

**Factsheet 14 2009****Dealing with an estate****About this factsheet**

When a person dies, somebody has to deal with their estate, collecting in the money, property and possessions, paying any debts and then distributing the estate to those entitled to it. This factsheet provides information for personal representatives on how to carry out their duties. It includes information on what happens if someone hasn't left a will.

For information on making a will, see Age Concern Factsheet 7 *Making a will*.

This factsheet describes the situation in England. There are differences in the rules for dealing with estates in Northern Ireland, Scotland and Wales.

Readers in these nations should contact their respective national Age Concern offices for information specific to where they live – see section 11 for details.

For details of how to order other Age Concern factsheets and information materials mentioned inside go to section 11.

## Inside this factsheet

1	Recent developments	3
2	Funeral arrangements	3
3	Personal representatives	3
4	Grants of representation	4
	4.1 Who can apply for the grant of representation?	4
5	How to apply for the grant of representation	5
	5.1 Forms	6
	5.2 Information required about the estate	6
	5.3 Submitting the application	7
	5.4 The interview	7
6	When a grant may not be needed	8
	6.1 Obtaining assets without a grant	9
7	Inheritance tax	9
	7.1 Transferring the nil-rate band	9
	7.2 Gifts that are exempt from IHT	10
	7.3 Arranging payment of IHT	11
	7.4 Deeds of variation	11
8	Settling the estate	12
	8.1 Collect in the assets	12
	8.2 Paying any debts and outstanding expenses	12
	8.3 Distributing the estate	13
	8.4 Possible claims on the estate	14
9	Intestacy	14
10	Useful organisations	15
11	Further information about Age Concern	17

## 1 Recent developments

- The amounts that spouses and civil partners are entitled to inherit when someone dies without making a will were increased on 1 February 2009. See section 9 below for details.

## 2 Funeral arrangements

You should check whether the deceased person left specific instructions for their funeral. This information may be contained in the will or in a separate letter or other document stored with the will.

A will may be held for safe-keeping in a number of places other than the deceased's home: with a solicitor, at a bank, or at the Principal Probate Registry (see section 10).

If you find the will and it names someone other than yourself as executor, you should contact that person immediately.

## 3 Personal representatives

The person who deals with (administers) the estate is called a personal representative. The term personal representative can either refer to an executor or an administrator. If the deceased left a will appointing someone to do this, they are called an executor. If there is no valid will, or if the will does not name an executor, then the personal representative is called an administrator. See section 4.1 for details of the people who may apply to be an administrator.

The deceased person may have named a professional executor, such as a solicitor. If not, a non-professional executor can obtain advice from a solicitor on how to carry out their duties properly, but this will not always be necessary. Advice from a solicitor can be paid for out of the estate.

Any fees charged by the solicitor should be 'fair and reasonable' having regard to all the circumstances of the case. Fees are usually based mainly on the time spent by the solicitor but may include an element relating to the value of the estate.

It is advisable to consider using a solicitor if any of the following apply:

- the estate is large or high value
- a business or agricultural property is involved
- the deceased was a partner in a firm
- there are family trusts or large gifts to children under 18
- there is a likelihood that a claim may be made under the *Inheritance (Provision for Family and Dependents) Act* by someone who believes that they have been unfairly treated by the will or by the rules of intestacy.

Problems requiring professional assistance may also arise if the will was badly drafted.

## 4 Grants of representation

The personal representative usually needs a formal legal document called the 'grant of representation' to confirm that they have the legal authority to deal with the assets of the deceased person. The term grant of representation is used to refer either to a 'grant of probate' when issued to the executors of a will, or a 'grant of letters of administration' when issued to an administrator.

### 4.1 Who can apply for the grant of representation?

#### **If there is a will:**

Where there is a will, the grant of representation will be given to:

- the executors named in the will or
- if there are no executors, or the executors are unable or unwilling to apply, the next person entitled to a grant of representation is any person named in the will to whom the deceased gives all his/her estate, or the remainder after gifts are paid. If the remainder is shared between more than one person, all will be entitled to apply. A grant of representation can be awarded to up to four people.

