

Obtaining Probate and the Administration of Estates

How we can help when someone has died

Introduction

When someone dies there are many important decisions and arrangements to be made, usually at a time of great personal distress. The death will need to be registered within five days. To do this an appointment should be made with the Registrar of Births, Deaths & Marriages who will ask for the Medical Certificate provided by the Doctor or Hospital, the medical card (if possible), and birth and marriage certificates, (if available). A certificate for Burial or Cremation is then issued which should be handed to the Undertaker.

The Will

If a Will has been made, it should be checked to see if there are any wishes as to Cremation or Burial. The appointed Executor(s) will need to be notified as soon as possible. The Executor(s) are responsible for carrying out the wishes of the person who has died, as set out in the Will. Executors are usually members of the family, friends, or a professional advisor.

Being an Executor is a responsible, and at times complicated, job. We work closely with Executors to advise and assist them as they carry out this challenging role. We would recommend that Executors seek our professional advice at the earliest opportunity as there are many important matters which need to be addressed as soon as possible after someone has died.

Probate

A Grant of Probate is an Order of the Court stating that a Will is legally valid. Probate establishes the authority of the Executors and is usually required before an estate can be distributed.

Depending on the size and intricacy of the estate, obtaining Grant of Probate can be an extremely complicated task. For example, the Executors have a duty to ensure that all assets are found and all tax and other liabilities dealt with.

Our Private Client Department specialises in helping Executors to undertake these duties even if we did not write the original Will.

Intestacy

This arises where the person who has died has not made a Will. In many cases a surviving relative is required to take out a Grant of Letters of Administration to administer the estate. We can help with the preparation of the application. When a Grant has been obtained, the Administrator is authorised to administer the estate in accordance with the Rules of Intestacy (which are the rules set out in law which govern how the estate must be distributed when someone has died without having made a Will) and again we can assist in this process.

Joint Assets

Unless tax is payable, a Grant may not be necessary where everything is owned jointly and passes by survivorship to the other joint owner. On production of a Death Certificate very often the asset is automatically amended into the sole name of the surviving owner. We can check the requirements in a particular case.

Tax

The tax position can be dealt with by our specialised departments. Income and Capital Gains, as well as Inheritance Tax, must be accurately declared to HM Revenue & Customs in detailed accounts and the correct tax paid before beneficiaries are provided for. Any Inheritance Tax due must be paid to HM Revenue & Customs before the Grant can be applied for unless the instalment option for payment is being used. We can deal with all of the above tax matters on behalf of the Executors or Administrators.

How long will it take?

As no two estates are identical, there is no set timescale. Even a very simple estate will, in our experience, rarely take less than three months to finalise. If there is Inheritance Tax to be paid, it may take between six and twelve months. It can be longer if there are difficult negotiations with HM Revenue & Customs for example in relation to the Probate value of an asset or the availability of a relief. There may be assets which cannot be realised quickly, and there may be claims made against the estate.

Conveyancing

If the home of the person who has died has to be sold or transferred, we can provide expert advice and assistance with regard to this, and will give a written quotation of our charges on request.

Help we can give

We can advise you:-

1. Who is responsible for the funeral arrangements and administration of the estate.
2. What the tax implications are and whether there are ways we can help you to pay less tax.
3. The fees and costs involved.

What needs to be done to finalise the financial affairs of the person who has died.

Our Role

We usually administer the estate on behalf of the Executors or Administrators. In this case they hand to us the bank and building society books, share certificates and other financial papers of the person who has died with instructions to prepare the application for the Grant of Probate, or Letters of Administration; and do all that is necessary to administer the Estate on their behalf, including accounting to the Beneficiaries in

due course. We also offer help and advice throughout, and make the role of Executor or Administrator as stress free as possible by liaising with the Court, HM Revenue & Customs, creditors and others on the Executors' or Administrators' behalf.

Planning for Beneficiaries

We can advise beneficiaries in connection with their own Wills and tax position, including tax mitigation opportunities available following an inheritance.

Our Private Client Department can assist you in the administration of estates and a broad range of connected legal matters. We provide specialist advice tailored to your needs and would be happy to speak with you without commitment to see if we could help you, whatever your problem.

Please call Richard Rix or Ruth Diplock on 01233 625711 for more information, or email them on rhr@hallettandco.co.uk or rjd@hallettandco.co.uk.