

A Guide to Administering an Estate

Leonard
gray

Always here for you.

■ Understand what steps should be taken following a bereavement.

■ Understand when a Grant of Representation will be required.

■ Understand the information needed to administer an estate.



This Guide has been designed to assist you with some of the general issues and to answer questions that you may have. This Guide is only intended to be a general overview of the law in relation to administering an estate. Legal advice should always be obtained from Leonard Gray in application to a particular case.

Section

1

Initial Steps Following a Bereavement

We understand that when someone close to you passes away it can be a very difficult time, not least because of the emotion involved but also because of the number of matters that have to be given attention.

This Section of the Guide is designed to highlight the initial steps that may need to be taken when someone passes away so that their estate can be administered appropriately.

These initial steps are set out below:

1. Locating the last Will of the deceased

It is important that the last Will is located as this may include specific wishes regarding funeral arrangements, including an indication as to whether they required a burial or cremation. The Will will also name Executors who have been requested to act as the Personal Representatives of the deceased. This means that they are the person or persons entitled to take out a Grant of Representation, more commonly referred to as a Grant of Probate, in the estate and draw in the assets and pay out the same to the beneficiaries. Likewise, they are the person or persons who must protect assets in the estate and ensure that no loss occurs to them otherwise they could be criticised by the beneficiaries.

In the case of someone dying leaving no Will, then an Intestacy occurs and the estate will be dealt with on the basis of the Intestacy Rules. Who will be entitled to administer the estate and benefit from it will very much depend on what members of family survived the deceased.



2. Registering the death

The medical death certificate should be collected from the doctor or hospital once it is available. Once you have this, you can then register the death formally with the Registrar. In Chelmsford, the details of the Registrar to be contacted are as follows:

Registrar for Births, Deaths and Marriages - Chelmsford Register Office

County Hall

17 Market Road

Chelmsford

Essex CM1 1GF

Telephone: 01245 430 700

3. The Funeral

The funeral should be organised fairly promptly by the Personal Representatives of the deceased. The funeral account can normally be discharged through a solicitor from one of the deceased's bank accounts before a Grant of Representation is obtained. Leonard Gray can arrange for the account to be settled if the original is sent to us and we have details of the deceased's bank/building society accounts.

4. Protecting the Property – Home Insurance

If the deceased lived alone then it is important that the position as regards buildings and contents insurance is clarified as soon as possible, especially if the property is to remain vacant.



Most insurance companies will agree to continue cover at a property despite the fact it is vacant, subject to conditions that are commonly imposed which may include the heating being left in cold weather and the property being visited regularly by a responsible person. The insurance company once notified will advise as to the exact conditions they will impose.

If the insurance company decline to continue the insurance at the property then Leonard Gray can assist in obtaining insurance through the Law Society Vacant Properties insurance scheme. Any Personal Representative of the deceased must ensure that this is done swiftly to avoid any loss to the estate.

5. Next Steps

Once the above steps have been taken, thought should be given how best to deal with the administration of the estate. If Leonard Gray are holding the Will then we will need to see a copy of the Death Certificate before we can allow the Executors to have sight of it. At this stage, if we can assist by providing advice on the estate it will often be a good idea to get in contact with us if you have not done so already on 01245 504 904.

The next Section of this Guide sets out the general administration process.

Section 2

The Administration of the Estate

This Section of the Guide sets out the general stages involved in the administration of an estate. What is involved will depend greatly on the exact estate, its size and value and how many beneficiaries there are involved and their relation to the deceased.

Because of the wide ranging differences in estates this Guide cannot and does not seek to be an all encompassing explanation of exactly what work will be undertaken in every estate. Instead, it seeks to summarise some of the common steps involved when dealing with an estate.

1. When a Grant may not be required

In some estates, it is not necessary to go through the formalities of obtaining a Grant of Representation. This is commonly in circumstances where the first death occurs between a married couple and all assets are due to pass to the surviving spouse.

Assets which are held jointly will normally pass by survivorship to the surviving co-owner. In the case of jointly held bank/building society accounts these can normally be amended into the name of the surviving co-owner. Likewise, if a property is owned by the deceased together with his spouse if this is held as joint tenants (we can advise on this once we have seen the deeds) then this will pass to the surviving spouse.

If this is the case and there are no solely held assets in the deceased's name which exceed £10,000.00 it may be that there is no need to obtain a Grant. It is best to be sure about this and we can provide advice on the specific situation once we know the facts involved.