## If there is no will:

If the deceased has not made a valid will, their nearest relatives, in the following order of priority, are entitled to apply for the grant of representation and be an administrator of the estate:

- 1 husband, wife or civil partner
- 2 sons or daughters\*
- 3 parents
- 4 brothers or sisters\*
- 5 more distant relatives\*

\* if any of these people dies before the person who made the will, their sons or daughters may apply.

A grant of representation cannot be issued to someone under the age of 18. The partner of the deceased is not entitled to apply if they were not married or in a civil partnership.

If you are not sure whether you are entitled to apply you should still complete and return the forms and the registry will let you know.

## 5 How to apply for the grant of representation

Whether you are applying for a grant of probate or of letters of administration the procedure is the same. You can obtain the relevant forms from the Probate and Inheritance Tax Helpline or from the local probate registry. There is also an accompanying leaflet, *How to obtain probate (PA2)*, which explains how to complete the forms.

---

**Note:** Addresses of the Registries and local offices can be found on the website: [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk), or by phoning the Probate and Inheritance Tax helpline on 0845 30 20 900.

---

## 5.1 Forms

The forms are as follows:

- the probate application (form PA1) – this asks for details about the person who has died, their surviving relatives, the personal representatives and details of the will if there is one
- a return of the whole estate form IHT205 (yellow form) – this gives details of the estate and its value. If the value of the assets of the person who died is less than the threshold for inheritance tax (IHT) at the time of death (before deduction of debts and funeral expenses) then fill in IHT205. In 2009/10 the tax threshold is £325,000.

If the estate's value is over the inheritance tax threshold then you should complete form IHT200 and send this to HM Revenue and Customs. Do not fill in both forms and do not send IHT200 with the probate application.

## 5.2 Information required about the estate

To complete these forms it will be necessary for the personal representative to obtain the following information:

- the value at the date of death of all assets owned by the deceased; this means the full market value of a house or flat or any other property and the value of household goods, jewellery and belongings at the sum for which they could be sold
- details of any money owed to the dead person or to their estate
- any debts owed by the person who had died, including tax (income tax and capital gains tax) due to HM Revenue and Customs.

This information will enable the personal representative to find out if inheritance tax is payable and if so to make arrangements to pay this. Most estates are not worth enough for IHT to have to be paid and so this will only be relevant in a minority of cases. If IHT is payable, it must be paid before a grant will be issued. See section 7 below.

## 5.3 Submitting the application

When all the forms have been completed they should be sent with the death certificate and the original will (or any documents in which the deceased expresses any wishes about the distribution of their estate), to either the Probate Registry where you wish to be interviewed or the Probate Registry which controls the local office where you wish to be interviewed. Do not send any papers to the local offices as this will delay the application.

It is advisable to send the documents by recorded delivery after making a copy of the will and other documents – the copies should be kept in a safe place.

You must also enclose a cheque for the application fee. The fee is currently £90, although there is no fee if the value of the estate is less than £5,000.

You can also pay for extra official copies of the grant of representation, which may be used to send to institutions in place of the original grant (an ordinary copy is not acceptable for this purpose). The fee for each official copy is currently £1 per copy if you request it with the application.

A separate official copy is not required for each institution holding assets of the deceased, as each institution will register the particulars in their records and stamp the reverse of the grant and return it to the personal representative. Sending a separate copy to each organisation simultaneously may be quicker.

---

**Note:** Depending on your income and personal circumstances you might not have to pay the whole probate application fee if it would cause you to suffer financial hardship. You can apply for remission or reduction of the fee by using forms EX160 and EX160a, which are available from the Probate Registry, or you can download them from the website: [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk).

---

## 5.4 The interview

You will have to attend an interview at a Probate Registry office before a grant can be issued. This should last around 15 minutes. The probate application form includes space for you to indicate which office you would prefer to attend at.

At the interview you will be asked to confirm the details you have given and you will have an opportunity to raise any queries you may have.

You will be asked to sign a form of oath and to swear or affirm before the interviewing officer that the information you have given is true to the best of your knowledge. You will also be required to produce proof of your identity. The letter confirming your appointment should explain which forms of ID are acceptable.

