

# A Guide for Family & Friends on the death of a loved one.

## PROBATE



For a specialist, professional advice  
at a time of bereavement  
Help when you need it most.....

I hope you find this guide to be  
of assistance.

**CHRIS BERRY**

# What to do when someone dies – A practical guide

Although bereavement can be an upsetting and emotional experience, there are of course, a number of practical issues that need to be dealt with at this time.

With this in mind we have compiled a basic guide to some of the practical steps you will need to take:

- Register the death
- Contact a Funeral Director to start the funeral planning arrangements
- Inform solicitors
- Secure the deceased's house (if vacant) and remove valuables
- Leave heating on or drain pipes if winter time
- Inform the insurance company, request that they leave cover in place
- Inform the Department for Work & Pensions and any private pension/ annuity providers, banks, Inland Revenue, utility providers. (If you are instructing a solicitor they will do all this for you)
- Gather together all bank statements and other financial information
- Find the Will, if there is one
- If you are the Executor named in the Will, speak to your solicitor who will guide you through the responsibilities of your role and confirm the matters that need to be dealt with.
- If you are the Executor and intend to deal with the estate yourself, you will need to deal with matters including:
  - Obtain valuations of all assets in the deceased's sole name and in joint names with any other party
  - Obtain the relevant forms from the Probate Registry to apply for a Grant of Probate or if there is no will Grant of Administration
  - Pay any inheritance tax due
  - Obtain Grant, gather in assets, pay all outstanding accounts, complete final tax returns, finalise matters with the Department for Work & Pensions and distribute estate

Please remember that an Enduring or Lasting Power of Attorney cannot be used after the person who made it has died.

# Administration of Estates

## THE FIRST WEEKS FOLLOWING THE DEATH OF YOUR LOVED ONE

When you are dealing with the loss of a loved one, we know that the last thing on your mind can be attending to legal procedures. Your life may come to a stand-still or seem like a complete whirlwind. We would suggest you seek a free first consultation with a Solicitor where you can speak to one of the specialist advisors to discuss moving forward. This leaflet explains some essential matters that need to be considered in the first weeks following your loss.

### **Is there a Will?**

If your loved one made a Will, you will need to locate the original document a Solicitor can help you with this. If you are unsure whether your loved one made a Will a Solicitor can undertake a search to locate the original document. Those storing the Will can only release the original to the Executors or their legal representatives. An Executor is the person your loved one chose to be responsible for administering their estate (their money and other assets).

It is important for an Executor to understand the Will. Wills are not always easy to read and you may not be able to understand the meaning of each specific provision; this is not uncommon. A Solicitor can explain the Will provisions to you and help make your loved one's wishes easy to understand.

### **What if there is no Will?**

If your loved one did not leave a Will, the Rules of Intestacy govern how their estate should be distributed. These rules can be complicated and a Solicitor can help you to understand them and how they apply to you.

### **Duties of a Personal Representative**

A Personal Representative is the person who is responsible for dealing with your loved one's estate. This is called an 'Executor' where there is a Will and an 'Administrator' where there is no Will.

Their main duties are to:

- find and value your loved one's assets
- calculate and pay any Inheritance Tax due
- apply for a Grant of Representation
- pay any outstanding debts and liabilities
- distribute the estate according to the Will or Rules of Intestacy

There are many other duties and procedures that Personal Representatives must follow. Personal Representatives are required by law to exercise care and skill in the administration of the estate. They are also required to keep a clear and accurate account of their dealings with the deceased's assets and liabilities. Executors can be held personally liable to creditors, beneficiaries and HM Revenue & Customs for their mistakes. Estate

administration is certainly not something that should be rushed. Depending upon the value of the estate, the administration can take several months.

A Solicitor can help you to understand your role as Personal Representative. It may be that following the death of your loved one you feel unable to take on the responsibilities involved in administering their estate. A Solicitor can take the weight off your shoulders by taking on the duties of administering the estate whilst keeping you informed of the progress along the way. A Solicitor can discuss the matter with you to help you decide what you would like to do.

### **What is a Grant of Representation?**

A Grant of Representation is the document that allows the Personal Representative to deal with the estate. This is called a 'Grant of Probate' where the deceased left a valid Will and a 'Grant of Letters of Administration' where the deceased died without leaving a valid Will. All financial institutions have their own policies for when they require a Grant of Representation.

#### Assets of low value

If your loved one held assets of a low value these can often be dealt with by using a form called a 'small estates statutory declaration' and therefore without the need to obtain a Grant of Representation. This form must be sworn by a solicitor or commissioner for oaths and a Solicitor can help you to complete the formalities required.

