

WHAT HAPPENS NEXT

Your guide to what happens when a loved one dies

Jordans Solicitors LLP

By your side since 1925

A guide to help you

When a person dies, loved ones are sadly left with an assortment of very important legal obligations that must be fulfilled.

The first thing to do is take the deceased's medical certificate to their local Register Office within five days to obtain a certificate of registration of death (to administer paperwork such as pensions and/or benefits) and a certificate for burial or cremation (sometimes known as the 'green certificate' or the 'green form').

Think about paying for several copies of the death certificate because organisations such as council services, banks and utility services may need one in order to close accounts.

Remember, if the deceased has left a Will then they will have almost certainly have named an Executor to deal with certain Estate Administration arrangements.

Your probate Lawyers, at your service

Our Probate team here are Jordans Solicitors can help with all legal aspects after someone dies. If you are the Executor and it is proving too much for you, please talk to us as we can help share the burden. Dealing with the deceased's paperwork and contacting all the appropriate organisations involved can be difficult and time-consuming, however, if you are worried about legal costs then we are happy to advise on only the more complex issues if you wish to deal with the more straightforward aspects.

We are local

We invite you to come and talk through your requirements during your face-to-face appointment - that's the nice thing about being local. If you're not able to make it into our office, we can also accommodate telephone and video appointments.

Call us on **01302 365 374** to arrange a free no obligation appointment to discuss your requirements and find out what we can do for you

Guide Disclaimer

This guide is provided for information purposes only. We have done our best to ensure that the information contained in this guide is correct as of 01.09.2022. It applies only to England and Wales. However, the guide has no legal force, and the information may become inaccurate over time, due to changes in the law. Information within this guide may be over-simplified and the information contained within it does not constitute legal advice and we will not be liable should you rely on this information. Before you take any action, you should always seek legal advice from a professional with an in-date practicing certificate.

Estate Administration – the steps involved

A simplified overview of the process

1

Practical Arrangements

Trace the last Will (if there is one). Identify the person legally responsible for sorting everything out (the Executor). Register the death and arrange the funeral.

2

Value the Estate

Contact everyone connected to the estate to ensure all money, property and possessions are traced and then valued. Identify any debts, bills and loans which need to be repaid.

3

Pay Inheritance Tax

Complete the inheritance tax return forms and calculate the tax due using all allowances. The first tax payment must be made within six months of the date of death.

4

Appointment by Probate Court

Apply to the Court for a grant giving authority to represent the Estate.

5

Collect in Assets

Collect in all the investments, money due, possessions and property. All items, including specific bequests, need to be valued. Deal with any legal challenges.

6

Estate Accounts and Final Distribution

Prepare the official Estate accounts. With everything approved, make the final payments to those benefiting from the estate and get closure letters from HMRC.

*For the purpose of this guide, the legal process has been simplified.

Frequently Asked Questions

When a loved one dies, those left behind naturally feel confused and stressed at a time when they need to grieve. That is why having a helpful guide on what needs to happen next will help. Here are answers to some of the most frequent questions that our clients have asked us.

Who is responsible for arranging and paying for a funeral or cremation?

People named in the deceased's Will as Executors (or the deceased's nearest relative if there's no Will) are primarily responsible for arranging their funeral. The costs can be recouped from the assets left behind by the deceased (their 'Estate') however sometimes a person dies without leaving enough money to pay for the funeral. If this is the case, then relatives would normally be expected to meet the costs.

The Executors should check to see if the deceased had taken out a private funeral plan, a funeral or life insurance policy that will pay out for funeral costs, or a workplace or personal pension scheme that offers a lump sum payment towards funeral expenses.

Whilst banks may temporarily freeze the deceased's bank account, they will be prepared to release funds to help pay for a funeral.

Good to know:

No funds to pay for the funeral? You may be eligible for financial assistance from the Governments "Social Fund".
Find out more, visit **www.gov.uk/budgeting-loans**

What if there's no Will in place?