In most cases only one interview is required, but if the application is complicated there may be additional documents to be signed or you may be asked to contact other people, for example one of the witnesses to the will.

## **6 When a grant may not be needed**

A grant may not be necessary. Listed below are some of the instances where it may be possible to obtain the assets that form the estate without a grant.

### **Joint property**

Where a jointly owned property is held in a 'joint tenancy', the property automatically becomes wholly owned by the surviving joint tenant.

The other way of holding jointly owned property is as 'tenants in common'. In this case the share owned by the deceased will form part of their estate and be passed on according to their will or the rules of intestacy. Seek legal advice if there is any doubt over the type of ownership.

Where money is held in a joint bank account, on the death of one account holder it automatically passes to the other account holder without a grant being required.

### **Low value estates**

Where the amount of money held in savings and investments is less than £5,000 at each financial institution a grant may not be necessary. However, banks, building societies, insurance companies or other institutions where the deceased person had savings, shares, policies, certificates, etc, are not obliged to release the asset without probate/administration, however small the amount (see section 6.1 below).

## **Nomination agreements**

Nomination agreements allow the owner of a property to nominate that it should be passed to a particular person in the event of death. These agreements could only be made before 1981.

### **6.1 Obtaining assets without a grant**

To ascertain whether the assets can be obtained without a grant, it is necessary to write to each institution informing them of the death of the deceased and enclosing a photocopy of the death certificate. You should check with each institution what other evidence they require before they will release any assets. You may also be asked to send the original documents.

At a later stage you may be asked to complete an indemnity form – this means that you undertake to reimburse the institution if it is proved that someone has a stronger claim to the assets than you.

Depending on the requirements of the individual institutions involved, you may find that it is more straightforward to obtain a grant of representation. There is no fee for this if the estate is worth less than £5,000.

## **7 Inheritance tax**

Inheritance Tax (IHT) is payable on estates whose value exceeds a certain amount (or 'threshold'). For the 2009/10 financial year the IHT threshold is £325,000. Anything left to a wife, husband or civil partner is taken off the value of your estate for the purpose of calculating IHT liability, providing you are both permanently resident in the United Kingdom.

### **7.1 Transferring the nil-rate band**

New rules allowing the transfer of the 'nil-rate allowance' to a spouse or civil partner were introduced in October 2007. The nil-rate allowance is the part of the estate on which IHT is not charged as it is below the IHT threshold. If not all the nil-rate band allowance, currently £325,000, is used, the unused proportion can be transferred to the person's spouse or civil partner. When the spouse or civil partner dies, the unused proportion will be added to their own nil-rate band allowance. The new rules apply where the second spouse or civil partner dies on or after 9 October 2007.

It does not matter when the death of the first spouse occurred. Whichever tax applied at the time (IHT was introduced in 1986 and before this either Capital Transfer Duty or Estate Tax applied), if there was any unused tax-free band it can be transferred. No tax-free transfer between spouses applied until 21 March 1972, so for deaths before that date part or all of the individual tax-free band could have been used up by any transfer to the second spouse.

For example, if a man dies leaving £162,500 to his children and the rest of his estate to his wife, he will use up £162,500 of his nil rate band allowance (everything left to his wife is exempt from IHT). If the allowance is £325,000 at the time of his death he has used up half of it. When his wife then dies, 50% of the nil-rate band allowance at the time of her death can then be added to her own allowance. So if the allowance at the time of her death has risen to £350,000, she has her own £350,000 allowance plus £175,000 (50% of £350,000). Her total allowance will be £525,000. If the value of her estate is less than £525,000, no IHT will be payable.

If someone outlives more than one spouse or civil partner, the unused allowances of more than one can be transferred, up to a maximum of an additional 100% of the allowance applicable at the time of their death.

The transfer should be claimed within two years of the death of the surviving spouse or civil partner by their personal representatives using form IHT 216. It will be necessary to provide documentation relating to the value of the estate of the spouse or civil partner who died first. This will include copies of the IHT return relating to their estate, their will, and valuations of assets. It is important that this information is kept safe and is available to the personal representatives on the death of the surviving spouse or civil partner.