#### Jointly held assets

Jointly held assets, such as your home and joint bank accounts, usually pass automatically to the surviving co-owner; this is known as survivorship and happens when jointly held assets are owned as 'Joint Tenants'. In these cases a Grant of Representation would not be required. Sometimes, joint assets can be owned so that each co-owner has a particular share for example 50% of the asset. This is known as 'Tenants in Common' and allows the share of the asset to pass under the Will or Rules of Intestacy.

#### Assets in sole name

If your loved one owned a house or substantial shares or savings in their sole name or a distinct share of a house with someone else (known as 'Tenants in Common'), a Grant of Representation will be needed.

A Solicitor can help you to apply for the Grant of Representation by taking responsibility for filling in the forms and following all necessary procedures in order to obtain the Grant.

### **Is a house left unoccupied?**

If a house is left unoccupied after your loved one's death, the Insurers of the property need to be informed as soon as possible to ensure that the insurance remains valid.

A Solicitor can recommend specialist insurance providers who can insure the unoccupied property and we can deal with this as part of our Estate Administration service.

### **Is there a house to sell or to be transferred?**

#### Selling a property

If there is a property to sell there can be numerous things to think about. You will need to locate the House Deeds and a Solicitor can help you with this. The property may be gifted specifically to someone by the Will or divided between several beneficiaries. Thought needs to be given to the marketing of the property and it is wise to gain a number of valuations to help you to decide who will market the property and for how much. Most importantly, it is the duty of the Personal Representative to ensure that the property is not sold for less than the true market value.

A Solicitor can help with this process and can assist you with the sale of the property to ensure that the transaction proceeds to completion as smoothly as possible.

#### Transferring a property

The property may need to be transferred into the names of the beneficiaries entitled to it. A Solicitor can also assist you with this.

#### House Trust

Your loved one may have included a House Trust in their Will. This allows a named beneficiary (known as the life tenant) to continue to live in the house, usually for the rest of their life, then for your loved ones share of the house to pass to a different beneficiary or beneficiaries on the life tenant's death.

The wording of the clause in the Will which creates the House Trust is often difficult to understand. A Solicitor can help explain it to you. A Solicitor can also complete all of the required forms and follow all necessary procedures to correctly register the beneficiaries' interest in the property with the Land Registry.

### **Who needs to be informed of my loved one's death?**

Numerous institutions and organisations will need to be informed of your loved one's death including pension providers, insurance providers, financial institutions, creditors and many more. Many will require an original Registrar's copy of the death certificate. A Solicitor can take on the burden of informing the various institutions and organisations

---

## CONTESTING A WILL

Sometimes relatives and friends can be shocked by the contents of your loved one's Will. The Law provides that certain people who are excluded from a Will can make a claim for financial provision from the estate. Alternatively, it may be that someone wants to contest a Will because they feel it does not reflect the true wishes of their loved one, particularly if they feel they did not have mental capacity at the time the Will was made or if they feel they had been strongly influenced to benefit a particular person against their will.

I want to contest a Will, what should I do?

Ask a Solicitor for a free first consultation where a member of their team would be happy to discuss your situation with you and advise about the possibility of making a successful claim against the estate.

Someone is contesting the Will of my loved one, what should I do?

Ask a Solicitor for a free first consultation. A Solicitor can advise you on the prospects of any successful claim against the estate.

## INSTRUCTING A SOLICITOR

A Solicitor can help you to deal with the Estate Administration from beginning to end. A Solicitor will provide you with a professional and personal service ensuring that the estate of your loved one is being dealt with properly, keeping you updated each step of the way.

Estate Administration – a Solicitor will:

- Explain the terms of the Will (including any Trusts) or how the Rules of Intestacy apply to the estate. Note that Personal Representatives can be held personally liable to creditors and beneficiaries for any mistakes they make in administering the estate
- Correspond with relevant financial institutions and organisations notifying them of the death
- Respond to all correspondence received and meet each organisations requirements
- Identify and value all of the assets and liabilities of the estate
- Identify beneficiaries in cases of Intestacy
- Notify beneficiaries of their entitlement
- Keep Personal Representatives informed of progress
- Place statutory notices to manage claims against the estate and to limit the personal representative's liability to creditors
- Prepare and complete all necessary documents and inheritance tax forms to apply for a Grant of Representation
- Pay Inheritance Tax or arrange an Inheritance Tax loan enabling a Grant to be issued
- Apply to the Probate Registry for a Grant of Representation
- Gather in the assets of the estate e.g. close bank accounts, cash in life policies and national savings investments

- Arrange for the sale or transfer of any assets of the estate e.g. house, shares or investments
- Finalise the Income Tax and Capital Gains Tax position of the estate up to the date of death and during the administration period
- Settle all estate liabilities from estate funds in the appropriate order
- Prepare estate accounts
- Carry out bankruptcy searches
- Accurately distribute the estate according to the Will or the rules of Intestacy
- Set-up and register any Trusts created by the Will or intestacy

A Solicitor will ensure that all formalities are complied with along the way. Sometimes unexpected situations can arise during estate administration, such as a claim against the estate (see 'Contesting a Will'). A Solicitor would ensure any issues that arise are dealt with promptly and that your Estate Administration is handled professionally.