2. When a Grant will always be required

When someone dies they may well have money invested in their sole name with a



financial institution or a property of which they are the sole owner. If a Will has been left it will clear where that money is due to go. However, without a Court sealed Grant of Representation any property or the money held can not be accessed.

With the Grant of Representation the Personal Representatives can receive funds and deal with property; whether by sale or transfer. The occasions a financial institution may agree to release funds in advance of the Grant being obtained are only for settlement of a funeral account (see above) and for payment of Inheritance Tax (see below).

3. Documents required for obtaining a Grant

To assist in the administration of an estate, Leonard Gray will need to see all original documents that relate to the deceased's financial affairs. These documents/items may include:

- Recent bank statements and building society passbooks;
- Share certificates or Share Account statements;
- Life policy documents;
- Recent utility account bills and Council Tax account;
- Statements of any asset portfolios;
- Title deeds to any land the deceased held an interest in;
- A list of all beneficiaries and Personal Representatives with their full names and up to date addresses
- Recent correspondence from HMRC to do with the deceased's Income Tax returns/Capital Gain Tax matters;
- Details of any private or state pension;
- A copy of the Funeral account;
- Details of any gifts which may have been given by the deceased in the 7 years prior to their death which have exceeded £3,000 (total of all gifts) in any one tax year; and
- Any other documents you think may be relevant. If you are unsure, it will be best for us to check the document to see if it is relevant or not.



Once we have the documents we can then give a rough indication as to how long the estate may take to administer. It should be noted that the administration of an estate is not something that can generally be accomplished quickly and it may take many months to complete.

4. Inheritance Tax and Valuations

If the estate value is less than £325,000.00 then, subject to lifetime gifts made by the deceased or any trust assets, it is likely that a short-form HMRC Inheritance Tax account may be completed for the estate, detailing why there is no Inheritance Tax to pay.

If the estate value is greater than £325,000.00 and the majority of this is passing to non exempt beneficiaries (i.e. not a spouse or Charity) it will be necessary to prepare a detailed HMRC Inheritance Tax account summarising the assets in the estate.

However, following the Finance Act 2008, even if an estate value is greater than £325,000.00 it may be possible that there is no Inheritance Tax to pay. Under the Act, where a second spouse passes away, their estate may utilise the unused Inheritance Tax allowance from the first spouse's estate.

- If the estate passed solely to the second spouse on the first spouse's death then this can lead to a "doubling up" of the Inheritance Tax allowance, effectively allowing for an estate value of up to £650,000.00 before any Inheritance Tax is to be paid.
- If the estate passed to the second spouse, subject to some legacies or gifts to other beneficiaries, then only the percentage of the unused Inheritance Tax allowance from the first spouse can be used on the second spouse's estate. This will reduce the upper limit available before Inheritance tax is payable. We can assist you with these calculations.

If the estate exceeds £325,000.00 (or £650,000.00 in the scenario above) then the



estate will bear tax at a rate of 40% on the surplus value. By instructing us to deal with the estate you can ensure that all deductible items are taken off of the value of the estate and that the HMRC Inheritance Tax account is completed properly with any reliefs claimed. There are harsh penalties that can be imposed by HMRC on the Personal Representatives for failing to include items and/or incorrectly estimating the value of items.

If a property or properties are involved it will be necessary to obtain a Surveyor's report on the value of the property/properties in question. A marketing appraisal by an estate agent is generally not satisfactory for this purpose. We can instruct a suitable Surveyor on behalf of the Personal Representatives if necessary.

Likewise, if the deceased owned valuable chattels such as jewellery or antiques these will need to be valued by a suitably qualified valuer and we can instruct an appropriate firm to deal with this.

The main point to bear in mind with Inheritance Tax is that it normally needs to be paid before the Grant will issue. Sometimes it is possible, depending on the institutions involved, to arrange for an organisation to draw a cheque on funds they are holding in favour of HMRC to pay the Inheritance Tax. There are normally conditions involved and you may be required to obtain a legal undertaking from Leonard Gray to obtain the funds.

If the estate is made up of primarily land (which cannot be sold before the Grant is available) then it is possible to select to pay the tax over 10 years on the land only. The first instalment payment still has to be made when applying for the Grant and in such circumstances it may be necessary for the Personal Representatives to obtain a loan.

5. Obtaining the Grant

Once we have details of the deceased's assets we will arrange for them to be valued and then prepare the probate application. This takes the form of an Oath that the Personal Representatives have to swear at a firm of Solicitors other than Leonard Gray.



At the same time, the HMRC Inheritance Tax account will be signed by the Personal Representatives. The probate application is then ready to be made and the Inheritance Tax account can be sent to HMRC.

