



Law Society of Ireland

ADMINISTRATION OF ESTATES

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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, is there tax due or 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 he/she owned except assets where ownership ceases on death or passes automatically 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 the Succession Act. The rules relating to the distribution of estates also provides for civil partners since January 2011.

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 a Will but no executor, or where there is no will, the law provides who among the deceased's beneficiaries or closest living relatives is entitled to deal with the estate; this person is called an administrator.

The functions of the personal representative include:

- 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 all property which was owned by the deceased including land, shares, bank accounts, 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. It allows the personal representative(s) to collect all assets of the deceased and administer the estate.

- Where the person(s) named as executor under the will extract a grant of representation such document is known as a Grant of Probate.
- Where somebody other than the executors extracts the Grant, the legal document is known as a Grant of Administration with Will Annexed
- Where there is no Will, it is known as a Grant of Administration Intestate.

We will refer to these terms collectively as "the Grant". Until the Grant issues from the Probate Office, the personal representatives are generally unable to deal with the assets owned by the deceased person. In limited circumstances, it may be possible to administer an estate without obtaining a Grant.

However, obtaining the Grant is merely the first step in the Administration of the estate.

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 will help to identify the assets and liabilities of the estate).
- Financial institutions will always release funds to pay for the funeral on production of the appropriate account.
- Standing Orders and Direct Debits should be cancelled where appropriate.
- 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, informing neighbours, the insurance company and the local Garda Station that 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.
- It should be ascertained whether or not the deceased availed of the Fair Deal Scheme under the Nursing Home Support Scheme Act 2009.
- Tax liabilities must be dealt with.
- Notify the Department of Social Protection where the deceased was in receipt of a pension.

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 to bring matters to finalisation very much depends on the circumstances of each individual case. It will usually be upwards of three 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 (CA24).
The Inland Revenue Affidavit is a Revenue form listing the assets and liabilities of the deceased as at the date of death and their value. Included in the form are details of beneficiaries who inherit over

€20,000 from the deceased and of any prior gifts or inheritances received by beneficiaries since 5th December 1991. The Inland Revenue Affidavit is submitted directly to the Probate Office and the Revenue are then sent the form by the Probate Office.

2. The availability of PPS numbers. This is required not only for the deceased but also for the beneficiaries.
3. Whether the beneficiaries have received previous gifts/inheritances. If so, full details will be required (this is necessary for tax purposes).

WHAT TYPE OF LEGAL ISSUES NEED TO BE CONSIDERED?

The starting point is usually the reading of the Will and identifying anything requiring legal interpretation or any circumstances 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.

Many difficulties can arise in the course of administering an estate leaving an executor/administrator personally liable. Certain rules of law may override the terms of the Will or impose obligations on an administrator.

There is an infinite range of circumstances which may give rise to the need for legal advice, such as:

- Doubt about the meaning of the Will or its validity.
- Title matters i.e. ownership of property.
- Civil Status of the deceased: Married or a Civil Partner/Separated/Divorced or Civil Partnership Dissolved/Cohabitant
- From which account debts should be paid and whether there is sufficient cash to pay liabilities and legacies / Managing ongoing liabilities.
- Managing an insolvent estate
- 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 to 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.
- If the deceased owned assets jointly with any other person.
- Claims/disputes by disappointed beneficiaries including the rights of children to make a claim.
- The need obligation to provide for the spouse/civil partner of the deceased under the Succession Act.
- Lifetime gifts that should be taken into account.
- When a legacy is payable to a beneficiary who has predeceased the deceased.
- Legacies of items which were sold by the deceased before death.
- Trusts or implied trusts and the existence of a letter of wishes
- 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).
- Tax implications.
- Whether the deceased received payments under the Nursing Home Support Scheme.
- The position of cohabitants
- The position of a predeceased child
- Charitable bequests and dealing with the Commissioners for Charitable Donations and Bequests

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, administration expenses and other legacies have been paid.

DO I NEED TO CONTACT THE DEPARTMENT OF SOCIAL, PROTECTION?

A bereavement or 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 is necessary to send the Inland Revenue Affidavit to the Department to find out whether the Department intends to claim back money 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 Protection

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. Beneficiaries must pay their own inheritance tax.. In the event that there are beneficiaries who are not resident in Ireland, Irish resident personal representatives are responsible for the payment and filing requirements of the non resident beneficiaries and should retain enough funds from the benefit of the non resident beneficiary to pay the inheritance tax due. In such a case where there is no Irish resident personal representative, the personal representatives must appoint a solicitor in Ireland before extracting the grant of representation.

WHAT TAXES ARE INVOLVED?

Apart from any taxes due by the deceased before his death, the Personal Representative will need to address the following taxes:

- Income tax and capital gains tax arising during the administration of the estate (the personal representative is otherwise personally liable).
- Capital Acquisitions Tax (CAT) is a tax on gifts and inheritances.
- CAT is payable at the relevant rate (view here) on inheritances which exceed certain exemption limits. The limits are known as tax free thresholds which are determined by the relationship of the beneficiary to the deceased. The tax free thresholds change annually (view here). This tax is the responsibility of each beneficiary unless the beneficiary is non Irish resident in which case the personal representative or the appointed solicitor is responsible as the case may be.
- Previous gifts/inheritances received by a beneficiary either from the deceased or any other source since 5 December 1991 are aggregated.
- Probate tax (If the death occurred before 6 Dec. 2000).
- Reliefs and or exemptions may be available. For example, Spouses and Civil Partners are exempt from CAT.

HOW IS THE ESTATE DISTRIBUTED IF THERE IS NO WILL?

Where there is no Will, the Succession Act provides:

- Where there is a spouse or civil partner and no issue ('issue' means children, grandchildren, great-grandchildren, etc of the deceased), the spouse or civil partner takes the whole estate.
- If there is a spouse or civil partner and issue, the spouse or civil partner 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 those grandchildren take their late parent's share.
- If there is no spouse or civil partner, then the issue take the whole estate. If a child of the deceased dies before the deceased but leaves children, then those grandchildren take their late parent's share.
- If there is neither spouse nor civil partner nor 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 civil partner 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 late 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.

SHOULD I CONSULT A SOLICITOR?

It is essential to identify from the outset any legal and tax issues 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 collecting the assets, organising where relevant the filing of tax returns 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.

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