

# WHAT TO DO IN THE EVENT OF A DEATH

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## Introduction

From time to time, many of us are faced with the often daunting prospect of winding up the estate and affairs of a relative or close friend. This booklet has been written to make the process as painless as possible. It lays out the steps you take, together with the addresses of some organisations that have been established to help you through the bereavement.

*Probate*<sup>1</sup> is one of the traditionally important legal topics. Strictly speaking, when a person is born, he assumes two ‘personalities’. The first is his human personality and the second is his legal personality. In law the two are quite distinctly different. As an example, and slightly straying from the point, a limited company will have a legal personality but it can never be said that it ever has a human personality. On death, the human being obviously loses his human personality but his legal personality lives on until all of his assets, liabilities and any other of his affairs are disposed of and terminated. Indeed, if, in his will, he sets up a *trust*<sup>2</sup>, his legal personality can live on for many years after the human personality has perished.

This booklet *only* refers to practices and procedures applicable should the death occur in England or Wales. Should the death occur in Scotland, Scottish law will apply and the procedures will be different. Explanatory booklets covering this eventuality are available from the Citizens Advice Bureau or from Social Security Offices.

This booklet is not intended to be an all-embracing ‘do it yourself’ manual. There is no denying that it is perfectly possible for the layperson to act as an executor or administrator especially with the aid of a publication such as this. However, we should sound a note of warning that, if it seems that there might be any complications or difficulties surrounding the process, you would be well advised to seek the help of a lawyer who specialises in probate matters. The

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<sup>1</sup> *Probate* is the general name given to the law of wills, succession and inheritance.

<sup>2</sup> A *trust* is a duty imposed on a person or persons (called *trustees*) which gives them nominal (but not actual) ownership of property of some kind in order that it can be used for the benefit of a third party.

reasonable fees that they charge may well be offset many times over by the overall savings that they are able to make. It is also worth noting that any professional fees or expenses that are incurred are usually chargeable to the estate and do not come out of the pockets of those who administering it.

**Disclaimer of Liability.** This booklet is in no way intended to be exhaustive as the subject area is far too broad for a publication of this size and nature to deal with it in every detail. It is therefore intended as a general guide and source of information only. While we have made every effort to ensure that what is printed herein is correct, we cannot assume any liability whatsoever for any factual, legal or any other errors that may have occurred in the research, compilation, printing or publication of this booklet, or any inaccuracies arising as a result of changes in the law.

## **Chapter I**

### **A SUGGESTED ORDER OF PROCEDURE ON LEARNING OF A DEATH**

1. **Secure the house and any other property belonging to the deceased. Make suitable arrangements for the care of any dependants who may be underage, incapacitated or in any other way unable to look after themselves. Make suitable arrangements for the care of any pets or livestock. Secure or remove any moveable valuables. Check to see that adequate insurance either has been or is arranged for valuable items and, similarly, that insurance policies are in force in respect of both buildings and contents. Even if insurance is in force, the insurer will want to know if the property is going to be left unoccupied for any significant period of time. If any of the property belonging to the estate should be damaged or lost by reason of burglary, fire, or other means, it is possible that the executors or administrators could be held to be negligent by the beneficiaries whose share of the estate is lessened by the loss. The deficit could be recoverable directly from those whose responsibility it was to safeguard the assets.**
2. **Register the death and obtain sufficient copies of the death certificate.**
3. **Arrange for the deceased's mail to be redirected to the address of the principal executor or administrator who will be responsible for the day-to-day running of the affairs of the estate.**
4. **If the home or any other premises are to be left unoccupied, they should be thoroughly secured and services such as gas, water and electricity turned off at the mains.**
5. **Attend to all the arrangements necessary for the funeral, burial etc. The funeral director will help with a great deal of the detail necessary for this. It is not necessarily the duty of the executor(s) to make the arrangements for the funeral although, of course, they may do so if**

they wish. If it is thought appropriate, a close friend or relative who might be aware of the wishes of the deceased may be prepared to shoulder this responsibility especially if the executors are a solicitor, bank or other professional. It may be that the deceased left documents giving instructions in the form of 'Last Wishes' in anticipation of his demise that could make this task considerably easier.

6. Find the deceased's Last Will and Testament if there is one. On discovering it, make enquiries to ensure that it really is the *last* will. If you do not know where to look, try the *testator's*<sup>3</sup> nearest relatives, friends, solicitor or bank in the first instance. Wills are sometimes deposited at Somerset House, in which case, they will have issued a deposit certificate. The will can be recovered by sending the certificate to:

The Principal Registry  
Family Division, 2<sup>nd</sup> Floor,  
Somerset House,  
Strand,  
London WC2R 1LP

7. Discover who the executors are if any. If executors have been named, find out if they are able and willing to act. If no executors have been named or if they are unwilling unable or incapable of acting, find one or more people who will be prepared to act as administrator(s) of the estate and become *Legal Personal Representatives*<sup>4</sup>.
8. Apply to the Personal Application Department of the most convenient Probate Registry for the necessary forms to begin the process of applying for Probate or Administration.
9. Conduct a thorough search of the deceased's papers and collect together documents that will be necessary to finalise the affairs of the estate. Of particular importance would be such items as:
  - Documents relating to a mortgage
  - Deeds to properties owned (these may be 'lodged' with a solicitor or in a bank safety deposit box for safekeeping).
  - Cheque books
  - Building society passbooks
  - Bank statements

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<sup>3</sup> A person who has died and has left a valid will.

<sup>4</sup> The Legal Personal Representative (LPR) will either be an executor, an administrator or another person who can show that they have a valid reason to act in that capacity by virtue of being a relative, friend or some other acceptable capacity. They are the 'guardians' of the deceased's legal personality. They can sue on his behalf (strictly speaking on behalf of the estate) if for instance, he was owed money under a contract and, conversely, they can, in their turn, be sued (i.e. the estate can be sued) by the estate's creditors. They are not personally liable for the debts of the deceased nor can they personally claim any damages recovered.

- Evidence of any offshore accounts
- Savings certificates
- Outstanding bills
- Car registration documents`
- Share certificates
- Insurance policies and other related documents
- Details of PEP's, ISA's TESSA's or any other savings or unit trusts
- Pensions documents including those for AVC arrangements and evidence of membership of pension schemes of previous employers
- Tax assessments
- Information regarding jewellery, works of art or other collectibles

10. Open an executor's/administrator's bank account. Although it can be slightly less convenient, it is a good idea for this to be in joint names with another executor/administrator if one exists.

11. Organise a filing system to enable you to keep all of the information regarding the estate in one place. You will at least need to have files both for correspondence and financial affairs but, depending on the complexity of the estate, it is likely that you will need more than one file in each of these categories.

12. Write to all of the banks, building societies, insurance companies and other financial and other business organisations in which the deceased had any interest informing them of the death. In your letter, ask if there have been any *nominations*<sup>5</sup> concerning the moneys that they hold in the name of the deceased. Include a copy of the death certificate where appropriate and giving as much help as possible in the way of account or policy numbers where known. Ask for relevant information to enable you to proceed with the probate application.

13. Begin to list the assets of the estate. Carry out a similar exercise for any debts to set against the assets. This should include of course, any debts that are owing to the estate by debtors and are still outstanding. If, on completion of this, it appears that the value of the estate is below £5000, (but see later) it may not be necessary for you to apply for grant of

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<sup>5</sup> A *nomination* is where a person, holding assets in a National Savings account, Friendly Society or similar institution, can instruct them using a special form. By completing the form, they can nominate for a person or persons to be paid a sum or sums, up to a maximum of £500 in total on the death of the owner of the money. If such a nomination has been lodged, the institution concerned will only need sight of the death certificate to pay out the money to the nominee(s) and no other documentation will be required unless the total nominated of the assets held by that institution is greater than £500 in which case further documentation will be required. If the nominator (i.e. the deceased) marries, or the nominee dies first, the nomination is automatically cancelled. It is not, however, cancelled by a will that leaves the money to someone else.

probate. If it becomes evident that the sum of the assets of the estate will result in a negative figure, you are strongly advised to seek the help of a solicitor specialising in probate matters.

