

# BOYS & MAUGHAN

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Solicitors and Notary Public

Professional help

... when it's needed

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**How To Deal  
With The  
Estate Of A  
Loved One**

## INTRODUCTION

Losing a loved one is a traumatic experience. Boys & Maughan are here to help you through the legal procedures, which can be a daunting prospect at such a difficult time. The information contained in this booklet explains:

- Many of the procedures that are involved
- The work that, if you wish, we can do on your behalf

Please read the following information carefully. We have tried to be as comprehensive as possible and therefore some of the points mentioned may not be directly relevant to you, but if there is anything that you do not fully understand or that you feel we have missed, please ask – we are here to help.

## REGISTERING A DEATH

Before you can register the death at your local Registry of Births, Deaths and Marriages, you must first obtain a certificate of cause of death from the doctor who attended the deceased.

In order that the Registrar can issue a Death Certificate he will require from you the following information about the deceased:

- full name and address
- confirmation of date of death
- place of death
- date of birth
- place of birth e.g. Canterbury
- occupation
- marital status and if applicable maiden name



and finally the name and address of the person registering the death.

If there is to be a Coroner's Inquest into the death, the Coroner will provide an Interim Death Certificate so that matters can proceed.

There is a small charge for the issue of a Death Certificate and we would recommend that you obtain at least 2 copies, which can be provided at the same time.

## IS THERE A WILL?

It is important to ascertain as soon as possible if the deceased had made a valid Will.



There is normally a copy of the Will with their personal effects, but it is always worthwhile enquiring with their solicitor and or bank to see if they hold any such documentation. It is important to realise that the solicitor or bank will be unable to provide any information, other than whether or not they actually hold the Will, until they have received confirmation or proof of death in the form of the Death Certificate.

Initially the most important item in the Will is to find out who is named as Executor, this being the party who the deceased has appointed to administer their Estate. In some cases this may be a solicitor or firm of solicitors.

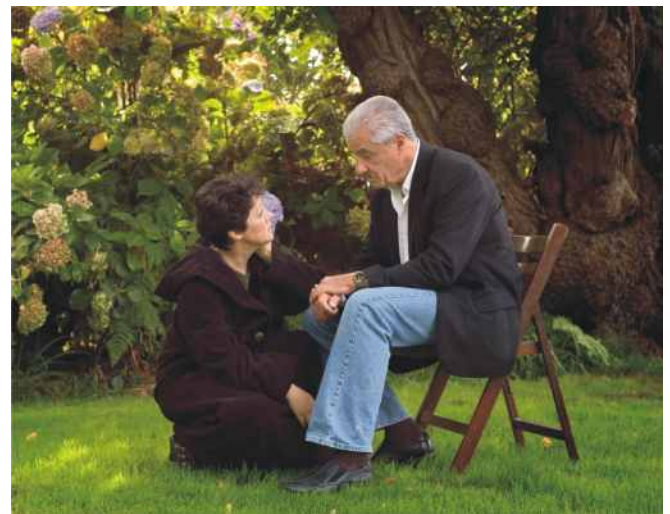
The Will may show the deceased's wishes in respect of funeral arrangements.

It is also the Executor's responsibility to inform any named beneficiaries within the Will of their entitlement to the Estate. However, it will be necessary first to confirm that there are sufficient assets to cover the bequests.

If there is no Will then the person who will be required to administer the Estate will be the deceased's next of kin, i.e. the spouse, civil partner, child, parent or sibling etc.

## IF THERE IS NO WILL

A person who dies without leaving a will is called an intestate, and such cases can be very complicated. In the first instance, it will be necessary to identify the deceased's relatives. If the deceased is survived by a spouse/civil partner, the survivor is not always entitled to the whole of the estate. This is due to the fact that there is statutory provision as to who benefits from the deceased's estate and equally importantly in which order they qualify. We will be only too pleased to give full details – please ask.



Factors that have to be taken into account include:

- if there is a surviving spouse/civil partner
- if there are any surviving children and their age
- if there are any personal possessions and their value

## WHO SHOULD UNDERTAKE THE LEGAL FORMALITIES

As previously indicated, it is the duty of the Executor, or if there is no Will the Administrator, to wind up and distribute the Deceased's estate. If the Executor or Administrator wish they can deal with all of the paperwork which is involved in obtaining the Grant of Representation, brief details of which are contained in this booklet. Alternatively it is open to the Executor or Administrator to appoint a solicitor to undertake such requirements. If a solicitor is instructed, then the Executor or Administrator will be relieved from all of the technical requirements involved in obtaining the Grant of Representation and, basically, will pass all of the onerous undertakings over to the solicitor. In addition if a solicitor is instructed, the solicitor or his firm will have in place professional indemnity insurance and this will provide some comfort and safeguard as far as the residuary beneficiaries are concerned.



