

Probate and Administration of Estates





Services

Accident Claims

Commercial Law

Conveyancing

Employment Law

Equity Release

Family Law

Landlord and Tenant Law

Powers of Attorney

Wills, Trusts and Inheritance

INTRODUCTION

When a person dies there is a legal process to go through to, first of all, register the death, and then, if the person has left behind money, property and/or any other assets, to enable his or her assets to be given to the correct person(s).

REGISTER THE DEATH

Since 1837 when a person dies in this country his or her death is recorded by the registrar of births, deaths and marriages. There is a legal requirement for the death to be registered within five days of the death, except in special circumstances.

Usually the person's doctor will issue a medical certificate of the cause of death. Regardless of who the executors of the person's will are (if any), the registrar of births, deaths and marriages will expect a relative to attend their office to register the death. If there are no relatives living nearby and the executors are local (perhaps the person's solicitors) then the registrar will accept another person registering the death.

Whoever registers the death should obtain the medical certificate of cause of death from the doctor who certified the death and telephone the registrar – preferably in the area in which the person died – to make an appointment.

Telephone numbers for local registrars

The following are telephone numbers to call to make an appointment to register a death with the registrars for the following areas:

Bournemouth:	01202 454 945
Dorset:	01305 225 153
Hampshire:	0300 555 1392
Southampton:	023 8091 5327
Wiltshire:	0300 003 4569

Information required to register the death

The person registering the death will need to take the following information:

1. The date on which the person died
2. The place where the person died
3. The person's usual address (i.e. main home) at the date when he or she died
4. The person's full name (including any middle name(s) and any other names by which he or she was known)
5. If the person who has died is a woman who was married, her maiden name will also be required
6. The person's date of birth
7. The town and county in which the person was born
8. The person's occupation
9. Whether the person was in receipt of the State Pension and/or any other state benefits and
10. If the person was married or widowed, the following further details will be required:
 - a. the full name of the person's spouse
 - b. the occupation of the person's spouse
 - c. if the spouse is still living, his or her date of birth

The Death Certificate

Once he has taken down the above information the registrar will issue the death certificate. The original death certificate is what is written in the death register; whereas the certificate which you will be given is a certified copy.

It is better to obtain plenty of certified copies, rather than just one, because it is more expensive to purchase further certified copies at a later date.

How many death certificates should I purchase?

It is important to have enough certified copies of the death certificate for all of the institutions that are going to need to be given them. Therefore, one for each bank, building society or other financial institution with which the person had an account. If the person had more than one account with the same bank, just one will usually suffice for all the accounts in that bank.

Also each private pension provider, insurance company, and company registrar in respect of any shareholdings will need to be sent a certified copy of the death certificate.

Further certified copies of the death certificate may be required by other institutions too. Therefore it is advisable to obtain more than you think you will need.

Please note that due to Crown copyright it is unlawful to photocopy a certified copy of a death certificate and many financial institutions will only accept an original certified copy.

The Green Form

Another document which the registrar will issue is known as the green form, which is a certificate authorising the burial or cremation of the body.

It is important that the green form is given to the funeral director, as the funeral cannot be held without it.

ARRANGE THE FUNERAL

Once the death has been registered it will be necessary for someone to ensure that the funeral is arranged.

Check the Will

If it is known that the person left a will, the will should be checked to see whether there are any instructions as to the type of funeral he or she wished to have. Sometimes funeral wishes are recorded in the will itself, often towards the end of the will and in some cases near the beginning. In some cases a separate set of notes or documents might be stored with the will. The person might have already paid for a funeral plan.

Whether or not you know that the person left a will we suggest that you contact their solicitor to enquire whether there is a will left with them. Many solicitors store wills on behalf of their clients.

As solicitors are bound by strict rules concerning client confidentiality, a solicitor will normally only be permitted to discuss the will with the person(s) named as executor(s) in that will upon the executor(s) producing both the person's death certificate and the executor's identity documents.

In cases where the firm of solicitors are appointed as executors, the firm will usually be prepared to discuss the person's funeral wishes with the nearest relatives.

