to discuss a particular matter. See below for our details.

- o Age Concern www.ageconcern.org.uk. Telephone the information line on **0800 00 99 66** for details of your local branch.
- o Cruse Bereavement Care www.crusebereavementcare.org.uk. A counselling and advice service for bereaved people. Telephone **0844 477 9400** or check the telephone book for your local branch.
- o HM Revenue & Customs www.hmrc.gov.uk. The inheritance tax helpline number is **0845 302 1479**.
- o National Association of Funeral Directors www.nafd.org.uk or telephone **0845 230 1343**.
- o Natural Death Centre www.naturaldeath.org.uk or telephone **0871 288 2098**.
- o The Samaritans www.samaritans.org or telephone **0845 790 9090**.

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