## **7.2 Gifts that are exempt from IHT**

Gifts of up to £3,000 in each tax year are exempted, plus up to £3,000 of the previous year's allowance if unused. Gifts to individuals of up to £250 each are exempt, as are wedding or civil partnership gifts of up to £5,000 by each parent or step-parent, £2,500 by each grandparent or great-grandparent, or £1,000 by people outside the categories mentioned. Gifts to charities established in the United Kingdom, political parties, housing associations or for 'national purposes', eg a museum or university, are also exempt.

The value of any non-exempt gifts made during the last seven years may be taken into account in whole or in part depending on how recently the gift was made.

If the person's death results from wounds inflicted, accident occurring or disease contracted while a member of the armed forces and engaged on active service against an enemy, or from a disease contracted at some previous time, the death being due to or hastened by the aggravation of the disease, and the circumstances meet the conditions set out in Section 154 of the Inheritance Tax Act 1984 the estate may be exempt from inheritance tax. In such cases the executor or administrator should contact the Ministry of Defence for a certificate of exemption.

### **7.3 Arranging payment of IHT**

In most cases the tax must be paid before probate/administration is granted and the personal representative may find that a bank or building society is unwilling to release money held in the deceased's account – in which case it may be necessary to raise a loan for the tax and for probate court fees. The loan may be repaid from the estate after the grant has been issued and the assets released.

Tax on certain items such as houses, land, etc, may be paid by instalments over a period of 10 years.

Further information on inheritance tax can be obtained by calling the Probate and Inheritance Tax helpline on 0845 30 20 900. There is also a Customer Guide to Inheritance Tax on the HMRC website at [www.hmrc.gov.uk/cto/customerguide/page1.htm](http://www.hmrc.gov.uk/cto/customerguide/page1.htm).

### **7.4 Deeds of variation**

A deed of variation may be used to change the terms of a will (within two years of the date of death) to reduce Inheritance Tax liability. All beneficiaries must agree to the changes. You should take legal advice to ensure that the deed has the effect you want.

## 8 Settling the estate

Once the application procedures have been completed and the inheritance tax and probate court fees paid, the grant of representation will be issued in the form of the probate or administration document.

A statement of the gross and net value of the estate and a copy of the will are enclosed with the document. The original will is then kept at the Probate Registry at the Principal Registry of the Family Division.

The personal representative must then take the following steps:

- collect in the assets
- pay any debts and outstanding expenses
- distribute the estate.

### 8.1 Collect in the assets

Except in the case of very small estates, it may be advisable at an early stage to open a separate bank or building society account, usually known as an 'executorship account', into which money due to the estate can be paid. This prevents the estate's funds becoming confused with the personal funds of the executor/administrator and makes it easier to produce the necessary estate accounts.

After the grant of representation has been received the personal representative applies for the release of all assets belonging to the person who has died, by sending a copy of the grant to each institution. As the money is received it should be placed in the 'executorship account'.

The assets may include arrears of pensions, the balances from the deceased person's bank and building society accounts, proceeds from the sale of shares and property, tax refunds, etc.

### 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.

If you are the personal representative but not also the major beneficiary of the estate it may be advisable formally to advertise for creditors, in case a debt arises after the assets have been distributed. This is done by placing an advertisement in the *London Gazette*, at PO box 7923, London SE1 5ZH, tel: 0870 600 3322, website: [www.gazettes-online.co.uk](http://www.gazettes-online.co.uk) and in a newspaper covering the area in which the deceased last resided. The notice should include the name of the deceased, the date of death, and the name and address of the personal representative to whom all claims should be sent.

A period of two months is normally allowed from the date of the advertisement for the submission of claims. Doing this protects the personal representative from personal responsibility.

You may be asked to complete an income tax return and if you are unsure about the deceased person's sources of income you should ask the tax inspector for a copy of the deceased's last tax return.

The personal representative is entitled to claim from the estate for 'out of pocket' expenses such as stamp duty, copies of the grant, travel, etc, but not for time taken or for the work involved in administering the estate. A professional executor, such as a solicitor, can charge fees for their time spent on the work. Their fees will be paid out of the estate.