14. If, after carrying out the exercise in 10 above, it seems likely that the value of the estate will exceed £200,000, there is a likelihood that it will be necessary to pay inheritance tax. This will have to be paid before probate is granted. There will also be monies due to be paid out in respect of funeral bills, *testamentary expenses*<sup>6</sup> and, possibly, Capital Transfer Tax. It will probably therefore be necessary to borrow money in the name of the estate or for some of the assets to be sold to meet the debt. Be sure to keep a careful record of these transactions together with any receipts issued.

Unless the will states which assets are to be used to settle unpaid debts, the money should be obtained by disposing of assets in the following order:

- Property not specified in the will. That is to say, property in respect of which the deceased died intestate.
- The residue.
- The property specifically left for the payment of debts. N.B. this is *not* the first property used to pay the debts.
- Any fund left to pay money to beneficiaries.
- Property specifically left to beneficiaries. This would have to be sold and the money so raised used to pay the debts. Unless all of the proceeds of such a sale will be required, it should be borne in mind that the only fair way of taking this money would be by removing a predetermined percentage of the money from that due to each beneficiary.

15. As you become aware of information regarding the estate, you can begin to fill out the forms supplied earlier by the Probate Registry. When all of the information is gathered and you are satisfied as to its accuracy, you can return the forms to the Registry.

16. When you hear from the Probate Registry, it will be necessary for all of the executors to visit the Registry to sign or swear the relevant forms and for them to pay the probate fees and to pay any inheritance tax due. If the tax due cannot be immediately met, it may be possible to arrange permission to pay in instalments by an agreed date. This is not automatic, and permission to pay in instalments is at the discretion of the Registry and dependent on the circumstances.

17. The Grant of Probate is made by the Registry and the number of copies requested by the executors is supplied.

18. By means of giving them sight of the Grant of Probate, you can now contact those organisations which hold assets belonging to the deceased

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<sup>6</sup> *Testamentary expenses* are those expenses directly incurred because of administering the will. They would include the fees charged by any professional or solicitor, the expenses incurred by the executor(s), the costs of advertising for lost beneficiaries etc.

and they will take the Grant as being your authority to act on behalf of the estate. Accordingly, they will release the assets that they hold to the care of the executors and close all of their accounts relating to the matter.

19. To guard against any unknown or unsuspected creditors becoming apparent after the assets of the estate have been distributed to the *beneficiaries* or *legatees*<sup>7</sup>, advertisements should be placed in newspapers asking them to come forward and make their claim(s) known. Place adverts in the *London Gazette* at:

The London Gazette  
PO Box 7923  
London SE1 5ZH Tel:0207 394 4580

and, if the deceased owned land, in a local paper in the area in which the land is situated. The estate should not be distributed until two months after the advertisement appears, otherwise the executor would be held personally liable for the debt to the creditor out of his own pocket. Once the two-month period has expired, the personal liability of the executor no longer exists but the liability of the debt on the estate still remains and the creditor or creditors have the ability to pursue the matter through the courts and if the claim is held to be valid, recover the monies owed through the beneficiaries. It is therefore essential that, if the adverts reveal potential claims, they should be fully investigated and settled where necessary before the estate is distributed to the beneficiaries.

It should be noted that an administrator must wait for the letters of administration to be issued before placing any advertisements. An executor does not need to wait for grant of probate.

20. Undertake negotiations with the Inland Revenue. By this time, you should be getting a reasonably clear idea of the overall financial health of the estate. You should also be near to being in the position of agreeing a final tax settlement figure including any Capital Gains Tax liability incurred as a result of the sale of assets of the estate.

21. Settle any debts of the deceased and, likewise, arrange to 'chase' for the payment of any remaining debts still outstanding to the estate to be paid. This would include any sums payable on insurance policies, sums in banks, building societies, unclaimed pension benefits, premium bonds etc. that have not as yet been forthcoming.

22. As well as a potential liability for Capital Gains Tax and Inheritance Tax, there is also a possibility of a liability for Income Tax during the tax year of death and any subsequent years that the estate exists prior to settlement. Request a tax return from HM Inspector of Taxes, complete and return it and pay any resulting tax due. If the estate is not settled within the tax year, it will be necessary to repeat this exercise for each year that the estate accounts remain unsettled. It is equally

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<sup>7</sup> Both of these terms are similar. They mean those persons who receive assets of the deceased, whether it be cash, land, buildings or other possessions under the terms of the will.

possible, especially in the year of death and if the deceased was working, that there could be a refund of income tax overpaid.

23. If you are satisfied that the affairs of the estate are in order and that all debts and financial obligations have been fulfilled, you can apply for the Inland Revenue to discharge the estate. This is done by completing and returning a Form 30 (Application for formal discharge from Inheritance Tax). The Inland Revenue, once it is satisfied, will reply by issuing a Discharge Certificate.

24. To all intents and purposes, the task is finished bar the distribution of remaining assets to the beneficiaries to the will. On a note of caution, however, it is possible for the will to be challenged by persons who believe that they may have a valid claim. People who may do so could include children, mistresses, ex-wives or others who, according to the law, have a *Family Provision claim*<sup>8</sup>. This remains so for a period of six months after probate has been granted. If you are satisfied that no such challenge will be forthcoming, (or, of course, if the six month period has already expired) the remaining assets of the estate can be distributed.

25. Sell off any assets that are not specified in the will and are not wanted by the beneficiaries. If they realise more (or less) than the value first placed upon them, advise the Inland Revenue so that the tax paid on the estate is adjusted accordingly. Of course, the money raised by this exercise will have to be distributed among the beneficiaries in a fair and just manner in accordance with the way in which the will was written.

26. *Legacies*<sup>9</sup> can now be distributed to the beneficiaries according to the testator's wishes. Be sure to obtain and safely keep, receipts for all monies and items distributed.

- Any costs incurred of maintaining any property specifically *devised or bequeathed*<sup>10</sup> should be borne by the beneficiary. In the same way, any legal fees arising from conveying land to a beneficiary should be borne by the beneficiary.
- If property specifically devised or bequeathed produces income (for instance, dividends on shares or rents from properties), then the beneficiary is entitled to that income from the date of death.
- A *pecuniary*<sup>11</sup> legacy should be credited with interest but normally this will only become payable one year after the date of death.

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<sup>8</sup> A *Family Provision Claim* is a legal means by which a relative or person who depended on the deceased while he or she was alive, can claim for a share of the estate. This is dealt with in more detail later in the text of the book.

<sup>9</sup> Those gifts which the deceased left in his or her will to the beneficiaries named in the will.

<sup>10</sup> For the purposes of this book, the two terms '*devise*' and '*bequeath*' mean the same thing. They both refer to actual property left by the deceased to beneficiaries as opposed to money. For the sake of interest, broadly speaking, one would '*devise*' land or buildings whilst one would '*bequeath*' other, movable, property such as, say, antique furniture.

<sup>11</sup> *Pecuniary* simply means 'in the form of money' as opposed to land or goods.

**27. The executor's bank account should, if you have done your sums correctly, now be exhausted and the balance be zero. You can now close the account.**

**28. You will need to prepare estate accounts and get them approved by all of the *residual legatees*<sup>12</sup> sending copies for them to keep. In addition, you should issue each of the residual beneficiaries with a copy of the Inland Revenue Form R185E which gives them details of what their share of the income of the estate is and what amount has been paid to the Crown by way of tax.**

**29. Legally, the task is now complete. By law and for your own protection, all accounts should be kept safely for a period of 12 years after the estate is dissolved.**

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<sup>12</sup> A person who receives goods, land or money from a will after all of the taxes and bills owing by the estate have been paid and the 'residue' of the estate is available for distribution.

