



August 2008

Key Points:

- Replaces previous version dated August 2007

Dealing with someone's estate

This factsheet is aimed at people aged 60 and over.

When a person dies, somebody has to deal with their estate (the money, property and possessions owned by the person who has died). This factsheet provides information on the ways in which the money may be collected, the debts paid and the balance distributed to those who are entitled to receive a share in the estate. Further reading may be necessary, and a selection of books on the subject is given in Section 10.

This factsheet describes the situation in England. Readers in Northern Ireland, Scotland and Wales should contact their respective national Age Concern offices for information specific to where they live.

Contact details are:

The Scottish Helpline for Older People – Age Concern Scotland, tel: 0845 125 9732 (local call rates) Monday to Friday, 10am – 4pm; website: www.olderpeoplescotland.co.uk;

Age Concern Cymru, Ty John Pathy, Units 13/14 Neptune Court, Vanguard Way, Cardiff CF24 5PJ, tel: 029 2043 1555 (national call rate); website: www.accymru.org.uk;

Age Concern Northern Ireland, 3 Lower Crescent, Belfast BT7 1NR, tel: 028 9032 5055 (national rate), Monday to Friday, 10am – 12pm and 2pm -4pm, website: www.ageconcernni.org.

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1. Funeral Arrangements

Age Concern Factsheet 27, *Planning for a funeral* explains how to register a death and arrange a funeral. Check whether the deceased left specific instructions for the funeral. This information may be contained in the will or in a separate letter or other document stored with the will.

A will may be held for safe keeping in a number of places other than the deceased's home: with a solicitor, at a bank, or at the Principal Registry of the Family Division.

2. Personal representative

The person who deals with (administers) the estate is called a personal representative. If the deceased left a will appointing someone to do this, they are called an executor. If there is no valid will, or if the will does not name an executor, then the personal representative is called an administrator. See Section 4 for details of the people who may apply to be an administrator.

The personal representative must follow certain legal procedures. It is not necessary to engage a firm of solicitors unless the will specifies this but it is vital that the personal representative is clear about what formalities are involved. If any queries arise, legal advice should be obtained; this can be paid for from the estate.

It is advisable to consider using a solicitor if any of the following apply: the estate is large; a business or agricultural property is involved; the deceased was a partner in a firm; there are family trusts or large gifts to children under 18; or there is a likelihood that a claim may be made under the *Inheritance (Provision for Family and Dependants) Act* by someone who believes that they have been unfairly treated by the will or by the rules of intestacy. Problems requiring professional assistance may also arise if the will was badly drafted.

Any fees charged by the solicitor should be 'fair and reasonable' having regard to all the circumstances of the case. Fees are usually based mainly on the time spent by the solicitor but may include an element relating to the value of the estate.

The fees of any professional or corporate advisers will be paid by the estate, not by the personal representative, but it is advisable to obtain an estimate prior to making a decision. Banks may be more expensive than solicitors.

Except in the case of very small estates, it may be advisable at an early stage to open a separate bank or building society account, usually known as an 'executorship account', into which money due to the estate can be paid. This prevents the estate's funds becoming confused with the personal funds of the executor/administrator and makes it easier to produce the necessary estate accounts.

Once all debts have been paid, the estate is then distributed in accordance with the deceased's wishes as set out in the will. If the person has not made a will the assets are distributed in accordance with the rules of intestacy which are explained in Section 9.

3. Grants of representation

The personal representative usually needs a formal legal document from the High Court to confirm that they have the legal authority to deal with the assets of the deceased person. This grant of representation ('the grant') is issued by the High Court. It is called a grant of probate when issued to the executors of a will, or a grant of letters of administration when issued to an administrator.

4. Who may apply for a grant

Where there is a will, the grant of representation will be given to:

1. The executors named in the will; *or*
2. If there are no executors, or the executors are unable or unwilling to apply, the next person entitled to a grant is any person named in the will as trustee of residue or to whom the deceased gives all his/her estate, or the remainder after gifts are paid. If the residue (remainder) is shared between more than one person, all will be entitled to apply. A grant can be awarded to up to four people.

If the deceased has not made a valid will, application for a grant should normally be made by their next of kin in the following order of priority:

Husband, wife or civil partner
Sons or daughters*
Parents
Brothers or sisters*
More distant relatives*

* if any of these die before the person who made the will, their sons or daughters may apply.