Funeral Directors

If the person who has died did not purchase a funeral plan during his or her lifetime and did not specify which funeral directors to use, unless you wish to make all the arrangements yourself, it is usual to appoint a funeral director to arrange the funeral and this service will often include the funeral directors keeping the body in their chapel of rest until the funeral takes place unless you wish to body to be kept elsewhere, perhaps at the person's home.

Woodland burials are very popular at the present time, perhaps because they are seen as a less formal alternative to burial in a conventional cemetery. In the New Forest / Christchurch area we see many people who

opt for burial in the Hinton Park Woodland Burial Ground. It is important to note that that burial ground is run by Co-operative Funeralcare and they will not permit independent funeral directors to carry out funerals there. Where people have already instructed an independent funeral director who is not part of that company to collect the body and make preparations, they may have to transfer the body to the Woodland Burial Ground's funeral directors which would involve more cost.

Funeral directors' invoices can be sent to the deceased person's bank or building society, which, provided there are sufficient funds, will usually make payment direct. Although it may be the case that funds cannot be released by the bank until probate has been granted, banks are usually able to pay the funeral costs even though probate might not be granted for some time.

THE ESTATE

Once the funeral has been arranged the next consideration is dealing with any property, money and other assets which the person has left.

Attend to urgent matters first

If the person who has died leaves a house or some other valuable assets, it is important to ascertain from the insurance company that the insurance remains valid. The insurance company will need to receive a death certificate from either you or the solicitor administering the estate as soon as possible.

What is the "estate"?

A person's estate is everything which he or she owned at the date of death.

For many people, their most valuable asset is their home. Other things typically include money, savings, jewellery, car, furniture, and clothes – indeed everything that he or she owns.

What is “probate” and is it required?

Probate is the term commonly used to refer to a grant of representation issued by the district probate registry. The term comes from the Latin *probare* which literally means to “prove”. What is being proved is the entitlement of the executors (where there are executors named in a will left by the person who has died) or next of kin who are known as administrators (if there was no will) to administer the person’s estate.

The term “grant of representation” refers to both a grant of probate (where the person has died leaving a will) and a grant of letters of administration (where the person has died without leaving a will).

The first issue to consider is whether a grant of representation will be required to enable the person’s estate to be transferred to the persons who stand to inherit it. It depends on what assets the person leaves.

Assets owned jointly with another person who is still living usually do not need probate; they automatically belong to the surviving joint owner.

In the case of joint bank accounts, once the bank has received the death certificate they will normally simply remove the deceased person’s name and thus leave the account in the sole name of the surviving joint holder.

It is very common with married couples for their home and any bank accounts to be owned jointly. If there are no assets held in the deceased person’s sole name, it is likely that probate would not be required.

Any accounts in the person’s sole name (including ISAs which are by their very nature individual – as opposed to joint – accounts) will not automatically pass to someone else. Whether the bank, building society or other financial institution requires a grant of representation before they can release the money depends on how much money is held in the account.

If there is less than £5,000 it is always possible to deal with assets without a grant of representation. In practice, most of the high street banks and building societies have much higher limits than that. Presently most of the high street banks or building societies will release a deceased person’s money if it is under £30,000, and in many cases if it is under £60,000. It depends on the individual bank or building society’s limit at the time.

Co-ownership of the Home

In the case of a home owned together with another person who is still living, if they owned it jointly as “joint tenants” (the solicitor should be able to advise whether that is the case from having sight of the title deeds) the surviving owner becomes the sole owner. It is preferable to register the death of the joint proprietor at HM Land Registry and the solicitor will be able to do this on your behalf provided that he or she has a certified copy of the death certificate.

If a property was owned jointly as “tenants in common”, then the deceased person’s share does not automatically pass to the surviving joint owner but is left in accordance with his or her will or where there is no will in accordance with the rules of intestacy. This type of ownership often applies where there is some sort of trust provision, often to protect the property from being left to the surviving co-owner absolutely, perhaps to seek to avoid it all being lost on nursing home fees, but often with provision for the surviving co-owner to have use of all of the home after the death of one of the co-owners. Your solicitor will be able to explain this to you if needed.