Naturally if a solicitor is instructed he will make a charge for the services provided by him in the administration of the estate. Such costs must be fair and reasonable having regard to all of the circumstances of the case. A solicitor will always give an estimate of costs at the outset of instructions.

## MAKING THE FUNERAL ARRANGEMENTS

Technically speaking, it is the responsibility of the Executor to arrange the Funeral. In most cases, close members of the family wish to make the arrangements and if they are not the Executor, the Executor is normally quite happy to allow them to do so. However, it is important to first check the Will, if there is one, to ascertain if there are any stipulated wishes about the funeral arrangements. Funeral Directors are generally very helpful in this respect.



Normally the cost of the funeral would be met by the Estate. However, if there is not enough money in the Estate then it is important to tell the Funeral Directors as soon as possible, because the people who are organising the funeral will be held liable for its cost.

## VALUATION OF ASSETS AND LIABILITIES

The next stage is to obtain a Probate Valuation of all of the Assets and Liabilities of the deceased as at the date of death. Please note that if any original document has been lost e.g. bonds, shares, etc then a Form of Indemnity will have to be prepared to sell or encash any such asset.

This can be a lengthy process and may involve contacting:

- every bank and Building Society that may hold accounts
- all known creditors

Investigating whether the deceased held any:

- Premium Bonds
- National Savings

and whether or not they held any:

- stocks
- shares
- bonds
- insurance policies
- pension policies.



In addition, it will be necessary to obtain a Probate Valuation of any property or land owned by the deceased, and of the deceased's personal items i.e. furniture and any vehicles etc.

To safeguard the Executor's interests it is advisable to put a Notice to Creditors in the local newspaper and a government publication called The London Gazette. Unless a Creditor confirms the liability within a period of six weeks they will not later be able to enforce the debt. This means that the Executor in due course, can distribute the Estate with confidence.



HER MAJESTY'S  
COURTS SERVICE  
hmcs

Any creditor has a period of six weeks from the publication to make a claim against the Estate for an outstanding debt or liability. If no such claim is made then the Executor is free to distribute the Estate and is released from any personal responsibility for repayment of the alleged debt or liability.

It is important, where possible, to obtain probate valuations in writing in case there are any queries from the Inland Revenue, District Valuer or beneficiaries.

## INHERITANCE TAX RETURN

Once all of the valuations have been obtained and collated, it will be necessary to complete an inheritance tax return for submission to the Probate Registry and, where applicable, payment of Inheritance Tax made to H.M. Revenue and Customs.

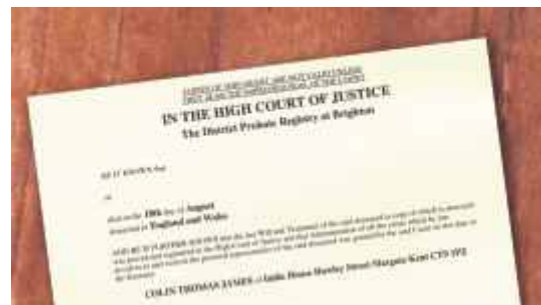
Different forms and enclosures are required depending upon the value of the Estate, the beneficiaries of the Estate and whether or not there are any foreign assets.

## OATHS

If there is a Will then an Executor's Oath must be produced and sworn. If there is no Will, then an Oath of the Administrator should be produced and sworn.

## GRANT OF PROBATE OR LETTERS OF ADMINISTRATION

Once the Inheritance Tax Return has been completed and the Executor's/Administrator's Oath sworn, an application can be made for a Grant of Probate (if there is a Will) or Letters of Administration (if there is no Will).



At this stage it ought to be possible to complete the final tax return to the Inland Revenue in respect of the deceased. In certain Estates, it may be possible to complete a Form IR38 for production to the Inland Revenue to obtain a refund of any overpayment of Income Tax due to the deceased's Estate.

Once the Grant of Probate or Letters of Administration have been obtained it will be necessary to make arrangements for the release of the financial assets within the Estate. Most financial institutions will have their own withdrawal forms or account closure forms that will need to be completed by the Executor or Administrator. It may be important also at this stage to contact the potential beneficiaries to enquire whether they wish to cash in the assets or have the assets transferred to them, for example any shares, property or perhaps personal items.

## RELEASING ASSETS

Once the assets within the Estate have been encashed it is important to try and pay any liabilities to Creditors as soon as possible. It is the Executor's or Administrator's responsibility to make sure that the Creditors are paid before any payment due to specific legacies or residuary beneficiaries are made.