A grant cannot be issued to someone under the age of 18, but a minor may take the grant on reaching 18. The partner of the deceased is not entitled to apply if they were not married or in a civil partnership.

If you are not sure whether you are entitled to apply you should still complete and return the forms and the registry will let you know.

5. How to apply for a grant

Whether you are applying for a grant of probate or letters of administration the procedure is the same. You can obtain the relevant forms from the Probate and Inheritance Tax Helpline on 0845 30 20 900 (lo-call rate), or from the local probate registry (whose address can be obtained by calling the Probate and Inheritance Tax Helpline). There is also an accompanying leaflet, *How to obtain probate* (PA2), which explains how to complete the forms. The forms are as follows:

- the probate application (form PA1) - this asks for details about the person who has died, their surviving relatives, the personal representatives and details of the will if there is one;
- a return of the whole estate form IHT205 (yellow form) - this gives details of the estate and its value. If the value of the assets of the person who died is less than the threshold for Inheritance Tax at the time of death (before deduction of debts and funeral expenses) then fill in IHT205. In 2008-2009 the tax threshold is £312,000.

If the estate's value is over the Inheritance Tax threshold then you should complete form IHT200 and send this to HM Revenue and Customs. Do not fill in both forms and do not send IHT200 with the probate application.

In order to complete these forms it will be necessary for the personal representative to obtain the following information:

1. The value at the date of death of all assets owned by the deceased:
 - the full market value of a house or flat or any other property, although a professional valuation is not normally necessary;
 - the value of household goods, jewellery and belongings which should be shown as the sum for which they could be sold.
2. Details of any money owed to the dead person or to their estate;
3. Any debts owed by the person who had died, including tax (income tax and capital gains tax) due to HM Revenue & Customs.

This information will enable the personal representative to prepare a detailed list of assets and tax due from the estate to find out if inheritance tax is payable and if so to make arrangements to pay this. The tax must be paid before a grant will be issued. See Section 7.

When all the forms have been completed they should be sent with the death certificate and the original will (or any documents in which the deceased expresses any wishes about the distribution of their estate), to either the Probate Registry where you wish to be interviewed or the Probate Registry which controls the local office where you wish to be interviewed. Do not send any papers to the local offices as this will delay the application. Addresses of the Registries and local offices can be found on the website: www.hmcourts-service.gov.uk, or by phoning the Probate and Inheritance Tax helpline on 0845 30 20 900 (lo-call rate).

It is advisable to send the documents by recorded delivery after making a copy of the will and other documents - the copies should be kept in a safe place.

You must also enclose a cheque for the application fee. The fee is currently £90, although there is no fee if the value of the estate is less than £5,000.

You can also pay for additional official copies of the grant of representation which may be used to send to institutions in place of the original grant (an ordinary copy is not acceptable for this purpose). The fee for each official copy is currently £1 per copy if you request it with the application.

A separate official copy is not required for each institution holding assets of the deceased, as each institution will register the particulars in their records and stamp the reverse of the grant and return it to the personal representative. But sending a separate copy to each organisation simultaneously may be quicker.

You may not have to pay the whole probate application fee if it would cause you to suffer financial hardship. This will depend on your income and personal circumstances. You can apply for remission or reduction of the fee by using forms EX160 and EX160a which are available from the Probate Registry, or you can download them from the website: www.hmcourts-service.gov.uk.

The interview

You will have to attend an interview at a Probate Registry office before a grant can be issued. This should last around 15 minutes. The probate application form includes space for you to indicate which office you would prefer to attend at.

At the interview you will be asked to confirm the details which you have given and you will have an opportunity to raise any queries which you may have.

You will be asked to sign a form of oath and to swear or affirm before the interviewing officer that the information you have given is true to the best of your knowledge. You will also be required to produce proof of your identity. The letter confirming your appointment should explain which forms of ID are acceptable.

In most cases only one interview is required, but if the application is complicated there may be additional documents to be signed or you may be asked to contact other people, for example one of the witnesses to the will.

6. When a grant may not be needed

A grant may not be necessary. Listed below are some of the instances where it may be possible to obtain the assets that form the estate without a grant.

1. Where a jointly-owned property is held in a 'joint tenancy', the property automatically becomes wholly owned by the surviving joint tenant.

The other way of holding jointly-owned property is as 'tenants in common'. In this case the share owned by the deceased will form part of their estate and be passed on according to their will or the rules of intestacy.