### **8.3 Distributing the estate**

Once all taxes and debts have been paid the estate can be distributed either according to the terms of the will or the rules of intestacy (see section 8).

Obtain a signed receipt from each beneficiary when they receive their share or bequest (for example a painting or a piece of jewellery), as this will form part of the estate accounts.

The personal representative may need to transfer a house or flat into the name of a beneficiary. If the property was held under a joint tenancy a copy of the death certificate should be sent to the Land Registry if the land was registered, or placed with the deeds for unregistered land.

The Land Registry produces a leaflet *What to do when a land owner dies* [PG009] giving guidance to personal representatives on how to register a change of ownership. This can be downloaded at: [www.hmlr.gov.uk](http://www.hmlr.gov.uk) or obtained from your local Land Registry office.

If the property is leasehold, the procedure is the same as for freehold property but the freeholder should also be informed of the changes and a fee may be payable.

If the property is unregistered, professional help may be required to make the application for first registration. You should contact a solicitor for advice. Where there is a lease the landlord should be notified of the changes and may charge a fee.

Details of the transfer of property should be noted on the reverse of the original grant.

After distribution has been completed, the personal representative should prepare the estate accounts. These must be approved and signed by the personal representative and the main beneficiaries and then the residue (remainder) of the estate may be distributed, in accordance with the will.

## **8.4 Possible claims on the estate**

Someone who was the husband, wife, partner, child or was dependant on 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'. This includes the unmarried partner of the deceased if they had been living together for at least two years. Someone in this situation, or a personal representative dealing with such a claim, should seek legal advice.

## **9 Intestacy**

Where a person dies without making a valid will, it is said that they have died intestate and the property is distributed according to rules laid down in the Administration of Estates Act. The rules applicable depend on which, if any, relations survive the deceased, but if a spouse or civil partner survives he or she will be entitled to at least the first £250,000 and all the personal possessions. Surviving children or grandchildren will be entitled to some of the estate, if it exceeds £250,000.

If the deceased had no children, but was married or had a civil partner, the spouse or civil partner will be entitled to at least the first £450,000 and all the personal possessions. Anything else is divided between the spouse or civil partner and other surviving relatives.

If there is no spouse, civil partner or children, the estate goes to any relatives in a particular order of priority (parents, brothers/sisters, half-brothers/half-sisters, grandparents, uncles/aunts, etc).

A personal representative acting for someone who has died without making a will may need to seek the advice of a solicitor as to how the rules apply in the specific case.

As the value of the home may exceed the amount that a spouse or civil partner inherits under the rules of intestacy, the family members may agree to renounce their share to prevent the house having to be sold. This may be achieved by a Deed of Variation (Deed of Family Arrangement).

If a will does not make provision for the residue of the estate a partial intestacy may be created, and the above-mentioned rules will then apply to the distribution of anything left after specific gifts have been made.

If there are no surviving relatives, the assets of the deceased will pass to the Crown. This is known as the estate being 'bona vacantia'. The estate is dealt with by the Treasury Solicitors who have discretion to make grants out of the assets. For example, they may agree to make a grant to the unmarried partner of the deceased, or to someone who provided substantial free services, such as nursing care or help with shopping and cleaning, which the deceased would otherwise have had to pay for.

Someone who wishes to make an application for a discretionary grant where the estate is bona vacantia should contact the Treasury Solicitor (see below for contact details).

## 10 Useful organisations

- **Land Registry**

Produces a guide on what to do when a landowner dies.

Lincoln's Inn Fields, London WC2A 3PH  
[www.landregistry.gov.uk](http://www.landregistry.gov.uk)

- **Law Society**

For details of solicitors in your area.

113 Chancery Lane, London WC2A 1PL

Tel: 0870 606 2555

Website: [www.lawsociety.org.uk](http://www.lawsociety.org.uk)

- **Principal Probate Registry**

For wills lodged for safekeeping.

Safe Custody Clerk, Record Keeper's Department, First Avenue House, 42-49 High Holborn, London WC1V 6NP

- **Probate and Inheritance Tax Helpline**

The helpline can answer questions on applying for probate and payment of inheritance tax and to order the relevant forms.

