

Guide to Estates When Someone Dies



1. Is there a will?

The first step that you should take when beginning to deal with the estate of a deceased person is to check carefully amongst their personal papers to see whether there is a copy or original Will. It is possible that Solicitors may be holding the original Will but the deceased will usually have a copy in an envelope which sets out the contact details for the Solicitor who is holding the original.

It is very important to check carefully to ensure that the Will is the latest Will as people often keep copies of earlier Wills which they forget to destroy. It can be sensible to make enquiries of local firms of Solicitors to see whether any firms hold a Will for the deceased and in some circumstances it may be necessary to conduct a Will search through a commercial organisation to ensure that any possible Wills are located.

If an estate is completed on the basis of a particular Will and it is later found to be invalid (for example because there is a later Will) or if an estate is administered in accordance with the intestacy rules (because it is believed that there is no Will) but a Will is later found then there are risks both to the Executors or Administrators who may be personally liable and also the beneficiaries who may have to repay any monies they have received.

2. What information will I need?

It is important to gather information about all bank accounts, investments, shares, life policies, pensions and benefits.

It is also important to gather information about any debts or liabilities for example utility bills, credit cards, loans and also liabilities that arise as a result of the death such as the costs of the funeral or funeral hospitality. If possible the deceased's national insurance number should be identified.

If it is necessary to complete an inheritance tax return to HMRC the information that is required is extremely detailed and any documentation that can be located at an early stage, to enable a decision to be made about the type of HMRC account that may be needed and whether any inheritance tax is payable, is extremely useful.

3. Do I need a Grant of Representation? (also called Grant of Probate or Grant of Letters of Administration)

Many financial institutions and the Land Registry will not allow any dealing with a deceased person's assets without a Grant of Representation.

A Grant of Probate is an Order issued by the Court to confirm the validity of a Will and also to confirm the authority of the Executors appointed under the Will to deal with the estate.

If the deceased did not make a Will a different form of Grant of Representation is needed called a Grant of Letters of Administration. There are strict rules as to who may take out a Grant of Letters of Administration but generally this would be close relatives of the deceased and the Order provides the Court's authority for that person or people (known as Administrators) to deal with the estate of the deceased person.

In order to obtain a Grant of Representation all estates (even small estates) must complete a return to HMRC providing details of all assets in the estate to satisfy HMRC either that no tax is due or to enable the payment of any inheritance tax that may be due. Depending upon the size or complexity of the estate a more detailed and complex return may be necessary.

4. Do I need to use a Solicitor?

You should consult a Solicitor as soon as possible following a death as there are strict time limits for submitting inheritance tax returns to HMRC and for the payment of any inheritance tax that may be due. With the benefit of prompt professional advice significant tax savings may be possible.

The law is changing all the time and, unfortunately, ignorance of the law is no excuse for failure to comply with it. Penalties and interest may be imposed both on the estate and possibly upon the Executor or Administrator personally for returns that are incorrectly completed or which are filed late.

It is important to take legal advice in respect of all wills containing trusts as there may be complex issues and the trustees (usually the Executor or Executors of the will) may be personally liable if the trust is not dealt with appropriately.

Failure to administer an estate according to the law can result in the Executor or Administrator becoming personally liable for any financial losses suffered by any of the beneficiaries and, therefore, it is important to ensure that all steps taken in the administration of the estate are undertaken correctly.

Whether or not you need a Solicitor to assist you in the administration of the estate will depend upon a number of factors but we would be happy to offer you a free no obligation appointment to discuss the estate, your duties as personal representative (either as Executor or Administrator) and how we may be able to assist you. To arrange your free appointment please contact the Wills & Probate team at LDJ Solicitors and mention this leaflet.

5. Gifts

When someone dies it is not just the assets that they own at the date of their death that may need to be taken into account when dealing with their estate. If the deceased made any gifts in the seven years before they died or if they made any gifts where they retained some use of the asset they had given away (e.g. if they had given their home to their children but still lived in it) these gifts may need to be brought back into the estate to calculate if any inheritance tax is payable. The rules relating to gifts can be complex and, if you are in any doubt about whether gifts need to be declared or the extent of the enquiries that HMRC requires you to make to identify any possible gifts, you should seek specialist advice as HMRC may hold an Executor or Administrator personally liable for an incorrect return if they do not believe that the necessary steps have been taken to identify and declare any relevant gifts.

6. Executor's and Administrator's liability for debts

The Executor or Administrator has a duty to ensure that all known debts incurred by the person who died are paid off before any distributions are made to the beneficiaries.