If a person has died 'intestate' (without a Will), then the law will be applied to administer and divide up the estate, without the need for an Executor. In this case, contact us and we can carefully explain what happens next.

What if there's a Will but it cannot be found?

We will work with you to compile evidence to produce to the Probate Court in an effort to prove what the Will said and that it was signed lawfully. If satisfied with the evidence we produce, then the Court will usually allow the terms of the missing Will to stand.

What happens with gifts to children?

Where a Will (or intestacy) results in a gift to children who are under the age of 18, a Trustee will usually need to be appointed. The trustee will manage and protect the gift on the child's behalf until they reach 18 (or older when a later age is specified in the Will).

What are an Executor's legal duties and responsibilities?

When someone dies, the assets they leave behind are collectively called their 'Estate', Executors are legally responsible for:

- Identifying everything in the estate – for example, cash from bank accounts, insurance policy proceeds and pension payments.
- Valuing the assets. Specialist valuers may be needed to value some assets such as the home or shares in a family company.
- Calculating any debts or liabilities of the estate – mortgages, loans, credit cards and so on.
- Completing inheritance tax forms and dealing with any inheritance tax due.
- Applying for a Grant of Probate.
- Paying funeral costs (or reimbursing whoever has already paid them).
- Making distributions to beneficiaries in accordance with the terms of the Will. You may need to pay a tracing service to find some of them.
- Drawing up Estate accounts for the beneficiaries so they can see that everything has been accounted for.
- An Executor can also act as a Trustee if the Will sets up a Trust – for children under 18 years of age for example.

Executors have a legal duty to secure the estate for the benefit of the beneficiaries, as they are personally liable if it is not dealt with correctly.

How long will it take to administer an Estate?

It might be possible to sort out a relatively simply Estate with no inheritance tax to pay in a couple of months. In more complex cases it might take longer, sometimes a year or more before the whole process has finished.

Going through the deceased's paperwork and contacting all the appropriate organisations involved can be laborious and time-consuming, however if you are worried about legal costs then we are happy to advise only on the more complex issues (such as completing inheritance tax forms and calculations), if you have the time to deal with the less complex issues.

When is inheritance tax payable?

Generally this tax payable where the total value of the Estate (property, possessions and money) is over the minimum tax-free figure.

There are exceptions. Gifts to your husband/ wife or civil partner are tax-free. Also, if your husband/wife/civil partner died before you, any unuse tax-free allowance can be passed on to the surviving partner to reduce the tac payable when they die. There are also special rules covering gifts to charity when can reduce the amount of tax due.

Some inheritance tax must be paid before probate is granted, which may cause cashflow problems. Your Lawyer will be able to discuss options which may include arranging a bank loan or advancing money from the Estate to pay for this.

What is the Will or intestacy rules are unfair?

It is possible for certain people to challenge the amount they are due to receive under a Will or (if there is no Will)as per the intestacy rules. Such challenges are often made on the basis that it is insufficient to meet their needs and does not reflect the obligations and responsibilities the person who died has towards them.

Whether you are the person who wants to challenge what will be received or whether you are an Executor or Administrator (with legal responsibility for sorting out the Estate) facing a challenge, we recommend you take legal advice.

Any challenge made under the Inheritance Act 1975 must be made no later than six months from date of issue of the Grant of Probate.

Such disputes can often be resolved by agreement but if not will need to be considered by the Court. Either way we recommend you take legal advice swiftly to ensure that your position is protected.

Additionally, a Will can be challenged on the basis that the person who made the Will did not have the necessary mental capacity to understand what they were doing when they made their Will. Again, we would recommend that you take specialist legal advice to assess whether there is likely to be sufficient evidence to show that the Will should not be followed.

If you are thinking of making a challenge – or needing to defend against one then the best starting point is to contact our team and arrange a Free First Consultation where you can share information and ask questions about our service.

What if we do not want the Executor who was named in the Will?

