

Administering an Estate



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THE AFTERMATH OF A DEATH

Making a Will helps to plan what is to happen in the aftermath of a death, but nothing can adequately prepare us for the loss of a loved one. A lot of everyday tasks require attention and important decisions may have to be made with regard to the deceased's property and personal belongings (for instance, should the house be sold?). This leaflet explains in broad terms what is involved and why it may be important to seek timely professional advice and assistance.

WHAT IS THE "ESTATE"?

When a person dies, everything they own is referred to as the deceased's "estate". After payment of debts and taxes, the "estate" is divided among the beneficiaries in accordance with the deceased's Will or if there is no Will, among the closest relatives in accordance with rules set out in law.

WHAT IS A PERSONAL REPRESENTATIVE?

A personal representative can be either an 'executor' or 'administrator'. Executors are the persons named in the Will to deal with the estate. Where there is no Will (in legal terms, where the deceased dies "intestate"), one or more of the closest living relatives is entitled to deal with the estate; this person is called an administrator.

The functions of the personal representative involve:

- Protecting the assets of the estate, e.g. making sure that everything is properly insured.
- Taking reasonable steps to secure property and valuables.
- Arranging lists of property and valuables and arranging for valuations of the property, shares etc.
- Finding out what debts have to be paid.
- Obtaining all other information necessary to obtain the legal documents which will allow the executor or administrator to deal with the estate.

WHAT IS A GRANT OF REPRESENTATION?

A 'grant of representation' is the legal document which issues from the High Court Probate Office which allows the personal representative(s) to collect all assets of the deceased and administer the estate. Where there is a Will, the legal document is known

as a Grant of Probate. Where there is no Will, it is known as a Grant of Administration. Until this document issues from the Probate Office, the personal representatives cannot generally do anything with the assets owned by the deceased person. In limited circumstances, it may be possible to administer an estate without obtaining a grant.

WHAT NEEDS TO BE DONE?

- It is necessary to go through the deceased's papers (Bank/Building Society books/statements/insurance policies/saving certificates/shares/stocks/title deeds and any other papers which will help to identify the assets and liabilities of the estate).
- The insurance cover on property or other valuable assets should be checked.
- Practical steps may involve removing valuables, turning off the mains water, installing additional locks/window locks/alarm, letting neighbours, the insurance company and local Garda know if the house is unoccupied.
- Valuations must be obtained setting out the value of all the assets and liabilities of the estate at the date of death.
- Tax liabilities must be dealt with.

WHO MAKES DECISIONS?

The personal representative(s) should make decisions in consultation with the beneficiaries. For instance, before making a decision to sell any part of the estate, the personal representatives should discuss the matter with the beneficiaries concerned and should abide by the wishes of beneficiaries insofar as is practical.



HOW LONG WILL IT TAKE?

Although the law allows one year from the date of death for a personal representative to give beneficiaries what is due to them, the time it actually takes very much depends on the circumstances of each individual case. It will usually be upwards of 3 months before a grant of representation issues but it can take considerably longer.

The following matters are relevant:

1. The size of the estate and the time it takes to get all of the detailed information required to complete an Inland Revenue Affidavit. This is a list of assets and liabilities and includes a questionnaire about what each beneficiary will receive or has received in the past. This must be given to Revenue and must be certified by them before an application can be made for a grant of probate or administration.
2. The availability of PPS numbers (formerly known as RSI numbers). This is required not only for the deceased but also for the beneficiaries.
3. Whether the beneficiaries have received previous gifts/inheritances from any source. If so, full details will be required (this is necessary for tax purposes).
4. Only in cases where a death occurred prior to 6 December 2000, funding arrangements for probate tax (payable when the Inland Revenue Affidavit is given to the Revenue.)

WHAT SORT OF LEGAL ISSUES ARE INVOLVED?

The starting point is usually the reading of the Will and identifying anything in it requiring legal interpretation or any circumstances which have changed since the Will was written. Sometimes there may be additions to the Will (in legal terms called "codicils") and the effect of these should be carefully considered. There are an infinite range of circumstances which may mean that legal advice is needed, such as:

- Where there is any doubt about the meaning of the Will or its validity.
- Title matters i.e. ownership of property.
- Whether the deceased was divorced or separated.
- From which account debts should be paid and whether there is sufficient cash to pay liabilities and legacies.
- If a beneficiary is under the age of 18 years or is suffering from a disability.
- If a farm or business is involved.
- The availability of various tax reliefs and steps which could be taken after the death to make sure that all possible tax relief can be claimed.
- Whether any insurance policies/credit union accounts/post office accounts have been nominated as payable to a particular individual.

