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Love later life

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3.2 If there is no will

If there is no will, the personal representative is called an *'administrator'*. This is usually a close relative, in this order of priority: spouse or civil partner; children; parents; brothers or sisters; other relatives (depending on who is entitled to the estate). If any of these people die before the deceased, their children may apply.

An administrator must apply for a *'grant of representation'* before they have any authority to deal with an estate.

A grant of representation cannot be issued to someone under the age of 18. The partner of the deceased cannot apply if they were not married or in a civil partnership at the time of their death. If you are unsure whether you are entitled to apply, take legal advice, or complete and return the forms and the Probate Registry will let you know who can act.

3.3 How to apply for grant of representation

An executor is authorised by a will to administer an estate and can start acting immediately after the death of the person leaving the will. An administrator **must** take out a grant of representation **before** they can take any steps to administer an estate.

A grant of representation is a formal document that names the person who has died, and the person or people who are authorised to administer the estate. Where there is a valid will, the grant of representation is called a *'grant of representation with will'*. If there is no valid will or the executors are unable to act, it is called a *'grant of representation without will'*.

You can make an application personally, but there are circumstances when it is advisable to take specialist legal advice. For more information about applying for a grant of representation, see section 7.

3.4 When do you not need to apply for a grant of representation?

A grant of representation is almost always needed when the deceased's estate includes property or land held in their own name or jointly with another person as a *'tenant in common'* (when each owner has a distinct share that does not have to be passed to the other joint owner).

If the deceased's estate is worth less than £5,000, probate or letters of administration may not be needed. This is called a *'small estate'*.

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4.3 Complicated estates

There are circumstances when it is advisable to use a legal advisor with specialist experience in administering estates.

For example:

the estate is over the Inheritance Tax threshold (£325,000 in 2024-25) and is not an exempt estate

there are doubts over the validity of the will

there is no will, the deceased was married with children, and left an estate worth over £322,000

dependants have been left out of the will but may have a claim for support from the estate

the estate has complicated arrangements such as assets held in trust

the estate is insolvent or there are doubts about solvency of the estate

the estate includes foreign property

the deceased was domiciled outside the UK for tax purposes.

4.4 Finding a legal specialist

Many solicitors' firms offer administration of estate services. However, you do not have to use a solicitor. There are other companies offering these services. Most banks offer services to deal with the administration of the estate, as do some Trust Corporations. You can search for a solicitor on the Law Society website at <https://solicitors.lawsociety.org.uk/> or see factsheet 43, *Getting legal and financial advice*, for more information.

4.5 How much do estate administration services cost?

Some probate specialists charge hourly rates, but others charge a flat fee calculated according to the value of the estate. Most specialists charge VAT at 20 per cent on their fees. Some charge both an hourly rate and a flat fee but this does not necessarily mean they are more expensive. The important thing is to shop around and compare quotes.

You may wish to make enquiries with several specialists to find the type of service and cost that suits you best. There are other expenses (such as the cost of applying for the grant of probate) which also must be paid. All these costs and expenses are usually payable out of the estate.

Since 2018, law firms regulated by the Solicitors Regulation Authority (SRA) have been required to comply with rules about transparency in price and service. The rules require all regulated law firms and individual solicitors to publish information on the prices they charge for certain services, including undisputed probate and estate administration services. Most SRA-regulated law firms publish this information on their website so you can be sure of how much you will be paying and what for.

5.3.1 Not sure if land or property was jointly owned?

If you are unsure whether property or land is jointly owned, you can find out from the Land Registry for a small fee. This shows the owners of registered property in England and Wales. This can be done online at www.gov.uk/search

5.5 What else forms part of the estate?

You must calculate the value of an estate, so HM Revenue & Customs can see whether Inheritance Tax is due. They need to know about certain gifts the deceased made in the seven years before their death. This includes information or circumstances that may affect the tax position of their estate, such as continuing benefits received from a trust.

5.6 What does not form part of the estate?

Life insurance money does not always

6 Inheritance tax

Inheritance Tax (IHT) of 40 per cent is payable on estates whose value exceeds a certain amount (or 'threshold'). For the tax year 2024-25, the IHT threshold is £325,000.

Up to the threshold, the assets are not taxed and the allowance is called the nil-rate band. If the estate value is less than £325,000, the remainder of the unused nil-rate band can be transferred to a spouse or civil partner. See section 6.2 for more information.