If the Executor or Administrator fails to do this, the creditors can hold them personally liable to meet the outstanding debts, up to the value of the estate. It is, therefore, important that no distributions to beneficiaries are made until the full extent of the debts can be established. The Executor or Administrator can, however, protect themselves by placing "statutory advertisements" pursuant to section 27 of the Trustees Act 1925 which will protect them against claims from creditors (or any other claims against the estate) of which they had no notice. If anyone later makes a claim after the deadline in the advertisements has expired then they may try to recover the money owed to them from the beneficiaries but not from the Executor or Administrator personally (except insofar as the Executor or Administrator is also a beneficiary of the estate).

If there are insufficient assets in the estate to pay all outstanding debts then the estate is insolvent and special rules apply to how the estate must be administered. If you believe that the estate may be insolvent you should seek specialist advice before taking any steps in connection with the estate as you may decide that you do not wish to act as Executor or Administrator in those circumstances and you may be unable to do this if you have already taken some steps towards administering the estate (however small).

7. Income Tax

It is the Executor's or Administrator's responsibility to ensure that all of the tax due during the lifetime of the deceased is paid following their death (for example unpaid tax may arise if the deceased owned a property which had been let out prior to their death or if they held any life insurance based investments which resulted in a chargeable gain as a result of their death).

It is important to ensure that, if necessary, tax returns have been prepared and filed for each year and that all tax has been paid. If tax returns were necessary but have not been completed and all relevant tax paid then it is the responsibility of the Executor or Administrator to ensure that these are brought up to date (even if this may stretch back over a number of years). The Executor or Administrator must ensure that all outstanding tax and penalties are paid from the estate before it is distributed and if they do not do so they may be personally liable for the failure to properly declare income tax due.

8. House Insurance

If the deceased owned a property and the property is no longer occupied as a result of their death it is essential that the house insurers are notified immediately that the property is no longer occupied. If it were to become necessary to make a claim on the policy the insurers may be able to avoid responsibility for the claim if they have not been notified that the property is no longer occupied. Failure to maintain adequate property insurance may result in personal liability for the Executor or Administrator for any losses suffered by the estate as a result of an insurable event.

9. Claims against the estate

It is possible that claims may be brought against the estate either by individuals who feel that the deceased did not have the necessary capacity to make the Will and so they feel that the Will is invalid or by individuals who feel that the deceased should have made provision for them but failed to do so.

There are limited circumstances in which claims such as these may be made but under the Inheritance (Provision for Family and Dependents) Act 1975 certain individuals do have a right to apply to the Court to consider whether reasonable provision has been made for them from the estate.

Eventually it is likely that the estate will be ordered to pay any costs of these proceedings and so it is important that they are dealt with carefully from the outset to try and ensure that any disputes are resolved at the minimum possible cost.

If the assets of the estate have been distributed to the beneficiaries before the time for submitting a claim to the court has expired then the Executor or Administrator may be personally liable for the amount of any Order made by the court (if it not possible to recover the assets from the original beneficiaries). Care should, therefore, be taken to ensure that such claims are either highly unlikely or that the timescale for submitting claims has passed before the estate assets are distributed.

10. Claims by the Department for Work and Pensions

Investigations are frequently carried out by the Department for Work and Pensions following any death where the deceased was in receipt of means tested benefits prior to their death. These investigations can be lengthy and are often very detailed and it is usually not possible to distribute the estate until the investigation has completed. In some cases the Department for Work and Pensions may seek to reclaim benefits that had been paid to the deceased person over a number of years if they feel that they have been incorrectly claimed.

11. Personal liability

Being an Executor or Administrator carries a high level of responsibility and if you do not fulfil your duties promptly and correctly you may find that you become personally liable for many of the matters highlighted in this guide. You may also be liable for claims made against you by the beneficiaries, for example, if they feel that you have failed to properly preserve assets or have failed to obtain the best possible price for assets that are sold or simply because of a delay in the administration. If the beneficiary feels that they have suffered a loss as a result of the way that the estate has been administered they may be entitled to bring a claim against the Executor or Administrator. Using a Solicitor to assist with the administration of the estate can assist in defending any such claim as the Solicitor will advise you throughout the administration process upon deadlines, procedures and best practice to ensure that your obligations are complied with.

If you require any further information or you would like to make an appointment to consult one of our specialist Solicitors please do not hesitate to contact the Wills and Probate team at LDJ Solicitors on :-

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