Seek legal advice if there is any doubt over the type of ownership.

2. Where assets are held in joint names, for example bank accounts;
3. Where the amount of money held in savings and investments is less than £5,000 at each financial institution. However banks, building societies, insurance companies or other institutions where the deceased person had savings, shares, policies, certificates, etc, are not obliged to release the asset without probate/administration, however small the amount;
4. Where a 'nomination agreement' exists (these arrangements could only be made before 1981, and allowed the owner of a property to nominate that it should be passed to a particular person in the event of death).

To ascertain whether the assets can be obtained without a grant, it is necessary to write to each institution informing them of the death of the deceased and enclosing a photocopy of the death certificate. You should check with each institution what other evidence they require before they will release any assets. You may also be asked to send the original documents. At a later stage you may be asked to complete an indemnity form - this means that you undertake to reimburse the institution if it is proved that someone has a stronger claim to the assets than yourself.

7. Inheritance Tax

Inheritance Tax (IHT) is payable on estates whose value exceeds a certain amount (or 'threshold'). For the 2008-2009 financial year the IHT threshold is £312,000. Anything left to a wife, husband or civil partner is taken off the value of your estate for the purpose of calculating IHT liability providing you are both permanently resident in the United Kingdom.

New rules allowing the transfer of the 'nil-rate allowance' to a spouse or civil partner were introduced in October 2007. The nil-rate allowance is the part of the estate on which IHT is not charged as it is below the IHT threshold. If the whole of the nil-rate band allowance, currently £312,000, is not used, the unused proportion can be transferred to the person's spouse or civil partner. When the spouse or civil partner dies, the unused proportion will be added to their own nil-rate band allowance. The new rules apply where the second spouse or civil partner dies on or after 9th October 2007.

It does not matter when the death of the first spouse occurred. Whichever tax applied at the time (IHT was introduced in 1986 and before this either Capital Transfer Duty or Estate Tax applied), if there was any unused tax-free band it can be transferred. No tax free transfer between spouses applied until 21st March 1972, so for deaths before that date part or all of the individual tax free band could have been used up by any transfer to the second spouse.

For example, if a man dies leaving £156,000 to his children and the rest of his estate to his wife, he will use up £156,000 of his nil rate band allowance (everything left to his wife is exempt from IHT). If the allowance is £312,000 at the time of his death he has used up half of it. When his wife then dies, 50% of the nil-rate band allowance at the time of her death can then be added to her own allowance. So if the allowance at the time of her death has risen to £325,000, she has her own £325,000 allowance plus £162,500 (50% of £325,000). Her total allowance will be £487,500. If the value of her estate is less than £487,500, no IHT will be payable.

If someone outlives more than one spouse or civil partner, the unused allowances of more than one can be transferred, up to a maximum of an additional 100% of the allowance applicable at the time of their death.

The transfer should be claimed within two years of the death of the surviving spouse or civil partner, by their personal representatives using form IHT 216. It will be necessary to provide documentation relating to the value of the estate of the spouse or civil partner who died first. This will include copies of the IHT return relating to their estate, their will, and valuations of assets. It is important that this information is kept safe and is available to the personal representatives on the death of the surviving spouse or civil partner.

Gifts of up to £3,000 in each tax year are exempted, plus up to £3,000 of the previous year's allowance if unused. Gifts to individuals of up to £250 each are exempt, as are wedding or civil partnership gifts of up to £5,000 by each parent or step-parent, £2,500 by each grandparent or great-grandparent, or £1,000 by people outside the categories mentioned. Gifts to charities established in the United Kingdom, political parties, housing associations or for 'national purposes' eg, a museum or university, are also exempt. The value of any non-exempt gifts made during the last seven years may be taken into account in whole or in part depending upon how recently the gift was made.

If the person's death results from wounds inflicted, accident occurring or disease contracted while a member of the armed forces and engaged on active service against an enemy, or from a disease contracted at some previous time, the death being due to or hastened by the aggravation of the disease and their circumstances meet the conditions set out in Section 154 of the *Inheritance Tax Act 1984* the estate may be exempt from inheritance tax. In such cases the executor or administrator should contact the Ministry of Defence for a certificate of exemption.

In most cases the tax must be paid before probate/administration is granted and the personal representative may find that a bank or building society is unwilling to release money held in the deceased's account - in which case it may be necessary to raise a loan for the tax and for probate court fees. The loan may be repaid from the estate after the grant has been issued and the assets released.