Someone leaving a home, or sale proceeds of a home, that they previously lived in to direct descendants (children, grandchildren etc) is entitled to an additional nil-rate band of up to £175,000. See section 6.1 for more information.

The amount inherited by a spouse or civil partner is usually exempt from IHT under the spouse and civil partner exemption rules. The situation is more complex if the survivor is not resident in the UK for tax purposes.

Details of the estate may need to be reported to HM Revenue & Customs (HMRC), depending on whether IHT is payable. This is done by filing an IHT Account that may be in long or short form depending on the size and nature of assets, and the identity of the beneficiaries.

Some estates are classed as an 'excepted estate' in which case no IHT is payable. See section 6.5.3 or the HMRC website at: www.gov.uk/hmrc-internal-manuals/inheritance-tax-manual/ihtm06011

Note

IHT is a complex area. It is advisable to seek independent legal advice in most cases if you think it will apply to your estate, or you are administering an estate and IHT might be payable.

6.1 Additional nil-rate band

An estate may be entitled to an additional nil-rate band, called the additional nil-rate band (RNRB) if:

the person died on or after 6 April 2017

they own a home, or a share of a home, that is included in their estate

their direct descendants such as children or grandchildren inherit the home, or a share in it.

If the first person in a couple died before 6 April 2017, their estate could not have used any RNRB (as it was not available) so 100 per cent of their RNRB is available for transfer, unless the value of their estate exceeded £2 million.

The maximum amount of the RNRB is £175,000 in 2024-25.

Any unused RNRB can be transferred to a surviving spouse or civil partner.

The home left to direct descendants does not need to be the home the person lived in with their spouse or civil partner to qualify for the RNRB or to transfer it. It can be any home,

6.4 Relief from Inheritance Tax

Certain types of assets can be passed on free of IHT or with a reduced rate of IHT, including some types of business assets, agricultural property, woodlands, and heritage assets. Professional advice should be taken when administering an estate that contains these types of assets, as there are complex rules to satisfy.

If active service caused or contributed to the death of a member of the armed forces, their estate does not have to pay IHT. The estate does not have to pay IHT if a person was helping in an emergency that caused or contributed to their death and was on-call or on-duty as a member of the armed forces, the emergency services, or a humanitarian aid worker.

6.5 Does the estate need to be declared for IHT?

6.5.1 Inheritance Tax is due

You must declare full details of the estate if Inheritance Tax is due using form IHT400

If the estate includes trusts

You must complete a full account using form IHT400 if the deceased:

gave gifts that were paid into trusts

held assets worth over £250,000 in trust (£150,000 if the person died on

7 How to apply for grant of representation

The process of applying for a grant of probate or letters of administration is the same. You either instruct a legal advisor to deal with the matter on your behalf or make a 'personal application' by post or online.

7.1 Application forms

For a personal application, the relevant forms are:

PA1P/PA1A - The probate application asks for details about the person who has died, surviving relatives, personal representatives, and details of the will if there is one (**PA1P**) or if there is no will (**PA1A**).

IHT205 - A 'return of estate' form asks for details of the estate and its value. Only for use for deaths occurring before 1 January 2022 where the estate is not liable for Inheritance Tax.

IHT400 - If the estate value is over the IHT threshold, or if directed when completing the IHT205, you should complete form **IHT400** ('Inheritance Tax') and send this to HM Revenue and Customs.

Do not fill in an IHT205 and an IHT400 together. Do not send IHT400 with a probate application. If an IHT400 form is required, seek professional advice as the form is very complex, may require additional schedules, and needs to be completed accurately. Download copies of the forms at www.gov.uk/government/collections/probate-forms and www.gov.uk/government/collections/inheritance-tax-forms

Online

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Go to www.gov.uk/applying-for-probate/apply-for-probate to apply for probate online. If applying online, you must send a copy of the original will by post to the Probate Registry. You can pay fees by debit or credit card if paying online.

Report the estate value at www.gov.uk/valuing-estate-of-someone-who-died/tell-hmrc-estate-value

By post

When all the forms are complete, send them to the address on the forms with the death certificate and original will (or any documents in which the deceased expresses wishes about the distribution of their estate).