## **CHAPTER II**

### **WHAT TO DO FIRST**

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### **UPON LEARNING OF THE DEATH**

- **If death occurs in hospital**

The hospital will contact the person who was named by the deceased as their next of kin. Strangely, this need not be any relative at all. As long as the deceased was prepared to name a person, the hospital will accept them as the person whom they should contact to inform them of the sad fact.

The body will have been removed to the hospital mortuary, awaiting the instructions of the deceased's Legal Personal Representative (LPR). Normally, the nearest relative will be contacted to collect the deceased's possessions that are in the care of the hospital.

- **Death other than in hospital**

If the deceased was known to be already suffering from an illness or disease from which it was expected that he/she might well die, you should contact the doctor who was attending them during their final illness. If, as a result of this, the doctor can certify the cause of death, he/she will be able to give you two documents.

- i. A *Medical Certificate* in a sealed envelope addressed to the Registrar. This certificate will give details of the cause of death.
- ii. A *Formal Notice* of death. This has the effect of certifying that the doctor has signed the medical certificate above and also gives instructions as to how the death should be registered

At this stage, it is a good idea to contact a Funeral Director or Undertaker who in consultation with you or other members of the family or friends will be able to take much of the responsibility for the technicalities of arranging the funeral from your shoulders.

Similarly, this is probably a good time to contact a minister of religion with a view to advice regarding the funeral ceremony itself. It may either be that the deceased had expressed orally or in some document a preference for a particular Funeral Director and/or minister. Check this.

**NB:** It is probable that, if the deceased died as a result of, or suffered from, HIV or AIDS, there will be special rules regarding handling of the body. If this is applicable, contact your local CAB or AIDS help organisation who will be able to advise.

- **Sudden or unexpected death**  
If a death is sudden or unexpected, the following people should be contacted:
  - The deceased's doctor
  - The deceased's nearest relative
  - The police, (this, of course, applies especially if there is the slightest belief that there may be suspicious circumstances surrounding the death or that it may not have been due to natural causes. If this latter is the case, care should be taken not to disturb anything or to remove any articles from the vicinity).
  
- **Reporting a death to a *Coroner*<sup>13</sup>**  
If he/she deems it necessary, or because he/she is unable to establish the cause of death, the doctor who was originally called upon to certify the death will report the death to the local Coroner. If this is the case, it is likely that the Coroner will certify the cause of death and the original doctor will formally report that the case has been referred to the Coroner. If the Coroner orders a post mortem, the family need not be consulted but they are permitted to be represented by a doctor whom they can appoint to attend the examination on their behalf.
  
- **If the death occurs abroad**  
Special rules apply and this area is not strictly within the span of this book. The death should be registered according to the practices of the country involved and a death certificate obtained. The death should also be reported to the local British Consul. Depending on the circumstances, decisions will have to be made as to whether it is preferable to have the funeral held in the country of death or whether the body should be brought back to the UK for burial/cremation. It is also a good idea to inform the local Coroner's office who will be able to advise you as to whether any other formalities need to be undertaken or paperwork obtained. If the death abroad was not due to natural causes, it will be subject to a UK Coroner's inquest.
  
- **Post Mortem Examination**  
It may be that, if a death occurs as a result of a natural illness, the doctors might wish to establish beyond doubt the cause of death and, as a result, approach the next of kin for permission to conduct a post mortem. There is nothing sinister about this. The procedure will not take long and the funeral arrangements can continue to be made.

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<sup>13</sup> A *Coroner* is a Government appointed official who is either a doctor or lawyer and whose duties require him/her to investigate and, if he/she believes it necessary, to conduct an inquest (possibly with a jury) to establish a cause of death.

- **Organ Donation**

As everyone is well aware, if a person's organs are to be donated, it must be done very quickly after the event of death otherwise those potentially valuable organs become unusable. It is therefore of the utmost importance for a decision to be made very quickly. If the death was unexpected for instance because of an accident, it is likely that a surgeon will approach the LPR's while the victim is being kept artificially alive by means of a ventilator. If the victim had completed a Donor Card during their lifetime, it is obviously of great help for the decision to be made. If, however, this is not the case, the LPR's will be obliged to make the decision themselves based perhaps on their personal experience of the victim in life and their resulting belief in what they think would have been their wishes.

- **Removing a Body from England or Wales for a Funeral Abroad**

In all cases, (not just where a Coroner was involved) if it is desired to remove a body to another country for burial or cremation, the Coroner must be informed and his/her permission gained.

## **REGISTERING A DEATH**

A death must be registered by the Registrar of Births, Deaths and Marriages in the sub-district in which it occurred within five days of its incidence. This period can be extended but only in exceptional circumstances and then only with the prior agreement of the Registrar.

You will be able to find the address and telephone number of the local Registrar in the telephone directory under REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES or from the doctor, local council, post office, CAB or police station. Be warned that some Registrar's offices, particularly the sub-district offices, are not open during full office hours but are part time only. It may also be that someone other than you will be required to give information for the death to be properly registered. It is therefore advisable to ring the office first to check these details.

- **At the Register Office**

Certain documents will be required.

- The Medical Certificate of the cause of death
- The deceased's medical card if possible
- Any pension order book, certificate or document relating to any pension or any other allowance that the deceased was receiving from the Benefits Agency, Social Services or any other public funds.
- The Pink Form (form 100), if you have been given one by the coroner.
- The deceased's birth and marriage certificates if possible (and of course, if applicable as far as the marriage certificate is concerned!)
- Any life assurance policies or the names of the insurance companies involved together with the names of the proposers of the policies.

- **The Registrar will Need to Know:**
  - The date and place of death
  - The deceased's last (normal) address
  - The deceased's surname and forename(s) together with maiden name if this is appropriate
  - The deceased's date and place of birth (both town and county of born in the UK. If born abroad, the country of birth.
  - The deceased's occupation
  - Name and occupation of deceased's spouse and of any previous spouses.
  - Whether the deceased was receiving a pension or other benefits from public funds
  - If the deceased was married and is survived by a spouse, the date of birth of the widow or widower.
  
- **You will receive from the Registrar:**
  - A Certificate for Burial or Cremation (known as the Green Form unless the Coroner has given you an Order for Burial (form 101) or a Certificate for Cremation (form E). These give permission for the body to be buried or for an application for cremation to be made. If you take the form that has been given to you to the funeral director, arrangements can then be made for the funeral to take place.
  - A Certificate of Registration of Death (form BD8 (rev) for Social Security purposes.
  - A Death Certificate. This is a document which is a copy of the entry in the death register. It is not strictly necessary for one to be supplied in every case but, if there is a will, pension claims, insurance policies, savings bank certificates, premium bonds or other financial matters, it is unlikely that they will be settled without production of one of these. You will have to pay for this document and you may wish to obtain more than one copy at the time of registration as further copies requested at a later date will cost more. Some organisations will be prepared to accept photocopies of originals but this is rare. Of course, you may be prepared to obtain only one copy and be willing to wait for it to be sent to one organisation and for it to be returned before sending it on to the next. A relatively inexpensive alternative, is to go to a solicitor's office with an original certificate and get them to make photo copies and sign and stamp them as certified true copies of the original.

## **ARRANGING THE FUNERAL**

If the death has been or is going to be reported to the Coroner, it will probably affect the date of the funeral.

If there is a will or a document of final wishes, the deceased may have made specific requests regarding the conduct of the funeral arrangements.

Be aware that, if you arrange a funeral, you will be responsible for paying for it. It is therefore advisable to make sure that enough money is available to meet all of the expenses incurred and that you know where it is likely to come from.

## The Funeral Director (Undertaker)

Almost all funerals are arranged through a funeral director. As mentioned above, it is possible that the deceased left specific requests as to his/her preference as to which funeral director should be used. It is also possible that, during his/her lifetime, he/she had made an agreement with a particular firm or had been subscribing to a 'funeral plan'. If no such instructions or plan exists, it is always a good idea to obtain at least two written estimates from different firms to compare prices and services.