Tax on certain items such as houses, land, etc may be paid by instalments over a period of ten years.

Further information on inheritance tax can be obtained by calling the Probate and Inheritance Tax helpline on 0845 30 20 900 (lo-call rate). There is also a Customer Guide to Inheritance Tax on the HMRC website at www.hmrc.gov.uk/cto/customerguide/page1.htm.

A Deed of Variation may be used to change the terms of a will (within two years of the date of death) to reduce inheritance tax liability. All beneficiaries must agree to the changes. You should take legal advice to ensure that the deed has the effect you want.

Once the application procedures have been completed and the inheritance tax and probate court fees paid, the grant of representation will be issued in the form of the probate/administration document. A statement of the gross and net value of the estate and a copy of the will are enclosed with the document. The original will is then kept at the Probate Registry at the Principal Registry of the Family Division - see Section 11.

8. Settling the estate

After the grant has been received the personal representative applies for the release of all assets belonging to the person who has died, by sending a copy of the grant to each institution. As the money is received it should be placed in the 'executorship account' mentioned in Section 2.

The assets may include arrears of pensions; the balances from the deceased person's bank and building society accounts; proceeds from the sale of shares and property; tax refunds, etc.

If the personal representative is not also the major beneficiary of the estate it may be advisable formally to advertise for creditors, in case a debt arises after the assets have been distributed. This is done by placing an advertisement in the London Gazette, at PO Box 7923, London SE1 5ZH, tel: 0870 600 3322, website: www.gazettes-online.co.uk and in a newspaper covering the area in which the deceased last resided. The notice should include the name of the deceased, the date of death, and the name and address of the personal representative to whom all claims should be sent.

A period of two months is normally allowed from the date of the advertisement for the submission of claims. Doing this protects the personal representative from personal responsibility.

You may be asked to complete an income tax return and if you are unsure about the deceased person's sources of income you should ask the tax inspector for a copy of the deceased's last tax return. When all assets have been received, any debts should be paid. If there is insufficient money in the estate to pay all the debts, seek legal advice.

The personal representative is entitled to claim from the estate for 'out of pocket' expenses such as stamp duty, copies of the grant, travel, etc, but not for time taken or for the work involved in administering the estate. A professional executor, such as a solicitor, can charge fees for their time spent on the work. Their fees will be paid out of the estate.

Someone who was the husband, wife, partner, child or was dependant on the deceased, may be able to make a claim under the *Inheritance (Provision for Family and Dependants) Act 1975*, if they have been left without 'reasonable financial provision'. This includes the unmarried partner of the deceased if they had been living together for at least two years. Someone in this situation should seek legal advice.

Once all taxes and debts have been paid the estate can be distributed either according to the terms of the will or the rules of intestacy. (See Section 9).

Obtain a signed receipt from each beneficiary when they receive their share or bequest (for example a painting or a piece of jewellery), as this will form part of the estate accounts.

The personal representative may need to transfer a house or flat into the name of a beneficiary. If the property was held under a joint tenancy (see Section 6) a copy of the death certificate should be sent to the Land Registry if the land was registered, or placed with the deeds for unregistered land.

The Land Registry produces a leaflet *What to do when a land owner dies* [PG009] giving guidance to personal representatives on how to register a change of ownership. This can be downloaded at: www.hmlr.gov.uk or obtained from your local Land Registry office.

If the property is leasehold, the procedure is the same as for freehold property but the freeholder should also be informed of the changes and a fee may be payable.

If the property is unregistered, professional help may be required to make the application for first registration. You should contact a solicitor for advice. Where there is a lease the landlord should be notified of the changes and may charge a fee.

Details of the transfer of property should be noted on the reverse of the original grant.

After distribution has been completed, the personal representative should prepare the estate accounts. These must be approved and signed by the personal representative and the main beneficiaries and then the residue (remainder) of the estate may be distributed, in accordance with the will.

9. Intestacy

Where a person dies without making a valid will, it is said that they have died intestate and the property is distributed according to rules laid down in the *Administration of Estates Act*. The rules applicable depend on which, if any, relations survive the deceased, but if a spouse or civil partner survives he or she will be entitled to at least the first £125,000 and all the personal possessions. Surviving children or grandchildren will be entitled to some of the estate, if it exceeds £125,000.