Assuming that there are sufficient funds in the Estate, once enough funds have been collected then the Executor or Administrator should pay all of the specific legacies. At the same time consideration should be given, if there are sufficient funds, to make interim distributions to the residuary beneficiaries.



## DISTRIBUTION OF ASSETS

If there is the prospect of someone bringing a claim against the Estate, it is advisable not to distribute any of the assets until six months after the issue of the Grant of Probate or Letters of Administration. This is because, if someone is going to bring a claim, they must do so within this period for it to be valid or obtain leave of the Court to do so. If the Executor or Administrator waits for the six month period to be over before distributing the funds, then if any claim is successful, the Executor or Administrator cannot be made personally liable.

## PREPARING THE ESTATE ACCOUNT

An Executor or Administrator will need to prepare an Estate Account detailing all of the assets collected and liabilities paid.

## FINAL TAX RETURN

The Executor or Administrator will also need to prepare an Income Tax return for the administration period of the Estate.



## ESTATE ADMINISTRATION RETURN

A copy of the Estate Account should then be forwarded to all of the residuary beneficiaries and the Estate can then be distributed accordingly.

## ADDITIONAL INFORMATION

If the Estate is under £10,000 then normally the Executor or Administrator will not need to obtain a Grant of Probate or Letters of Administration. By producing the Will and Death Certificate to the financial institutions, they will normally release any monies upon the Executor or Administrator completing a Statutory Declaration.

An Estate is classed as insolvent if the liabilities are greater than the assets. In this instance there is a direct order in which bills are supposed to be paid:

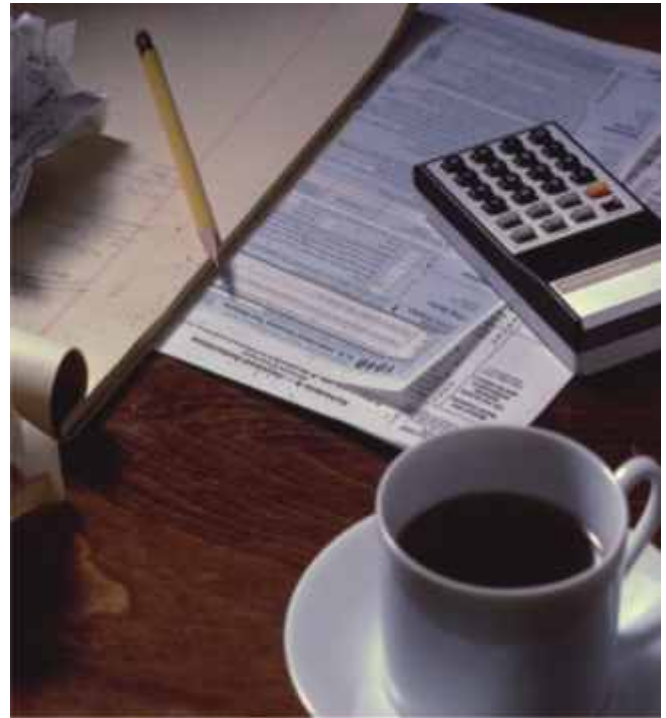
- any funeral account or outstanding solicitor's account in respect of administering the Estate.
- any funds owed to Inland Revenue.
- all other Creditors.

If there are not sufficient funds to meet all the Creditors then effectively they receive a percentage of the amount due to them. For example, if there is £1000 in the Estate and there are three Creditors, one owed £5000, one owed £3000 and one owed £2000 then for every pound outstanding they would receive £0.10 i.e. £500, £300 and £200 respectively.

There is also the possibility that, in due course, beneficiaries may wish to vary the terms of a Will or of the Intestacy rules. This can be done either by a Deed of Variation or a Disclaimer. A Disclaimer effectively just gives up their right to the monies and then the Will would stipulate as to whom it would go to in their place. A Deed of Variation stipulates that whilst the beneficiary is giving up their entitlement, they wish to specify who is to benefit in their place. It is important however that all beneficiaries are consulted in this respect as you can only do one Deed of Variation and all parties that are giving up all or part of their benefit in the Estate would have to sign the document. The completion of such a Deed must take place within two years of the deceased's date of death.

If any of the beneficiaries are minors i.e. under the age of eighteen, then the funds must be held for them until they reach this age. It is the responsibility of the Executor or Administrator to invest those funds on behalf of the minor. On reaching the age of maturity the beneficiary then receives the capital monies and all of the accrued interest.

Any Executor or Administrator of the Estate is entitled to be reimbursed for any reasonable expenses which they incur, this would mean that any solicitors fees would be paid from the Estate. However the Executor or Administrator is not entitled to charge for their own time unless they are acting in a professional capacity, such as a solicitor, accountant or bank and even then the Will should contain an appropriate charging clause.



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