There are three main trade organisations to which funeral directors in the UK belong. They are, in no particular order, the Funeral Standards Council (FSC), The Society of Allied and Independent Funeral Directors (SAIF) and the National Association of Funeral Directors (NAFD). You will be able to obtain from funeral directors who are members of these organisations, price lists of the services that they offer and, having given you a written estimate, they will not exceed that price without consulting you beforehand.

Virtually all funeral directors will, if required, provide a 'basic' funeral within their list of services offered. This will comprise the very minimum possible service and will not include church or crematorium fees or any other 'add-ons'. If required however, it is usually possible to negotiate with the funeral director for a basic funeral plus selected features each at its own quoted price.

Before he can proceed with the funeral, the funeral director will need to be given either the Certificate for Burial or Cremation (Green Form) or an Order for Burial, or a Certificate for Cremation which give permission for the body to be buried or an application for cremation to be made.

### Burial or Cremation

Check the will or any document of final wishes to see if there are any instructions left by the deceased as to the conduct of the funeral. It is generally up to the executor, administrator or nearest relative to decide whether the body is to be buried or cremated. It should also be remembered that, except in cases of medical research, the executor is not bound by law to follow the wishes of the deceased.

It is natural that personal preferences vary. For instance, some people would prefer that the body should stay at home prior to the funeral while others would prefer that the chapel of rest which is almost always provided by the funeral director should be used. The funeral director will always, as part of their service, be willing to advise and help you to decide where the body should stay until the funeral, where the procession should start from, the time and place and any other ancillary matters.

If there is to be a service or ceremony, contact the appropriate person for the religion or belief concerned. Once again, if you are unsure of what to do or whom to contact, the funeral director will be able to assist. You should be able to choose the place for the funeral service and, if it is your wish, you may be able to

choose the person who should conduct the service. There is no legal obligation to have a religious service at all. The service can be dispensed with altogether or you can design your own non-religious service to conform with the situation as it applies at the time. This is also the time that a decision needs to be reached regarding flowers or donations to charity or a combination of family flowers only and donations. Often, particularly following a cremation, flowers are given to a local hospital, old people's home or the church.

### **Cremation**

No one can be cremated until the cause of death has been conclusively established and, depending on the circumstances, a number of forms have been satisfactorily completed and obtained. The necessary forms are:

- An **Application form (form A)** signed by the next of kin or executor
- Two **Cremation Certificates (forms B and C)** each signed by a different doctor. A charge is made for these to be completed. It is not, however, necessary for these forms to be completed if the death has been referred to a coroner. You will instead receive from the coroner a **Form E** which is a **Certificate for Cremation**.
- A certificate **Form F** completed and signed by the medical referee at the crematorium.
- A **Certificate for Burial or Cremation** issued by the Registrar. This form is not, however, required if a Certificate for Cremation has been obtained from the Coroner.

### **Costs**

The cost of cremation will vary from one establishment to another. Most are owned and run by local authorities. There are a few private crematoria in existence and their prices tend to be higher than those charged by the local authority run establishments. There will be a fee for the medical referee and for the use of the chapel although these costs may well be included in the overall price quoted.

### **Disposal of Remains**

In the absence of any instructions, it is the responsibility of the crematorium staff or the funeral director to contact the responsible relative before arrangements for disposal are made.

Within reasonable limits, the way in which the ashes of the deceased are disposed of is left entirely to the discretion of the individual. It may be that the deceased expressed a wish in his or her lifetime or there may be an indication in the will or in a document of last wishes or in some other document. Typically, they can be scattered in a garden of remembrance or perhaps in some favourite spot. Some people prefer the remains to be buried in a churchyard or cemetery, perhaps with a plaque or memorial rose bush of commemoration while others may prefer to keep them. It is likely that a memorial plaque can be attached to a special wall of the crematorium however, there will almost certainly be a charge for this.

### **Burial**

In the same way as for cremation, it may be that the deceased expressed certain preferences in his or her lifetime as to the way in which the burial should take place. Alternatively, there may be instructions in the will, asset of last wish

documents or some other papers. It may be that the person who died had already made arrangements or paid for a plot in a churchyard or cemetery or may wish to be buried in a double plot with their already deceased spouse or partner. If a plot has already been paid for in a cemetery, there will be a deed of grant in existence. Most cemeteries are multi-denominational and most types of ceremony can be catered for. Cemeteries will either be run by the local authority or privately owned and fees will vary.

## **PAYING FOR THE FUNERAL**

### **Where will the Money Come From?**

Unless you are absolutely sure that there will be no problems as to where the money will be coming from to pay for the funeral and its surrounding expenses, make sure that money is going to be available before committing to payment. Funerals can be extremely expensive and if expected funds are not available, you could easily discover that you will be held to be liable from your own pocket. As mentioned previously, check to see if the deceased person has made any arrangements or has contributed to some kind of insurance or other scheme during his or her lifetime. If you or the deceased is/was claiming for certain State benefits, help may be available towards all or part of the cost of the funeral. This will be dealt with in more detail later. If no one at all is either willing or able to pay for the funeral, the local council or possibly, the area health authority may be prepared to help but this will only apply when no arrangements have yet been made.

### **Payment by the Deceased**

When a person dies, banks and building societies always freeze the accounts of that person except, of course, in the case of joint accounts, when the surviving account holder can still obtain access to any assets still in the account. In some cases and at their discretion, building societies may be prepared to pay out up to £5,000 if formal application is made together with a copy of the Death Certificate. They are not legally required to do this until there has been a *Grant of Probate, Grant of Letters of Administration or Grant of Administration with the Will Annexed*.<sup>14</sup> If there are funds belonging to the deceased in National Savings accounts, these may be released for funeral expenses on presenting the death certificate and the bill for the funeral as long as there are no other funds available to cover the expenses, the value of the National Savings is below £5,000 and no Grant of Representation is being sought.

A search should be made through the deceased's papers to look for any evidence that they may have made provision during their lifetime to pay for their funeral. It is possible that membership of a trade union, occupational pension scheme or private pension plan may lead to some kind of death grant (see below). It is also

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<sup>14</sup> Even though they have different names, all of these terms are similar in effect. They are all 'Grants of Representation'. They are certificates issued by the court giving formal proof to the rest of the world that the right to administer the affairs of the estate of the deceased has been given to the person named in the certificate. A 'Grant of Probate' is issued when the deceased left a will. 'Letters of Administration' are issued when the deceased died without leaving a will. 'Grant of Administration with the Will Annexed' covers the hybrid situation where there is a will but no executors have been named in it or, alternatively, executors have been named in the will but they are unable or unwilling to act.

possible that the deceased had contributed to a prepaid funeral plan or there may be a lump sum or sums payable on death from life assurance policies. It is also often the case that membership of a trade union, professional body or other association, or provident club can lead to a benefit being payable on the death of a member.

#### Occupational Pension Schemes or Private Pension Plans

Some occupational pension schemes provided by employers pay lump sums on the death of their members, particularly if they died while they were still working. Even if no such death benefit exists, it is possible that, if the deceased was a member of a scheme, there may be benefits in the form of a pension payable to the widow/er or other dependant(s). If the deceased had more than one employment during his or her lifetime, it is possible that he or she is still a member of a scheme or schemes to which they belonged during that period of employment. Benefits payable on death may exist under the rules of these schemes either in the form of lump sums or a pension or pensions for widow/ers and/or dependants. This is true if the deceased died before normal pension age or in retirement. If the deceased died in retirement, find out who was paying his/her existing pension(s), inform them of the death and enquire whether further benefits are payable either in the form of lump sums or additional pensions for dependents. If you have difficulty finding the address of the organisation responsible for paying a pension, you may be able to obtain help in tracing them from:

The Pensions Scheme Registry  
PO Box 1NN  
Newcastle upon Tyne NE99 1NN  
Tel: (0191) 225 639518

#### Other Payments

If the deceased person was receiving or had recently claimed Social Security benefit, there may be arrears of benefit to be paid. When the DSS is informed of the death, they will be able to provide a form on which any such arrears can be claimed.

