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AFTER A DEATH

When someone passes away, the grief of loss combined with anxiety over completion of the necessary formalities can be overwhelming, particularly where there is no experience of the official procedures involved. For those who are fortunate to have family or friends close by, their support can be invaluable.

Initially:

- If a Will has been made, you need to check who are the appointed Executors, as they have responsibility for all matters after someone's death. The Will may also contain wishes about the funeral
- Your funeral director will guide you through the details of burial or cremation
- The death must be registered by booking an appointment with the Registrar
- There are a number of government departments which must be notified. The Registrar can provide details of a "Tell us Once" service when registering the death
- A power of attorney expires on the death of the donor
- Most assets held in joint names they will normally pass automatically to the surviving owner with very little administration
- If the Will is held by solicitors, all Executors will need to give their authority, together with an original Death Certificate, before the will can be released or details given. Solicitors are bound by rules of confidentiality even after the client has passed away.

What is a Grant of Probate?

Probate is a formal procedure which confirms the Executors' authority to collect and distribute the assets in accordance with the terms of the Will. There are a number of requirements with which an Executor must comply and they also have a responsibility to secure, list and value the assets and liabilities of the estate and to ensure all tax affairs, both pre and post death are dealt with properly.

Is a Grant of Probate always required?

No, it is not necessary for all estates. If the estate is small it may not be required. Otherwise, the usual process of dealing with assets of the deceased is by means of a Grant of Probate.

What happens if there is no Will?

There are rules which set out who can apply to be appointed to deal with the estate. This person is called an Administrator and has similar powers to an Executor but only after approved by the Probate Registry. It is advisable to take advice about who is entitled to deal with the deceased's estate and also who is entitled to inherit.

Will I have to pay Inheritance Tax?

- Before a Grant of Representation can be obtained it is necessary to ascertain whether there is any Inheritance Tax payable on the estate. The first £0-£325,000 is taxed at 0% (the Nil Rate Band allowance) after deduction of any lifetime gifts in the 7 years before death. Anything above that amount is taxed at 40% or a reduced rate of 36% if 10% passes to charities.
- If under the terms of the deceased's will a gift is made to a spouse/civil partner or qualifying churches and charitable bodies, these will be exempt from Inheritance Tax.
- Where on the death of the first spouse/civil partner some or all of the estate is given to the surviving spouse/civil partner, a claim can be made to transfer some or all of the available Nil Rate Band allowance to the surviving spouse when they die, up to a further £325,000.
- An additional allowance increasing from £100,000 (2017) to £175,000 (2020), with restrictions for larger estates, may be claimed where a qualifying residential property interest passes to lineal decedents, with additional provisions for down-sizing and transfer on the death of a surviving spouse or civil partner.
- Additional reliefs are available for certain types of assets such as business or agricultural property

Note: The above only relates to persons who die domiciled in England and Wales. If someone dies who is domiciled abroad the rates and allowances applicable to Inheritance Tax are different. This is a specialised area and professional advice should be sought.

It should be noted that if Inheritance Tax is payable, at least part of it will have to be settled before a Grant of Representation can be issued. This can cause problems if the deceased has no or little cash assets, as a loan may have to be obtained by the executors or administrators.

The executors or administrators may also need to pay Probate Registry fees, currently £273 when applying for the Grant. Proposals to increase Probate Registry Fees on an increasing scale from £300 to £20,000 have been shelved in May 2017.

Possible claims against the Estate

A spouse, ex-spouse, partner, co-habitant, child or someone financially dependent upon 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. Usually these claims should be made within 6 months of the Grant but later claims may be allowed. If there is a potential for claims to be made then the executors/administrators or beneficiaries should take independent advice.

Variations and changing the beneficiaries

It is possible to rearrange the way the estate is shared out when someone dies, even if they didn't leave a will. This can be arranged with a Deed of Variation or Disclaimer by one or more of the beneficiaries and can be useful for tax planning or resolving disputes. Inheritance Tax concessions are available within 2 years from the date of death but advice should also be taken regarding Income Tax and Capital Gains Tax.

Trusts

Many wills written before the introduction of the Transferable Nil Rate Band for Inheritance Tax included provision for a trust to use the Inheritance Tax allowance of the first to die in a marriage or civil partnership. Whilst such trusts still have some use as protection against care costs or other purposes, there may be some tax and administration disadvantages. Heppenstalls would be happy to review the will in conjunction with the executors or beneficiaries.

Other trusts exist to cater for second marriages or to make provision for disabled or imprudent beneficiaries and the Trustees may want to take advantage of Heppenstalls' tax advice or tax services including Trust & Estate Tax Returns, Inheritance Tax returns, or Capital Gains Tax planning

Heppenstalls Solicitors are always happy to give some time to Executors to explain the court process and advise on areas of any caution.

We can also provide a full probate service for those who do not feel they are able to undertake the procedure for themselves. Charges can be structured on a fixed, percentage or time-costed basis to suit the complexity of the estate