Tel: 0845 30 20 900

Websites: [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk) and  
[www.hmrc.gov.uk/inheritancetax/](http://www.hmrc.gov.uk/inheritancetax/)

- **Solicitors for the Elderly**

To find a solicitor specialising in wills and probate

Room 17, Conbar House, Mead Lane, Hertford, Herts, SG13 7AP

Website: [www.solicitorsfortheelderly.com](http://www.solicitorsfortheelderly.com).

### **Treasury Solicitor**

For information on bona vacantia estates.

1 Kemble Street, London, WC2B 4TS

Tel. 020 7210 3116

Website: [www.bonavacantia.gov.uk](http://www.bonavacantia.gov.uk)

## 11 Further information about Age Concern

Visit the Age Concern website, [www.ageconcern.org.uk](http://www.ageconcern.org.uk), or call our national Information Line on 0800 00 99 66 (free call) if you would like:

- to order copies of any of the Age Concern information materials mentioned in this factsheet
- to request information in large print
- further information about our full range of information products
- contact details for your nearest local Age Concern.

### **Books from Age Concern**

Age Concern publishes a wide range of books for older people and those who care for and work with them. The following title may be of particular interest:

*Your rights to money benefits 2009/10. All you need to know about the full range of benefits for the over 60s.* £5.99

To order this book, or to view our full range of books, please visit our website [www.ageconcern.org.uk/bookshop](http://www.ageconcern.org.uk/bookshop) or call our book order line 0870 442 2120.

### **Age Concern and Help the Aged**

Age Concern England and Help the Aged have joined together to form Age UK, a single charity dedicated to improving the lives of older people.

### **Age Concern and Help the Aged across the UK**

To find out more about Age Concern and Help the Aged's work in Northern Ireland, Scotland and Wales, contact:

Age Concern Northern Ireland

Tel: 028 9032 5055

Website: [www.ageconcernni.org](http://www.ageconcernni.org)

Scottish Helpline for Older People (Age Concern Scotland)

Tel: 0845 125 9732

Websites: [www.olderpeoplescotland.org.uk](http://www.olderpeoplescotland.org.uk)

[www.ageconcernscotland.org.uk](http://www.ageconcernscotland.org.uk)

Age Concern Cymru & Help the Aged in Wales

Tel: 029 2043 1555

Website: [www.accymru.org.uk](http://www.accymru.org.uk)

## **Support our work**

Age Concern is the largest provider of services to older people in the UK after the NHS. We make a difference to the lives of thousands of older people through local resources such as our befriending schemes, day centres and lunch clubs; by distributing free information materials; and through our national freephone helpline – the Age Concern Information Line 0800 00 99 66.

If you would like to support our work by making a donation please call Supporter Services on 020 8765 7527 (national call rate, Monday to Friday 9.15am–5pm) or visit [www.ageconcern.org.uk](http://www.ageconcern.org.uk)

### Legal statement

Age Concern England (charity number 261794) has merged with Help the Aged (charity number 272786) to form Age UK, a charitable company limited by guarantee and registered in England: registered office address 207-221 Pentonville Road, London, N1 9UZ, company number 6825798, registered charity number 1128267.

Age Concern and Help the Aged are brands of Age UK. The three national Age Concerns in Scotland, Northern Ireland and Wales have also merged with Help the Aged in these nations to form three registered charities: Age Scotland, Age Northern Ireland, Age Cymru.

### Disclaimer and copyright information

This guide is not a comprehensive statement of the law in this subject and Age Concern and Help the Aged cannot give individual legal or financial advice. Some rules may have changed since the publication of this guide. If you have any queries that this guide does not answer, seek further advice from one of the organisations suggested.

Please note that the inclusion of named agencies, companies, products, services or publications in this factsheet does not constitute a recommendation or endorsement by Age Concern and Help the Aged. While every effort is made to ensure accuracy, Age Concern and Help the Aged cannot be held responsible for errors or omissions.

© Age UK. All rights reserved.

This factsheet may be reproduced in whole or in part in unaltered form by local Age Concerns with due acknowledgement to Age UK. No other reproduction in any form is permitted without written permission from Age UK