- Claims/disputes by disappointed beneficiaries.
- Lifetime gifts that should be taken into account.
- Legacies of items which were sold by the deceased before death.
- Trusts or implied trusts.
- Pension rights.
- Foreign assets.
- Whether the deceased was domiciled abroad.
- Partial intestacy (where there is a Will but it does not cover all the property of the deceased).
- If the deceased owned assets jointly with any other person.
- Tax planning.

WHAT ARE THE DIFFERENT TYPES OF LEGACIES?

A specific legacy is an item specifically referred to in the Will such as jewellery, a car or a particular property. A pecuniary legacy is a bequest of cash. A residuary legacy is what is left over after all debts, funeral and administration expenses and other legacies have been paid.

DO I NEED TO CONTACT THE DEPARTMENT OF SOCIAL, COMMUNITY AND FAMILY AFFAIRS?

A funeral grant may be available where the deceased made PRSI contributions. If the deceased was on a non-contributory pension or received non-contributory benefits it may be necessary to send the Inland Revenue Affidavit to the Department to find out whether the Department intends to claim back money which was paid to the deceased to which he was not entitled (the personal representative may otherwise be held personally liable). A refund may be due to the Department of Social, Community and Family Affairs.

DO TAXES COME OUT OF THE RESIDUE?

Not always. Except where there are not enough assets in the estate to pay all taxes, liabilities and cash legacies, in general, taxes due by the deceased come out of the residue. Although beneficiaries must pay their own inheritance tax (and, if applicable, probate tax), the personal representatives can be held liable for a beneficiary's tax in the event of non-compliance.

WHAT TAXES ARE INVOLVED?

Apart from any taxes due by the deceased before his death, clearance should be obtained in respect of the following taxes:

- Income tax and capital gains tax which may have arisen during the administration of the estate (the personal representative is otherwise personally liable).
- Inheritance tax is payable at the rate of 20% on inheritances which exceed certain exemption limits. There are complicated rules where there have been previous gifts/inheritances received by a beneficiary either from the deceased or any other source.
- Probate tax (If the death occurred before 6 Dec. 2000).

HOW IS THE ESTATE DISTRIBUTED IF THERE IS NO WILL?

Where there is no Will, the Succession Act provides:

- Where there is a spouse and no issue ('issue' means children, grandchildren, great-grandchildren, etc.), the spouse takes the whole estate.
- If there is a spouse and issue, the spouse takes two thirds and the other third goes to the issue. If a child of the deceased dies *before* the deceased but leaves children, then the grandchildren take their parents share.
- If there is no spouse, then the issue take the whole estate. If a child of the deceased dies *before* the deceased but leaves children, then the grandchildren take their parents' share.
- If there is no spouse or issue, the estate is distributed between the deceased's parents in equal shares. If only one parent is alive, that parent takes the whole estate.
- If there is neither spouse nor issue nor parent(s), the estate is distributed between brothers and sisters in equal shares. If any brother/sister dies *before* the deceased but leaves children, then those children take their parents' share.
- If the closest living relatives are nephews and nieces, the estate is distributed equally between them.
- Where there are no nephews/nieces or closer living relatives, then the estate is distributed in equal shares among the next of kin, i.e. the nearest blood relatives in accordance with rules set down in law.

WHAT SORT OF COMPLICATIONS CAN ARISE?

Certain rules of law may override the terms of the Will.

There are various laws which impose obligations on the personal representatives.

SHOULD I CONSULT A SOLICITOR?

It is essential to identify from the outset any legal issues which may need to be dealt with; these are not always obvious and can result in a personal representative being held personally liable. Your solicitor will advise you on the steps to be taken and will be in a position to deal with any underlying complexities. He/she will attend to the considerable administrative detail involved, from assembling accurate date of death information, completing the Revenue and Probate Office forms required in the application for a grant of representation (in the absence of a Will, a Bond, usually from an insurance company, will be necessary) to collecting the assets, making the various tax returns, obtaining various tax clearances and ultimately making arrangements for the distribution of the estate, and related accounting to the personal representatives and beneficiaries.

The information herein is intended as a general guide only. No responsibility is accepted for errors or omissions however arising.