#### Life Assurance Policies

The deceased may have taken out one or more life assurance policies at some time prior to their death. Hopefully, there will be mention of these either in the will if one exists or in a document of last wishes. If this is not the case, papers will have to be diligently searched and evidence unearthed. A policy is not, normally, good enough as this usually only gives terms and conditions. What is needed is a policy schedule or, at least, a policy number with which you can make enquiries of the assurance company. Be warned that some policies only have benefits payable if the assured dies before a certain age. Some people may have 'Penny Policies' where very small amounts in the way of premiums were payable over very long periods of the person's life. A clue as to the existence of these is often a paying in book showing the premiums paid over a long period. Alternatively, you may find the policy document itself. This may be marked 'Paid Up' or some such similar wording if the premiums had ceased to be payable.

#### The Cremation Society

If the deceased was a member of the Cremation Society, you may be able to get a reduction in the fees for a cremation or a contribution towards the cost of the funeral.

### **If you need Help in Paying for the Funeral**

If you believe that there is insufficient money available to pay for the funeral, it is possible that some or all of the costs can be met from the Social Fund. Further details regarding this can be obtained from your local Social Security office.

Briefly, you may be able to get help if the deceased was your partner or, if the deceased had no partner, you are a close relative or close friend of the deceased and it is believed reasonable that you should accept responsibility for the funeral expenses. You or your partner must also be in receipt of one or more of the following Social Security benefits:

- **Income Support**
- **Family Credit**
- **Disability Working Allowance**
- **Housing Benefit**
- **Council Tax Benefit**

You may not be able to get help if the deceased was in a similar close relationship as yourself with another close relative who either has savings over £500 (£1000 for anyone who is over age 60) or is not in receipt of one or more of the above benefits.

Any Social Fund Funeral Payment that you might otherwise receive may be reduced in certain circumstances if it becomes evident that there may be other funds available to pay for the funeral. These funds may include various assets.

Examples of assets that may affect the amount granted include:

- Any assets belonging to the deceased which become available either to you or your partner without the granting of probate or letters of administration – e.g. from a bank or building society
- Any lump sum for funeral costs that may be due following the death from insurance policies, pension schemes or a burial club
- Any contribution that may be given from a charity or relative (either of yourself or the deceased) towards the funeral
- If, as a result of the deceased being a war pensioner, a funeral grant is available (see ‘If the deceased was a War Pensioner’ below)
- Any savings that you or your partner may have over £500 (£1000 for anyone who is over age 60). This will include all types of savings in banks, building societies, National Savings or cash although the Widow’s Payment of £1000 is not counted. The Widow’s Payment is a tax free lump sum payable as soon as you are widowed if your husband died on or after 11<sup>th</sup> April 1988 and had paid enough NI contributions and was not getting a Retirement Pension when he died or you were under age 60 when your husband died.

### **What You can Get Help With**

The Social Fund is designed to give help towards the costs of a simple funeral within the UK. Claims should be made within three months of the date of the funeral. The Fund will pay up to £500 to the funeral director for his services.

These services can include:

- **Collecting the body within the UK and transporting it for distance of up to 50 miles to the premises of the funeral director**

- A simple veneered coffin and plain burial robe
- Transport to the funeral for the coffin, bearers and one other car for mourners
- The funeral director's services and those of his staff

In addition, other costs will be met including:

- The cost of burial or cremation and any attaching necessary documentation
- The cost of any necessary medical certificates
- The cost of removing any heart pacemaker if the deceased is to be cremated
- The fee imposed by a minister of religion and up to an additional £75 if there are any additional costs brought about as the result of the deceased's religion
- Flowers up to £25
- Travel to arrange or attend the funeral (one return journey only)
- If the deceased died away from home, the cost may be met of collecting and transporting the body to the funeral director's premises or place of rest in excess of the 50 miles mentioned above. If the body is to be transported more than 25 miles, the cost of embalming may also be paid.

If, after death, the deceased is found to have assets, which form an estate, and money has been paid from the Social Fund towards the cost of the funeral, money from the estate will have to be repaid to the Fund. The Social fund will write to the person who is looking after the estate at the same time as any payment is made. A house, which is being lived in by the surviving partner of the deceased and personal items that have been left to relatives, will not be counted as part of the estate.

#### **If the Deceased was a War Pensioner**

If the person who died was a War Pensioner you may be able to get help with the cost of a simple funeral as long as:

- The War Pensioner died as a result of the disablement for which he or she was getting the pension or
- Died in hospital while having treatment for that disablement or
- The War Pensioner was getting a War Pensioner's constant attendance allowance at the time of his or her death

If help is granted toward the funeral as a result of the person who died being a War Pensioner, there is no requirement to pay money back from the estate of the deceased.

You must claim within three months of the date of death. Write in the first instance to:

The War Pensions Agency  
 Norcross  
 Blackpool FY5 3WP

There is also a telephone helpline. Tel (01253) 858858  
Help from the local Health Authority

If the deceased's relatives cannot be traced or they are judged to be unable to pay for a funeral and the person in question died while in hospital, the Health Authority may arrange and pay for it.

As with the Social Fund, if it is discovered at a later date that there is money available from the estate of the deceased, they may make a claim for the recovery of all or part of the expenses that they have met.

#### Help from the Council

The law states that a local council has a duty to bury or cremate a dead person if no other arrangements are made. As a general rule, they will arrange for the body to be cremated but if there is evidence to suggest that the deceased did not wish to be cremated, they will respect this wish.

As with the Social Fund and the Health Authority, the council may make a claim on the estate of the deceased. If the hospital believes that relatives of the deceased are able to pay but are unwilling to do so, the council in whose area the body lies will be asked to pay for the funeral however they may make efforts to get the money back.

Details can be obtained from your local council or county council if you live in a country area.

## CHAPTER III

### THE PROCESS IN DETAIL

#### Probate

Probate is one of the traditional legal topics, which affects everyone. It is the area of law that is concerned with wills, succession, inheritance, intestacy and administration. It is also a very important area, because while we may be able to happily go through our entire existence on this planet unaffected by and in total ignorance of, say, marine law, no human being has, or ever will, avoid the process of dying and therefore being subject to the strictures of probate law.

When a limited company is created, it is said to have a legal 'personality'. That is to say, it has a set of legal rights, similar to those of a human being recognised in law. It has a date of birth (the date on which it was incorporated), it can sue and be sued, it can employ people, it can trade, it can own property and it can die (by being wound up). It can even marry (by means of a merger); have children (by creating any number of subsidiaries) and divorce (by means of demerger). When a person is born, he or she not only has his or her human personality evidenced by the things that happen in everyday life, but, similar to the company, a legal personality. It therefore follows that, when the human being dies, whilst his human personality will cease to exist from that moment, his legal personality will continue until his estate is wound up and his assets distributed to his beneficiaries. Since the deceased obviously has no ability to wind up the estate or distribute assets, the process must be carried out on his behalf by his Legal Personal Representatives. They will hold the assets until all liabilities on the estate are discharged and carry out the distribution of the remainder, subject, of course, to his having made satisfactory provision for his spouse and/or dependants.

The LPR's will find out what should be done with the assets, either by consulting the will or by consulting and following the rules laid down by Parliament as to the presumed wishes of the average person who dies intestate.

The probate laws are intended to satisfy three criteria. To safeguard the deceased's creditors, to provide for the dependants of the deceased as far as is reasonably practicable and, finally, to distribute any remainder to those persons who it was known the deceased wished or is presumed to have wished should benefit.

