

DEALING WITH A WILL AND FINANCES AFTER A DEATH

If you have been named in the Will of the person (or one of the people who will deal with the Estate), you are called an “Executor” or sometimes a “Personal Representative”. If you are acting as an Executor or a Personal Representative it is advisable to speak to the deceased’s solicitor and accountant if they had one. Whether or not you get help from a solicitor, to be able to deal with the deceased’s affairs, and access funds, you will normally need to apply to the Probate Registry for a “Grant of Probate” or a grant of “Letters of Administration”.

Timescales

You have one year from the date of the deceased’s death to sort out the Estate before distributing it. After a year, you could become liable to pay interest on any undistributed assets. As an Executor or Personal Representative, you must make a list of everything the deceased person owned, including their savings and investments. You must work out whether there is Inheritance Tax to pay. You must then pay any debts the person had and finally you distribute their belongings and remaining money according to what their Will says.

As an Executor you are personally liable (responsible) for making sure you follow the Law and do what the Will says. If you are unsure, you should get advice from a solicitor – the Estate will pay the solicitor’s fees.

Inheritance Tax

Whether or not, you as the Executor or Personal Representative, have to pay Inheritance Tax out of the Estate depends on :-

- How much the property and belongings of the deceased were worth when they died

- The value of any Trust that the deceased person benefited from, and
- The value of certain “gifts” (money or items of value) the deceased made in the 7 years before they died, or longer if they “reserved an interest”. (An example of reserving an interest would be if they gave away their house on the condition that they were allowed to live there free of charge or for very low rent until they died)

If all of these add up to more than a certain amount (called the “Nil Rate Band”), the Estate has to pay Inheritance Tax at 40% on the value above this amount. The amount is reviewed every year. It is £325,000.00 for the year April 2009 to March 2010. The rules about Inheritance Tax are complicated, so you should seek a solicitor’s advice straight away if you are an Executor or Personal Representative. Again, the cost of legal advice will be paid from the Estate.

Financial documents

Some of the documents you will need to find include the deceased’s:

- Tax and National Insurance affairs
- Bank, Building Society and Savings Accounts and Certificates
- Stocks and Shares
- State and Private Pensions
- State Benefits
- Car, health, home and life insurance policies
- Utility bills
- Other unpaid bills
- Property deeds
- Mortgage payments
- Rent payments
- Credit Card and Store Card payments
- Loan payments and other formal debts

If the deceased was self employed or a business partner, you will also need to collect together any documents relating to their business.

Accessing money

Normally, only the Executor or Personal Representative will have access to the deceased's money and you will need various documents to do this.

Tax affairs

The deceased may be owed a tax rebate or may have to pay some tax. If you sell the deceased's property or other assets at a gain (profit) Capital Gains Tax may be payable if the gain above the market value at the date of death (not the date of acquisition) exceeds the current Capital Gains Tax threshold.

Other payments

You may also need to pay:

- Rent or mortgage on the deceased's home
- Funeral costs
- Any outstanding bills
- Formal debts owed by the deceased
- Insurance on the deceased's home
- Other payments to protect the Estate assets

Enough money?

When someone dies, their debts do not die with them. They have to be paid out of the person's estate. If you are administering an estate, you must make sure that you have paid all of the debts before you pay the beneficiaries. If you are not sure what the debts are, you need to advertise in the London Gazette and a local paper for any one who may have a claim on the estate, and then wait two months before paying the beneficiaries.

You could become responsible for the debts if you pay the beneficiaries without having cleared all of the debts first.

If there is not enough money to pay all the debts, they must be paid in a particular order:

1. The funeral expenses and “testamentary” expenses (those to do with dealing with the Will)
2. Any debt secured by a mortgage on a property
3. HM Revenue and Customs
4. The Department of Works & Pensions who deal with Social Security (you may have to refund any over payment of benefits)
5. Unpaid Pension contributions or wages

If all the debts can be paid, but there isn't enough money left to pay everything set out in the Will, the legacies (those where a specific amount is mentioned) will be paid first, and the other people mentioned will get what is left over.

If there is not enough money to pay all the legacies, the people entitled to the legacies will get a proportion of what they have been left, depending on how much money is available. The other people mentioned in the Will, who are supposed to get the remainder, will get nothing.

Money to collect

Money owed to a deceased is part of their estate. You may be able to claim:-

- Tax rebates
- Life Insurance
- Money from Pension Schemes
- Money from lost or forgotten Pensions and Savings
- Capital from the deceased's business
- Formal debts owing to them

However any informal loans made by the deceased do not have to be repaid by the borrower.

ACTION

We strongly advise you to sort out your finances and to make a Will. This will save your surviving relatives additional distress when you die and make sure that your money, property and possessions are shared out as you want.

It is advisable to seek proper legal and financial advice and, as always, we are here to help. If you have any comments or queries regarding anything contained within this article or indeed if you require any advice on Estates, Probates, Trusts, Inheritance Tax, Enduring Powers of Attorney or Lasting Powers of Attorney, please do not hesitate to contact me on **01288 35 9000** or email me at **sharon.piper@busbyslaw.co.uk**.

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