The proceeds of life assurance policies and lump sums payable under a private pension scheme may or may not pass under the will. Sometimes they are held by trustees and, as such, are outside the person’s estate; therefore probate would not be required to deal with those assets.

What happens if the person did not leave a will?

The person's estate would pass in accordance with the legal rules, known as "intestacy". The rules are contained in the Administration of Estates Act 1925, as amended, which provides as follows:

- If the person leaves a spouse (or registered same-sex civil partner) and children, then –
 - The person's personal belongings (including any car, garden effects, pets, crockery, glass, linen, ornaments, musical instruments, but not anything which is used for business purposes) pass to his or her spouse (or civil partner)
 - The spouse (or civil partner) also inherits the first £250,00 of the estate
 - If the estate is worth more than £250,000, the remainder is divided into two equal parts – one of which passes to the person's children, and the other is held upon trust for his or her spouse (or civil partner) for the rest of his or her life then to the children
- If the person leaves a spouse (or civil partner) but no children, then –
 - Personal belongings pass to the spouse (or civil partner)
 - The spouse (or civil partner) also inherits the first £450,000 of the estate
 - If the estate is worth more than £450,000, then the remainder is divided into two equal parts – one of which passes to the person's spouse (or civil partner) absolutely, and the other passes to his or her parents (if they are still living) or to his or her brothers and sisters of the whole blood (if they are still living) or to his or her nieces or nephews of the whole blood.
- If the person leaves a spouse (or civil partner) but no children, parents, brothers and sisters of the whole blood or nieces and nephews of the whole blood, then –
 - The spouse (or civil partner) inherits the entire estate.
- If the person was unmarried (or not in a civil partnership), then the entire estate is inherited by the following:
 1. His or her children (or the children of any child of him or her who has died before him or her); or if there are none, then –
 2. His or her parents; or if there are none, then –

3. His or her brothers and sisters of the whole blood (or the children of any brother or sister of the whole blood who has died before him or her); or if there are none, then –
4. His or her brothers and sisters of the half blood (or the children of any brother or sister of the half blood who has died before him or her); or if there are none, then –
5. His or her grandparents; or if there are none, then –
6. His or her aunts and uncles of the whole blood (or the children of any aunt or uncle of the whole blood who has died before him or her); or if there are none, then –
7. His or her aunts and uncles of the half blood (or the children of any aunt or uncle of the half blood who has died before him or her); or if there are none, then –
8. The Crown.

Who are “executors”, “administrators” or “personal representatives”?

Executors are people named in the Will with the responsibility of:

- Finding out how much the person’s assets are worth
- Paying for the funeral out of the person’s money
- Applying for a grant of probate (if necessary)
- Collecting in the money and cashing in investments
- Selling or transferring the person’s property
- Paying the person’s bills
- Distributing what is left of the assets to the beneficiaries in accordance with the person’s wishes as stated in the will

If the person who has died did not leave a will, then his or her next of kin will can be appointed as administrators, who effectively do the same as executors. The solicitor will be able to advise which relatives are entitled to be appointed as administrators in any particular case.

Whoever has responsibility for administering the estate, whether they are executors appointed in a will or administrators where no will was left, they are collectively referred to as “personal representatives”.

Inheritance Tax

Inheritance tax is payable when a person dies leaving assets worth more than £325,000 (at the time of the publication of this booklet). What a person leaves to his or her surviving spouse (or registered same-sex civil partner) is exempt from inheritance tax provided it does not exceed £1,000,000 and the spouse (or civil partner) is domiciled in the United Kingdom.

The rate of tax on any amount over and above the threshold is 40%. No tax is payable on the first £325,000, which is known as the “nil rate band”.

Married couples and registered civil partnerships can pass their “nil rate bands” to each other. Therefore, when the second spouse (or civil partner) dies, he or she can leave up to £650,000 without any tax being payable (provided that he or she received the whole of the estate of the first spouse (or civil partner) to die).