### The Legal Personal Representatives

The LPR's work is very similar to that of a trustee. Various Acts of Parliament passed over the years have laid down in detail rules and procedures as to what an executor may or may not, should or should not, do. The basic responsibilities and duties are simple. They should be familiar with the terms of the will and should not deviate from them; they must take care of the property and assets as though they were their own; they must keep full accounts and keep the beneficiaries fully informed as to their progress in dealing with the estate; they must consult with any other executors and not make any decisions without their agreement; and, finally, if there is any doubt as to how they should proceed, they should take legal advice.

An executor is entitled to recover reasonable out of pocket expenses from the estate which have been incurred as a result of carrying out duties necessary to do his job as an executor, but he may not make a profit or pay himself for his effort unless the will specifically allows this. As a result, each executor must make a careful note of all of the expenses that he incurs, including, where possible receipts of monies paid out. An executor cannot take advantage of his position and create a situation where he has a conflict of interest between himself and the estate. An example of this might be where an executor has always liked a piece of property that belonged to the deceased. He has it valued and, taking the item, pays the value in cash into the estate's bank account without informing any of the other executors or beneficiaries what he is going to do. Whilst at first glance there may appear to be no harm in this, it would be deemed illegal unless he informs all of the other executors and beneficiaries and they are all adults and they all agree. To avoid any complications at a later date, in this case, it would be a wise idea to note the transaction on a piece of paper and get all of the executors and beneficiaries to sign it as proof of their agreement.

It all boils down to the fact that executors to an estate must not only act to the very highest standards but they must be seen to be doing so. If they fail in this, the beneficiaries can sue the executors either in negligence or in fraud. If such an action is successful and the executor is found to be liable, he would have to pay the damages from his own pocket to compensate the estate. A defence would be that he acted honestly and reasonably and ought fairly to be excused. If the court agrees to this, it has the discretion to waive the liability.

As can be deduced, the last thing that an executor can be is lazy or have a 'hit or miss' attitude. However, most estates are relatively straightforward and the average person does not need to take a great deal of effort to live up to the

standards expected of an executor and therefore little risk is involved. Again, as has been pointed out earlier in the book, if you believe that you are in danger of getting out of your depth by reason of ability, complexity or understanding, you should consult a solicitor and charge the fee to the estate.

### **Who will act as The LPR's?**

Legally, it is only necessary to appoint one executor but obvious prudence would indicate a strong benefit in appointing at least two if only on the 'two heads are better than one' principle. If there is a will, and it names the executor/s, it is they who will have to do the job always provided that they are prepared to act in that capacity. If they are not prepared to act, they should announce the fact immediately. The way to do this is to send a 'letter of renunciation' to all concerned, making it clear that they do not wish to act in any way as an executor. The reasons why they may not be willing to act are of no importance. It may be that they feel inadequate for the task or that they are too busy or, having been named many years ago, they are now too old to undertake the worry. Incidentally, it is not possible to 'half renounce', in other words, only accept some of the responsibilities and deny others. It is very much an 'all or nothing' situation. Of course, if there are other executors, there is no reason why you should not share the duties involved, and it is only sensible that you should. However, even in this instance, you will jointly share the responsibility of each other's actions in law but it is sensible for those named to appoint one of their number to act as the principal executor and for a document to be prepared to this effect and signed by them all. All official paperwork must be signed by all of the executors, even if it has been agreed that one will act as the principal.

If the will only appoints one executor or if only one person is able or willing to act, a grant of probate will be issued to one person. If, however, the will appoints more than four executors, only four will be given the grant. It is a matter of agreement between those named as to who should apply. While it is open for those who do not apply to renounce their intention to apply, in this instance, it would be wise for those who do not apply to reserve their right to do so at a later date. This, therefore leaves the way open for those who have reserved the right to apply at a later date if one of the existing executors should become incapable for any reason of carrying out the duties. This is done by the executor(s) signing a power-reserved letter which is available on application to the Probate Registry.

A minor (a person below the age of 18) cannot act as an executor. If a minor is the only person named in the will as executor, his or her parents or guardian are entitled to apply to take out a grant of letters of administration with will annexed. Thereafter, if the minor wishes to apply for the grant of probate on attaining his or her 18<sup>th</sup> birthday, they may do so if the affairs of the estate have not yet been resolved.

In the event that all of the named executors renounce the task, or there is no one named in the will, the task of applying for the grant will have to be undertaken by someone else. The law, not surprisingly, has made provision for this and has laid down an order of precedence of those entitled to apply. Those people are:

- The trustees and beneficiaries of any trust that has been set up under the terms of the will.

- The person or persons entitled under the will to the *residue*<sup>15</sup> of the estate.
- Any personal representative of a residuary legatee.
- Any other legatee.
- Any personal representatives of any other legatee
- The person or persons entitled to inherit the estate under the *intestacy*<sup>16</sup> rules.
- Any creditor.

Anyone who is appointed by these means will not be termed an executor because they were not appointed by the will. They will be an administrator. This is of no real importance as the duties involved are exactly the same.

The fact that *someone* should be appointed as executor in the will is undeniable. The question of *who* that person should be is open to debate and should properly be left to the personal preferences of the individual. There are almost certainly going to be plus and minus points in favour of almost any nominee. Probably the initial choice would be to nominate a friend or relative. By making this choice, you would almost certainly believe that the appointee, knowing you in life will carry out your wishes in death as you would like to see them done. On the other hand, you may not wish to burden a friend or relative with the responsibilities involved or you may think that they do not have the time or the expertise necessary. It might be that you think that they are, themselves, getting on in years and should not be asked to shoulder the inevitable worry. If this is the case, you may like to consider appointing a solicitor, bank or specialist firm. Should you be inclined to this point of view, your estate will obviously not benefit from the long personal knowledge of you that would be present with the relative or friend as executor. It would, however, benefit from the appointee being a professional who has a deep understanding of the problems and pitfalls of the job and how to avoid or circumvent them. Of course, with this latter choice, the professional or organisation involved will charge a fee for their services, payable by the estate. This money may, however, be offset by the level of expertise brought to the task by the very fact that it is being carried out by a professional in the field and who can be relied upon to be completely unbiased in their decisions. It is not unusual that, even when LPR's have been appointed, they approach a solicitor, other professional or bank, to administer the affairs of the estate on their behalf in return for a fee recoverable from the assets of the estate. This can be effected in one of two ways. Either the professional does all of the work and only needs the LPR to sign relevant documents from time to time as necessary or, the LPR's can renounce their duties and the professional can then apply to be appointed in their place.

If there *is not* a will, the estate will be entrusted to one or more people who will be appointed as administrators. By Act of Parliament, there is legal provision for deciding who should be appointed as administrator(s) of an estate. If there is more than one person, and there is apparent competition for the post, there is a

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<sup>15</sup> The *residue* of a person's estate is those assets that are left after having paid all of the outstanding debts, liabilities, taxes, costs and legacies.

<sup>16</sup> When a person dies without leaving a will, he is said to have died 'intestate'. When this happens, the law has formulated a set of rules as to who should then inherit the estate and in what order they have a claim. It is these people to whom this reference applies. See later in the book.

strict order of precedence based on the closeness of family ties to the deceased. The order of priority is as follows. If one is not available for any reason, the next in ranked order is considered:

- A surviving spouse/civil partner,
- *Issue*<sup>17</sup>
- Parents of the deceased
- Brothers or sisters of the whole blood
- Their issue
- The Treasury Solicitor *unless* there is no surviving spouse, in which case, the order continues
- Brothers and sisters of the half blood
- Their issue
- Grandparents
- Uncles and aunts of the whole blood
- Their issue
- Uncles and aunts of the half blood
- Their issue
- The Treasury Solicitor

*N.B.* The list above, shows the order in which people are chosen to be appointed as administrator. It is *not* the order by which the estate of an intestate deceased should be distributed.