## IMPORTANT THINGS TO CONSIDER FOLLOWING THE DEATH OF YOUR LOVED ONE

A Solicitor recognises that people tend to share common concerns following the loss of a loved one.

### Making a Will or reviewing an existing Will

Following your loss, you may be inheriting a house and/or money. If you have an existing Will it is advisable to review it so that it accurately reflects your wishes and your current position. This may mean changing your Executors and/or beneficiaries.

If you do not already have a Will you may wish to begin thinking about who you would like to appoint to carry out your wishes when you die, and how you would like your estate to be distributed.

A Solicitor can discuss the benefits of making a Will or advise you whether it is necessary to amend an existing Will. A Solicitor can also advise you on relevant legal issues such as Inheritance Tax (if your estate exceeds the Nil Rate Band - currently £325,000), guardianship for your minor children, lifetime Trusts or Trusts within your Will, provision for pets, as well as advising you generally on the gifts you wish to make and how they would take effect upon your death.

If you would like further information about Wills then please contact me.

### Making a Lasting Power of Attorney

At such times it is always sensible to consider how you will manage your affairs in the future should you be unable to deal with them.

So there are a number of practical steps you can take to prepare for the future.

In the first instance you can be getting your affairs in order by making a Property and Financial Lasting Power of Attorney. When a person (the Donor) has capacity they can give someone else the power to manage their financial affairs. Sadly none of us can predict when we are likely to need a Lasting Power of Attorney so it is important to make such an appointment when a person has the capacity to do so.

A Solicitor can prepare a Property and Financial Lasting Power of Attorney and you will be some way being safe in the knowledge that your financial affairs are being looked after by those you have appointed.

Remember if the Donor leaves it too late & does not have the capacity to make a Lasting Power of Attorney then friends and relatives will need to approach the Office of the Public Guardian for the appointment of a Deputy to deal with a persons financial affairs. Unfortunately this can prove to be very costly and time consuming.

We would therefore strongly advise clients to make a Financial Lasting Power of Attorney whilst they have capacity.

In the second instance and for the same reasons we would also strongly recommend a client has a Health & Care Lasting Power of Attorney prepared.

A Health & Care LPA can be made to give your attorney the right to make personal welfare and medical treatment decisions on your behalf. This is particularly relevant where decisions as to what provision of care is required suitable for the client and where such care is to be provided.

Remember a LPA whether Property & Financial Affairs or Health & Care given you the opportunity of appointing an Attorney of your choice and who you wish to deal with your affairs. This then avoids the possibility of others, who you may deem inappropriate, applying to the Court to be appointed to deal with your affairs.

We can if you request furnish a leaflet explaining a little more about Lasting Powers of Attorney. Lasting Powers of Attorney are essential for everybody regardless of age.

If you would like further information about making a Lasting Power of Attorney then please contact me.

## **SPECIAL CONSIDERATIONS FOR THE LOSS OF A PARTNER OR PARENT**

A Solicitor will recognise that people who have lost their partner or parent often share common concerns requiring special consideration. Choose a Solicitor who you feel comfortable with and who will give the best possible advice to those who may be feeling confused and unsure what to do with their home or are becoming increasingly worried about funding long-term care.

## Care Home Fees

Following the loss of your loved one, you may begin to think about what might happen if you or your parent were to go into residential care and in particular whether yours or their savings or home will be used to pay the fees.

A Solicitor can offer you advice on the likelihood of assets being used to pay for care fees. We can put your mind at ease by explaining the funding available and explain how this may affect you personally.

### **Just a thought:**

By taking action on any one of these issues you can start saving yourself and your family and friends an awful lot of time, money and hassle.

If you would like free initial consultation then:

## Contact us

Address:

247 Church Street  
Blackpool  
FY1 3PE

Phone: 01253 620 022

Fax: 01253 297 117

Email: [berrys.mail@btconnect.com](mailto:berrys.mail@btconnect.com)

Website: <http://www.berrys-solicitors.co.uk>

Solicitor: Christopher Berry Principal

Berrys Solicitors is Authorised and Regulated by the Solicitors Regulation Authority  
Firm No: 261147

# **BERRYS SOLICITORS**



BERRYS SOLICITORS,  
help when you need it most.....