If a person dies after 6 April 2017 owning a home and he or she leaves it (or a share of it) to his or her children or grandchildren, then the estate should also benefit from the residence nil rate band, which is a further £100,000 in 2017-2018 and which will increase by £25,000 each year until it reaches £175,000 in 2021. Therefore after 2021, subject to a few provisos, the first £500,000 of the estate would be free from inheritance tax. Further, if the surviving spouse (or civil partner) dies, having inherited the house from the first spouse to die, and leaves it to the children or grandchildren then with both of the couple’s nil rate bands and residence nil rate bands combined the first £1,000,000 would be tax-free. However, if the estate is worth more than £2,000,000 then the additional residence nil rate band is reduced by £1 for every £2 over £2,000,000.

This is a very basic guide to inheritance tax and you should seek advice from a solicitor as to any specific situation.

Probate Registry Fees

From May 2017 when probate is applied for the Probate Registry will charge a fee which is based on the value of the person's estate, rather than the earlier flat fee of £155 for applications by solicitors or £215 for personal applications.

Probate Registry fees from May 2017 will be as follows:

Value of Estate	Probate Registry Fee
Up to £50,000	£0
£50,000 and up to £300,000	£300
£300,000 and up to £500,000	£1,000
£500,000 and up to £1 million	£4,000
£1 million and up to £1.6 million	£8,000
£1.6 million and up to £2 million	£12,000
More than £2 million	£20,000

In order to apply for probate it will be necessary for the Probate Registry's fee to be paid either out of the deceased person's account(s) if there are sufficient funds or, if that is not possible, we will have to ask the personal representative(s) for a payment on account of the fees.

DIXON STEWART'S SERVICES

If the personal representatives require assistance in dealing with the estate, Dixon Stewart Solicitors offer sympathetic but professional advice. We will obtain the grant of probate (if required) and ensure that the estate is dealt with efficiently.

In cases where there is no will, our legal team provide professional legal advice on the distribution of the estate, and, where necessary, obtain a grant of letters of administration.

The cost of our services depends on level of responsibility that the personal representative(s) wish to us to have, and we have differently priced levels of service depending on the estate's requirements.

The solicitors taking responsibility for all of the administration

If the personal representative(s) would like the firm of solicitors to take responsibility for all of the administration of the person's estate, or if the firm of solicitors are appointed as executors under the person's will, then we provide an all-round service from start to finish.

The family's only involvement will be to supply initial information about the person's assets and liabilities, as well as the death certificate (unless we have registered the death). If family members or others are also the personal representatives they will be sent paperwork prepared by us to sign as and when required.

If the firm are appointed as executors we may even be involved in arranging the funeral.

We would carry out all the necessary liaising with the person's bank(s) and other financial institutions to ascertain how much money was held in accounts at the date of death. If necessary we would arrange for any house, flat or other property to be valued.

We would liaise with the funeral directors in respect of their invoice and, where possible, arrange for it to be paid out of the person's account(s) even before probate is granted.

We would also contact any creditors to establish how much money was owed at the date the person died. For example, home utility suppliers (such as gas, electricity, water etc), care costs, any mortgage lender or other lender etc – and ensure that they are made aware of the need to wait until funds are available from the person's estate before payment can be made.

Having obtained the above information, we would then prepare the inheritance tax account and oath for the personal representative(s), both of which then have to be signed by the personal representative(s) and, in the case of the oath, sworn at another solicitor's office.

We would arrange for any inheritance tax to be paid where possible out of the person's account(s) and apply to the district probate registry for a grant of representation.

When the grant of representation is issued, we would then distribute sealed copies to all institutions which held the person's money, together with any additional forms that they require. This would then enable the institutions to release the person's money to our account from which we would then settle any liabilities.

Once everything has thus been dealt with we would produce a set of estate accounts for approval and distribute the estate to the beneficiaries in accordance with the will or law of intestacy if there is no will.

Our fees for this service are currently charged at the rate of £200 per hour, plus ½% of the value of the person's residential property (if any) and 1% of their other assets, plus VAT. Therefore, the total cost depends on the size of the estate and the amount of work involved in administering it.

Once we have established how much work is likely to be involved we will be able to provide an estimate of the overall cost.