If it is necessary to consider who has priority within one category, the answer is simple, there is no priority. Thus, for instance, a younger sister has equal priority with an older brother. This can, and often does, lead to a certain amount of competition and resentment within a family as to who should be or should have been, the administrator of a particular estate. If it seems likely that this situation might develop, the obvious course of action, if at all possible, is to reach agreement between the family members before matters become strained.

As with executors, the maximum number of administrators is four whether the person died intestate or where there is a will but one of the other conditions described earlier prevails and it is necessary to appoint administrators rather than executors. However, while it is possible under all circumstances for a single executor to be appointed, it will be necessary to appoint a minimum of two administrators when certain conditions occur. If any of the beneficiaries is below the age of 18 or where a *Life Interest*<sup>18</sup> arises, a minimum of two administrators must be appointed.

The executor to the estate or, in the absence of a will, on reaching a decision as to who should become the administrator to the estate, that person or people will have to apply to the Probate Registry for the court's written confirmation of the appointment. This will be given, in writing, by means of a certificate which will be proof to anyone who has an interest in the matter that the bearer has legal authority to deal with matters concerning the estate and that the estate is legally

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<sup>17</sup> That is to say children, grandchildren etc. whether they be natural, adopted, illegitimate etc.,

<sup>18</sup> A *Life Interest* most commonly arises when the deceased died intestate, leaving an estate greater than a certain (fairly high) amount that we will call £x, and had a surviving spouse and a child or children. In this case, the spouse will take the first £x and will have a life interest in half of the residue of the estate. More detail follows in the text later

*vested*<sup>19</sup> in him. This certificate is called a 'Grant of Probate' if given to an executor of a will or, if given to an administrator in the case where there was not a will, a 'Grant of Administration'. There is also a much rarer situation, when a 'Grant of Administration with the Will Annexed' is issued. This situation arises when a will was written but it did not name any executors. Sometimes these certificates are called 'Letters of Administration' or 'Letters of Probate'.

It may not be legally necessary to seek a grant of any kind. Sums up to £5000 held by the National Savings Bank, Premium Bonds, Government Stocks and other certain institutions, can be paid out by giving them sight of the death certificate only. Since this is an amount per institution, the total can be significant and it may be that if this is the situation, the seeking of letters is not relevant. This is also true of jewellery and any cash etc. that may have been left as long as there is no disagreement between those members of the family who believe that they may have a claim the property can be divided up without the need for an application of grant.

Where assets are held jointly and the other owner survives the deceased, those assets will normally pass automatically into the ownership of the survivor and will not require a grant of letters. This could be the case, for instance, with a house or bank account and is not restricted only to jointly held assets between those who are married.

#### 'Do it Yourself' Probate

It cannot be denied that the responsibilities and possible liabilities connected with probate can be very heavy indeed and it is therefore not a burden that should be shouldered lightly and without careful thought. It is, however, although time consuming and sometimes frustrating, not a difficult task as long as the estate is not particularly large or complex and there is not a large number of beneficiaries. The process, if this former state of affairs is true, usually comprises the writing of a fairly large number of letters to the relevant authorities and the people and organisations with whom the deceased had dealings.

Once the will has been located, it is necessary to satisfy all those who are interested, that the document being considered is the *last* will that the testator wrote. In most cases, this is an easy task. However, it is advisable to check with the deceased's solicitor, bank and relatives who might know, if there is any knowledge of any later editions. In practice, as mentioned above, when a new will is written, all copies of all previous versions should be destroyed. However, it is not uncommon for this to fail to take place and the obvious resulting errors can easily occur. If only a copy can be found, it is possible that probate can be granted but the Probate Registry should be notified immediately and they will give advice as to how to proceed.

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<sup>19</sup> *Vested* means that the person named is legally entitled to dispose and deal with the estate as if it were his own including both assets and liabilities. This does not mean, of course, that he can do anything with the proceeds of such a disposal other than that which the will allows or instructs him to do.

**While in rare instances, it may be specified in the will that it should be read aloud with all of the beneficiaries present, there is no other legal reason why this should be done.**

**As long as a will is written in such a way as to comply with all of the rules and is held by the court to have *testamentary intention*<sup>20</sup>, it will be considered valid.**

**More considered thought and care however, should be given if the situation appears to be more complex. It is then that the executor or administrator should give thought to instructing a professional or solicitor or bank to carry out the work. If even one of the situations listed below is evident, then it would be at the least advisable to seek professional advice before embarking on the ‘DIY’ route.**

- **When the estate comprises a large amount of money or assets or is very complicated.**
- **When it is believed that the estate will, after realising all of the assets be insolvent, i.e. the liabilities or debts are greater than the sum of the assets.**
- **If the deceased set up a trust under the will.**
- **If beneficiaries include *children*<sup>21</sup> under the age of 18 and a *trust*<sup>22</sup> is set up for them.**
- **If someone stands to inherit a life interest in the estate.**
- **Some of the beneficiaries named in the will cannot be found.**
- **If the deceased died intestate and it is believed that there may be relatives of the deceased who might have a claim on the will but cannot be traced.**
- **If the will contains alterations although these may be acceptable if each one is signed by the testator.**
- **If the testator was under the age of eighteen when the will was prepared.**
- **If the will shows any signs of damage. This could be by tearing, burning, alteration, erasure of part of the text or if there is evidence that another document may, at some time, have been attached.**
- **If someone gives notice that they intend to challenge the will for any reason.**
- **If there is some question of the will’s validity or the will cannot be found or if there is any reason to suspect that another, later, version may exist.**
- **If the will or part of it is ambiguous or unclear as to the intentions of the testator.**

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<sup>20</sup> At its simplest, *testamentary intention* simply means ‘was intended to be a valid will’. It does, however, in practice, go further. For instance, if the will was made when the testator was considered to be of doubtful mental capacity or unsound mind, there will be doubt as to his testamentary intention and the will may be declared invalid. If, when making out a will, this situation seems likely to develop, it would be advisable to have a doctor as one of the witnesses. The doctor should examine the testator and declare in writing that he (the doctor) believes that the testator is wholly aware of what he is doing and what the consequences of his actions will be.

<sup>21</sup> It seems odd to highlight the word *children* as being a legal term. However, within the realm of probate law the word does not quite have the same meaning as might be expected in everyday life. The word *children*, if used in a will, includes both legitimate and illegitimate children of either sex. If children are adopted and the will was written before the adoption they will not be included. Similarly, if the adoption took place after the will was written they will be included. Stepchildren are not normally included at all unless all of the children are stepchildren or it is specifically made plain that they should be included.

<sup>22</sup> A *trust* is a duty imposed on a person or persons (called *trustees*) which gives them nominal (but not actual) ownership of property of some kind (usually, but not necessarily, money), in order that it can be used for the benefit of a third party. (See later in the text)

- If any house or land in the estate has *unregistered title*<sup>23</sup>
- If the will refers to another document.
- If any part of the estate is held outside of the UK.
- If the deceased owned a business or was a partner in a business.
- If the deceased was a 'Name' at Lloyd's.
- If one of the beneficiaries under the terms of the will acted as witness to the will or, indeed, is married to a witness.
- If the will does not contain an *attestation clause*<sup>24</sup>.
- If the will does not dispose of the residue of the estate.
- If it is believed that there may be a possibility of a relative or dependant making a family provision claim.

## Intestacy

A person who died without having made a will would be termed as having died intestate. The effect of this would be that, instead of following a document to establish what the deceased would have wished to have happen to his estate, the court will apply the intestacy rules. These are a set of rules that have been developed over a long period as to how the court believes the deceased would have set out his wishes. In other words, the court will apply the deceased's 'presumed intentions'. The rules themselves are set out in the Administration of Estates Act 1925 and the Intestates' Estates Act 1952.