HMRC will within several weeks confirm if they have any queries and also as to whether they will instruct their District Valuer to inspect any properties. If this is the case then the District Valuer's report will have to be awaited before negotiations with HMRC can be concluded. Eventually, in most cases, all queries/negotiations can be dealt with, all Inheritance Tax paid and Inheritance Tax clearance obtained. All of this can take anywhere from a few months to over a year depending on the size and complexity of the assets being valued by HMRC in the estate.

6. Miscellaneous Issues

There are a number of other matters that need to be dealt with during the administration that Leonard Gray can also deal with on your behalf, such as:

- Liaising with the Local Authority to obtain Council Tax exemption/discount.
- Dealing with HMRC to finalise Income Tax/Capital Gains Tax matters.
- Placing Statutory Advertisements – Personal Representatives will have an ongoing liability for any debts in the estate which may arise over the course of time, even after the assets may have been distributed and the Personal Representatives are holding no further funds. This liability can be limited by the placing such adverts. The liability will be limited to the period ending with the expiration of 2 months after the adverts have been placed. All creditors of the estate will then lose their right to claim from the Personal Representatives.
- It is possible for certain categories of persons related or supported by the deceased who can claim against the estate for a lack of reasonable financial provision. This is a complex area and there is not space to explore this area in



detail here. But Executors should be aware that claimants have up to 6 months from the issue of the Grant to make a claim and the Court then have a further 4 months to provide notice of such a claim. After the initial 6 months have elapsed, a claim can only be brought with leave of the court. It is therefore prudent to retain around one half of the residue of the estate even until 10 months have elapsed even if there is no known chance of a claim being brought. If Leonard Gray act as Personal Representatives one half will always be retained in any event.

The next Section of this Guide sets out the process for distributing the estate.

Section

3

Distributing the Assets and Finalising the Estate

This Section of the Guide deals with how matters progress once the assets of the estate have been drawn in and all liabilities and tax have been settled.

When an estate is passing to a number of individuals the most common thing to do is for all assets to be sold and the relevant shares paid out in cash. In circumstances where the estate is passing to one individual, it is more likely that assets may be retained and appropriated to that beneficiary.

1. Paying legacies

If the Will specifies that legacies of either cash or certain items are to be made, these will need to be settled by the Personal Representatives before the estate can be finalised. Leonard Gray will normally arrange to settle legacies and arrange for a suitable receipt to be signed by the beneficiaries thereby ensuring the Personal Representatives cannot be criticised.

2. Estate Accounts

Once all assets have been drawn in and all liabilities settled, Leonard Gray can then prepare the Estate Accounts. These are a complete set of accounts which detail all monies that have come in and gone out in relation to the administration of the estate. These can often be very detailed and it is important that they balance.

They will also show the payment of any legacies and detail how everything else that is left over known as the “residuary estate” is divided among the residuary beneficiaries.



We would then supply the Personal Representatives with sufficient copies of the accounts for them to retain a copy each and the residuary beneficiaries to also be supplied with a copy. Once the accounts have been approved a copy will be sent to the residuary beneficiaries together with a receipt for them to sign in advance of receiving their share of the estate. This receipt will indemnify the Personal Representatives from any future disagreement with the residuary beneficiaries regarding their share of the estate.

3. Final payments and interest

Once all receipts have been received, payments can be sent to the beneficiaries including any sums of interest (gross) they are due on their share of the estate.

The next Section of this Guide will look at how to make an appointment.

Section

4

Making an Appointment

If you would like to discuss the issues raised in this Guide further then please contact a member of our team: **Chris Kelly**, **Jenna James** or **Sigourney Rutkowski** who will be happy to do so.

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A: Leonard Gray LLP 72 -74 Duke Street Chelmsford Essex CM1 1JY

We are based in Chelmsford town centre, a two minute walk from Chelmsford Rail Station with car parking and disabled access at the rear of our office for the use of clients.

Open Monday to Friday, 9am to 5pm. Alternative times by arrangement.

Other available Guides from Leonard Gray:

- **A Guide to Agricultural Property Relief and Business Property Relief**
- **A Guide to Care Home Funding and Home Protection Schemes**
- **A Guide to Deputyship on the Loss of Mental Capacity**
- **A Guide to Inheritance Tax Planning and Solutions**
- **A Guide to Lasting Powers of Attorney**
- **A Guide to Making a Will**
- **A Guide to Registration and Use of an Existing Enduring Power of Attorney**
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