The solicitors obtaining a grant of representation only

If the personal representative(s) would prefer us to only assist them with obtaining a grant of representation (and the firm are not executors), then there will be a fixed cost for this service.

The personal representative(s) would have to notify all the person's bank(s), other financial institutions and creditors of the person's death and obtain from them details of all sums of money due to, and due from, the person's estate. They would then supply those details and any property valuations to us.

Dixon Stewart Solicitors would then prepare the inheritance tax return and oath for the personal representative(s). If necessary then the inheritance tax return would be submitted to HM Revenue & Customs and any necessary forms would be submitted to the person's bank(s) requesting that any inheritance tax is paid direct to HM Revenue & Customs.

When HM Revenue & Customs provides their certificate that the inheritance tax has been paid, we would then apply to the Probate Registry for a grant of representation.

When the grant of representation is issued, we would then send it to the personal representative(s) and from that point on they could then distribute it among the person's bank(s) and financial institutions.

It may be necessary for the personal representative(s) to open up an executor's bank account for the person's money to be paid into, out of which they could then settle all liabilities before paying what is left to the beneficiaries.

Our fee for the above currently starts at £600 plus VAT and disbursements where there is no inheritance tax to pay and at £750 plus VAT and disbursements where there is inheritance tax to pay.

The disbursements typically include the Probate Registry's fee. Please refer to the section entitled "Probate Registry Fees" for details.

INSTRUCTING SOLICITORS

If you are the personal representative of someone who has died, or the relative or close friend of someone who has died appointing the firm of solicitors as executors, to assist you in compiling the information that we will require to enable us to apply for a grant of representation and/or administer the estate, there follows a questionnaire which you might find helpful.

Please do not worry if you are unable or prefer not to complete the questionnaire; it is not compulsory.

It is usual for people to make an appointment to see a solicitor to discuss the assets and liabilities of an estate a short time after the funeral has taken place to allow a little time following the loss of a relative or friend.

INFORMATION THAT THE SOLICITORS MAY REQUIRE

Full name of the person who has died:	Date of Birth:
Last address of the person who has died:	Date of Death:
	National Insurance Number:
	Occupation:
Full name of the deceased person's spouse:	Marital Status: Single / Cohabiting / Married / Widowed
Place of Marriage:	Date of Marriage:
Executor 1 Full Name:	Relationship to the person who has died:
Address:	Date of Birth:
	Telephone Number:
	E-mail Address:
Executor 2 Full Name (if applicable):	Relationship to the person who has died:
Address:	Date of Birth:
	Telephone Number:
	E-mail Address:
Executor 3 Full Name (if applicable):	Relationship to the person who has died:
Address:	Date of Birth:
	Telephone Number:
	E-mail Address:

Assets				
	Account/Roll/ Ref. Number	Value at death £	Sole	Joint
Property Address:				
Any Other Land/Property:				
Name of Bank(s):				
Name of Building Society(ies):				
National Savings & Investments:				

Assets continued				
	Account/Roll/ Ref. Number	Value at death £	Sole	Joint
Private Pension Provider(s):				
Life Policy Provider(s):				
Company Shareholding(s):				
Business or Agricultural Interests or Property:				
Property Held in Trust:				
Any Other Assets:				

Liabilities				
	Account/Roll/ Ref. Number	Value at death £	Sole	Joint
Funeral Directors:				
Wake / Funeral Reception:				
Council Tax:				
Electricity:				
Gas:				
Telecommunications:				
Sewerage Services:				
Water Supply:				
Other Liabilities:				

Gifts made within the last 7 Years		
Recipient	Date of Gift	Value of Gift £

Checklist	
Death certificates supplied to the solicitor	
Executors' identity documents supplied to the solicitor	
Insurer(s) of property or contents contacted	
Motor vehicle SORN submitted or motor insurance retained	
Television Licencing Authority contacted	
Redirection of mail set up if necessary	

This booklet is a brief guide only, providing some ideas for you to consider. It is not an exhaustive guide to this area of law and is not intended to provide advice on specific issues or situations.

If you would like further information, please contact us so that we may advise you as to your situation.



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Home or hospital visits can be arranged.