It is advisable to se 12 Tf1 0 0 1 301.99 305.33 Tm0 g0 G[-)]TJET@0.000008871 0 595.32 841.92 re1

7.2 Statement of truth

For a personal application, an interview is no longer required, but you must complete a ‘

8.2 Paying any debts and outstanding expenses

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 before paying any debts. If you pay debts in the wrong order, you c

8.5 Problems with executors or personal representatives

Sometimes, executors or personal representatives act inappropriately, or do not take actions, or disagree about how to proceed if more than one person is appointed to act. Seek professional legal advice from a solicitor if so, as you may need to involve the court to resolve such difficulties.

8.6 If you are an executor and you do not wish to act

You may not wish or may not be able to act as an executor, even though you have been named as an executor in someone else's will.

You can appoint another person to act as personal representative on your behalf. You need to complete a form to appoint someone else to act as an attorney, see www.gov.uk/government/publications/form-pa11-apply-for-power-of-attorney-will

It is important to note that you remain responsible for any actions your attorney takes on your behalf.

Alternatively, you might not want to act at all or appoint anyone else to act for you. Provided you have not already started to deal with the estate, you can '*renounce*' your role as executor completely.

You must complete a form to apply for a renunciation, see www.gov.uk/government/publications/form-pa15-apply-for-renunciation-will

Someone else can then apply for a grant of representation.

9 Intestacy

When someone dies without leaving a valid will, their estate must be shared out according to the '*rules of intestacy*'. The person who dies is known as an '*intestate person*'.

Only people specified in the rules of intestacy are entitled to administer the estate of an intestate person and inherit from it, such as spouses or registered civil partners and children.

9.1 What are the rules of intestacy?

If a person dies without a will, or they leave a will that is not legally valid, the statutory rules of intestacy decide how the estate is shared out. There are rules about the priority of different family members.

The flowchart on the next page illustrates who inherits under the rules of intestacy. If a beneficiary has died during the lifetime of the intestate person but they have left children of their own, then those children are likely to inherit their deceased parent's share of the estate.

Note: references to '*civil partner*' and '*partner*' in the flowchart **only** apply to registered civil partners.

9.2 Grandchildren and great grandchildren

A grandchild or great grandchild cannot inherit from the estate of an intestate person unless either:

their parent or grandparent has died before the intestate person, or
their parent is alive when the intestate person dies but dies before reaching the age of 18 without having married or formed a civil partnership.

In these circumstances, the grandchildren and great grandchildren can inherit equal shares of the share to which their parent or grandparent would have been entitled.

9.3 If there are no surviving relatives

If there are no surviving relatives who inherit under intestacy rules, the estate passes to the Crown. This is known as *bona vacantia*. The Treasury Solicitor is responsible for dealing with the estate. The Crown can make grants from the estate but does not have to agree to them.

If you are not a surviving relative, but you believe you have a good reason to apply for a grant, you should seek legal advice.

9.3.1 Rearranging how the estate is shared out

It is possible to rearrange the way property is shared out when someone dies intestate, provided this is done within two years of the death. This is called making a deed of variation. All the people who would inherit under the rules of intestacy must agree.

If all agree, the property can be shared out differently so people who do not inherit under the intestacy rules still get some of the estate. They can agree that the amount people get is different to the amount they would receive under the rules of intestacy. Changing the way an estate is distributed can affect whether there is any inheritance tax to pay.

If you think that the way the estate is shared out should be rearranged, you need legal advice and you might get legal aid.

9.4 Disclaiming your inheritance

If you do not wish to receive your inheritance, this is known as disclaiming it. If you disclaim your inheritance, you cannot redirect where it goes or suggest your

Useful organisations

Association of Lifetime Lawyers, The

www.lifetimelawyers.org.uk

Telephone 020 8234 6186

Network of solicitors, barristers, and chartered legal executives providing specialist legal advice for older people, their families and carers.

Citizens Advice

England or Wales go to www.citizensadvice.org.uk

Telephone 0800 144 8848 (England)

Telephone 0800 702 2020 (Wales)

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

Joint Casualty and Compassionate Centre

www.gov.uk/guidance/joint-casualty-and-compassionate-centre-jccc

Telephone 01452 51995197.33 530.35 Tm0 g0 G[-)]TJETQ.000008871 0 595.32 841.92 reWconfider

Probate and Inheritance Tax Helpline

www.gov.uk/government/organisations/hm-revenue-

Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

Age UK Advice

www.ageuk.org.uk

0800 169 65 65

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