A personal representative acting for someone who has died without making a will, may need to seek the advice of a solicitor as to how the rules apply in the specific case.

As the value of the home may exceed the amount that a spouse or civil partner inherits under the rules of intestacy, the family members may agree to renounce their share to prevent the house having to be sold. This may be achieved by a Deed of Variation (Deed of Family Arrangement).

If a will does not make provision for the residue of the estate a partial intestacy may be created, and the above mentioned rules will then apply to the distribution of anything left after specific gifts have been made.

If there are no surviving relatives, the assets of the deceased will pass to the Crown. This is known as the estate being 'bona vacantia'. The estate is dealt with by the Treasury Solicitors who have discretion to make grants out of the assets. For example they may agree to make a grant to the unmarried partner of the deceased, or to someone who provided substantial free services, such as nursing care or help with shopping and cleaning, which the deceased would otherwise have had to pay for.

Someone who wishes to make an application for a discretionary grant where the estate is bona vacantia should contact the Treasury Solicitor at One Kemble Street, London, WC2B 4TS, tel. 020 7210 3116; website: www.bonavacantia.gov.uk.

10. Further reading

IHT [TG] 1: A Guide to Inheritance Tax

IHT [TG] 2: A Guide to Inheritance Tax Procedures

Both available for free from the Probate and Inheritance Tax helpline: 0845 30 20 900.

Customer Guide to Inheritance Tax

This guide, produced by HM Revenue and Customs is only available online at <http://www.hmrc.gov.uk/cto/customerguide/page1.htm>.

Wills and Probate – Dealing with someone’s affairs when they die.

CLS Direct Information Leaflet 10. Available from the Community Legal Advice website: www.communitylegaladvice.org.uk or by phoning 0845 345 4345 (lo-call rate).

11. Useful addresses

HMRC Inheritance Tax, Ferrers House, PO Box 38, Castle Meadow Road, Notts NG2 1BB, Probate and Inheritance Tax helpline: 0845 30 20 900 (lo-call rate), website: www.hmrc.gov.uk/cto/iht.htm. This helpline can be used to answer questions on IHT or probate and to order IHT forms and forms for applying for probate.

Principal Registry of the Family Division, First Avenue House, 42-49 High Holborn, London WC1V 6NP, tel: 020 7947 6939 (for wills lodged for safe keeping), website: www.hmcourts-service.gov.uk/cms/wills.htm.

Solicitors Regulation Authority, Ipsley Court, Berrington Close, Redditch, B98 0TD, tel: 0870 606 2555 (national call rate), website: www.sra.org.uk. The SRA can give you details of solicitors in your area who specialise in wills and probate matters.

12. Further Information from Age Concern

Factsheet 7

Factsheet 27

Information Sheet IS18

Making your will

Planning for a funeral

Instructions for my next-of-kin and executors upon my death

If you would like

- to find your nearest Age Concern
- any additional factsheets mentioned (up to a maximum of 5 will be sent free of charge)
- a full list of factsheets and/or a book catalogue
- to receive this information in large print

phone 0800 00 99 66 (free call) or write to Age Concern FREEPOST (SWB 30375), Ashburton, Devon TQ13 7ZZ. For people with hearing loss who have access to a textphone, calls can be made by Typetalk, which relays conversations between text and voice via an operator.

Age Concern factsheets and other information materials can be downloaded free from our website at: www.ageconcern.org.uk. To receive a free e-mail notification when new and updated factsheets are published, please either contact the Factsheet Subscription Service on tel: 020 8765 7200 by email: factsheet.subscriptions@ace.org.uk, or sign up on-line.

Age Concern provides factsheets free to older people, their families and people who work with them. If you would like to make a donation to our work, you can send a cheque or postal order (made payable to Age Concern England) to the Personal Fundraising Department, ACE Freepost CN1794, London SW16 4BR.

Find out more about Age Concern England online at: www.ageconcern.org.uk

Please note that the inclusion of named agencies, companies, products, services or publications in this factsheet does not constitute a recommendation or endorsement by Age Concern. Whilst every effort is made to ensure accuracy, Age Concern cannot be held responsible for errors or omissions.

No factsheet can ever be a complete guide to the law, which also changes from time to time. Therefore please ensure that you have an up to date factsheet and that it clearly applies to your situation. Legal advice should always be taken if you are in doubt. (*Age Concern England is unable to give financial or legal advice*).

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