Occasionally the Executor appointed by the Will may be inappropriate, for example, banks tend to make high charges for Executor services and if there is only a small Estate then they can often be persuaded not to act. If so, they will 'renounce Probate'.

You might want to obtain specific advice on this using our fixed price ' Ask the Legal Expert' service where an expert Lawyer can advise whether this should be possible in your particular circumstances and provide useful guidance on what steps you should take.

What happens if the person who died lived abroad, or if they owned property or other possession in another country?

Foreign rules as to who benefits can be very different from our own. There may also be a separate Will covering those foreign assets.

Where necessary your Lawyer will work with Foreign Lawyers to protect the property and ensure it is dealt with in accordance with the applicable law.

Applying for a Grant of Probate

To obtain the legal right for yourself to deal with the Estate of someone who has died, you will have to formally apply to the Probate Registry and obtain what is known as a 'Grant of Probate. The application fee for this is £215 if you apply for yourself, when a Lawyer makes an application on your behalf, the Probate Court fees are reduced. Additional copies of the grant only cost around 50p each.

An important part of the Probate process is to assess the size and complexity of the Estate you are dealing with, so speak to the Lawyer who prepared or held the Will as you will need the original.

Wherever the person held a current asset or liability, each institution should be sent a certified copy of the death certificate and asked to submit a final statement. Bank should pay out funeral expenses straight away, but most assets remain frozen until you have formally been granted Probate. Once the certificate has been seen by an institution, and with the permission of the person who has supplied it, the organization can keep a photocopy of the certificate in their files and return the original certificate.

Where an Estate includes a property, get a written valuation by an estate agent or surveyor to help HMRC assess whether inheritance tax (IHT) is likely to be payable.

After assessing the size and composition of the Estate, you should be in a position to complete the Probate application form. You will need to send the original Will, the death certificate and one of the forms below:

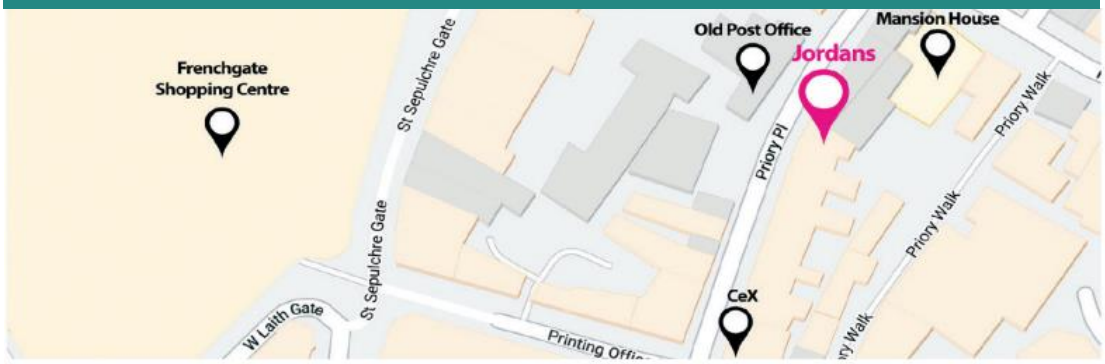
- Use an IHT 205 if the Estate is valued below the IHT threshold (currently £325,000).
- Use an IHT 400 if the Estate is valued above the IHT threshold.

Note that HMRC will also require details of gifts made by the deceased in the seven years prior to death, because these might affect the amount of IHT payable.

Finally, you will need to complete a State of Truth by Executors. This can be done at your local Lawyers office.

Where can you find us

Doncaster



Kiveton Park - Sheffield



Our key promises:

- Direct Lawyer Contact
- Free Initial Assessment
- Flexible Openings*
  *Contact your local office for availability
- Clear Price Guarantee
- Same-day Response

Next steps

Take advantage of our **Free Initial Assessment** to find out what suits your needs. To get in touch, call us on **01302 365 374** or email your query to **info@jordansllp.com** to receive a response from one of our experts

By your side since 1925

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