As you might expect, the law makes no provision for *common law spouses*<sup>25</sup>, mistresses, or illegitimate children. Neither does it recognise any claims that may be made by lovers, close friends or others who may feel that they should be considered. However, if anyone in any of these categories can prove that they were dependent on the deceased during his or her lifetime, they may be able to make a successful claim under the 'Family Provision' legislation – the Inheritance (Provision for Family and Dependents) Act of 1975 of which more later in the chapter.

If the rules cannot be applied because they are inappropriate, i.e. no one can be found who matches the categories for whom the legislation makes allowance, the estate will be taken and held by the Crown. Curiously, this is not a device by which the Treasury seeks to make a profit. In practice, if there is anyone who, in the opinion of the Court appears to have a genuine moral claim on the estate rather than a legal one, in the absence of claimants covered by the legislation, the

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<sup>23</sup> When houses or land are sold, they have to be registered at HM Land Registry. This has, however, only been the case since 1925. houses or land which have not changed hands since before 1925 will almost certainly have *unregistered title*.

<sup>24</sup> An *attestation clause* will be found at the end of the will prior to the signatures of the witnesses. It normally reads something like 'signed by the testator in our presence and then signed by us as witnesses in his presence'. If this clause is absent, it could lead to the will being declared invalid or, at least cause delay and inconvenience until the will is proved valid.

<sup>25</sup> *Common law spouse* – technically, no such thing now exists in law. Most people understand the term to mean someone who lives with another person and they act in every respect as though they were married except they have never gone through a religious or civil marriage ceremony. Because it is a term that is both universally understood and convenient, it has assumed acceptance although now technically obsolete. For this reason it has been used in this book.

**Crown may grant a proportion or even the whole of the undisposed estate to them.**

**Under the intestacy rules, if a child, brother, sister, uncle or aunt of the deceased would have been entitled to a share of the estate but they died first, the share that they would have been entitled to will be passed to any descendants (almost invariably children) that they may have surviving them.**

**The best way to pick a logical path through the rules is to consider each of the classes of people for whom it is believed that the deceased would have wished to consider making provision.**

### ***A Surviving Spouse***

**If there are no children, parents, brothers or sisters and there is a surviving spouse, then he or she will inherit the entire estate. In any event, a surviving spouse will be able to inherit all of the items of the deceased's estate that are termed 'personal chattels'. These would include such items as household goods, clothing, transport (car, motorcycle, boat, caravan etc.). However, if the deceased had any property connected with his/her business, this would not be included. On top of the personal chattels, the surviving spouse is entitled to receive a cash value up to a certain amount specified by the rules prevailing at the time (as long as the remainder of the estate is worth that amount). Whether, having taken the above into account, the spouse is entitled to any more of the remaining estate (assuming that there is any), will depend on whether there are any other close relatives. If there are children, and there is a surviving spouse, he/she will be treated as above and any remainder will be halved and that amount will be put on trust for the remainder of his/her life, allowing him/her interest on it but no right to the capital sum. If there are no children but there are other close relatives, (parents, brothers, sisters, nephews, nieces) then the surviving spouse will receive the amount as mentioned above, together with an additional lump sum plus half of any remainder to be worked out by the application of a formula. As mentioned previously in the book, in the opinion of the authors, there is little point in quoting the current levels of money on which the calculations are based, as they are subject to possible change every time there is a budget. The actual levels in force can be readily discovered by enquiry at your local Probate Registry.**

**If there are no close relatives, the surviving spouse is entitled to the whole estate in its entirety.**

### ***Any Issue***

**If there is a surviving spouse, any recognised issue will receive one half of the residue which will be divided equally among them (if there is more than one). That is to say after having applied the rule mentioned above. The other half, having been put on trust for the lifetime of the spouse, will pass to the issue on his/her death, again divided equally if there is more than one person.**

**If there is not a surviving spouse, then the issue will be entitled to inherit the entire estate which would again be divided in equal proportions if there is more than one person.**

As mentioned previously in the book, if any of the issue is below the age of eighteen, they will be unable to inherit directly, but the estate will be placed into trust for them until they reach that age (or until they marry, if earlier).

#### *Other relatives*

If there is a surviving spouse and issue, other relatives will receive nothing, as the estate will be disposed of as mentioned above. However, if there is a surviving spouse but no issue, other relatives will be entitled to receive one half of the residue after the spouse has deducted the chattels and the lump sum calculated in accordance with the formula mentioned above. This sum will firstly go to the parents of the deceased in equal shares but, if both of them have already died, it will be split into equal shares and distributed to the deceased's brothers and/or sisters or, if they have died, their children if there are any. If only one of the deceased's parents has died, the survivor will be entitled to half of the residue and the other half will be distributed to brothers, sisters etc.

In the absence of any surviving spouse or issue, other, less close relatives will be entitled to a share of the estate subject to a particular order of entitlement as follows: -

- To half brothers or sisters, but if there are none,
- To grandparents, but if there are none,
- To uncles or aunts of the whole blood, that is to say, brothers or sisters of one of the parents of the deceased, but if there are none,
- To uncles or aunts of the half blood, that is to say, half brothers or sisters of one of the parents of the deceased, but if there are none,
- To the Crown.

#### *Partial Intestacy*

When a person dies having left a will but that will does not dispose of the whole of his or her estate, that person is termed to have died 'partially intestate'. An example could be for instance when one or more persons who are left the residue of an estate die before the testator. While the rest of the estate can be disposed of in accordance with the provisions of the will, that portion of the estate that was left to the deceased legatee will be treated as though the testator died intestate and the intestacy rules will be used to decide where the money should go.

#### *The Inheritance (Provision for Family and Dependants) Act 1975*

Although this does not strictly come under the heading of intestacy, it is convenient to deal with the provisions of this act here.

Not until the first quarter of the twentieth century had long passed, did the law come to recognise that, under certain circumstances, some classes of people had a right to benefit from the estate of a deceased even though he or she had failed to make provision for them in the writing of their will either by design or oversight.

Up to this time, the law had taken the view that a person's property was his absolutely and to do with as he wished in death as well as life. As a result there are many tales in both fact and fiction of wives, children, mistresses etc. 'cast out in the streets without a penny' on the death of the person on whom they had

been financially dependant. It was, as we all know a favourite topic for writers of Victorian melodrama. This injustice was recognised and the whole philosophy was overturned at a stroke by Parliament passing the Inheritance (Family Provision) Act (1938) which allowed and indeed encouraged people who had been mistreated or overlooked in this way to make a claim on the estate of a deceased despite, in many cases, the best efforts of the testator (and often his surviving family where the deceased had died intestate). The same act can be utilised by anyone who has been named in the will as a beneficiary but in their estimation, and because they were dependent on the deceased, he or she did not make sufficient provision for them and they wish to seek a greater proportion of the estate.

The 1938 act was superseded in 1975 by The Inheritance (Provision for Family and Dependents) Act. This act cleaned up and modernised the original and it is the one which prevails today and to which this part of the book addresses itself.

By virtue of the Act, a person who believes that they have a valid claim on the estate of a deceased person can make application to the High Court or, where the estate has a value of less than £30,000, the County Court, for a hearing and judgement. Three categories of potential claimants are provided for, a surviving spouse, children and other dependents. This can include people who are not members of the family of the deceased at all, therefore effectively holding the door open to anyone at all that the court is willing to recognise as having a valid claim.

Even now, the legislation is by no means perfect. In particular, there is a time limit of six months after grant of Probate to lodge a claim. It is understandable that the law does not wish to allow for a person's estate to remain undisposed for an inordinate length of time, and, under exceptional circumstances, this time limit can be extended by the court. However, there have been many examples of claimants who would otherwise have had perfectly valid claims being defeated by running out of time because they were unaware of the death of their spouse who had deserted them some years earlier and with whom they had subsequently lost touch. If a potential claimant is aware of the death of someone on whose estate they believe they might have a claim, they can register a *caveat*<sup>26</sup> at the Probate Registry, which will prevent a grant being made, and the estate from being distributed during the next six months without the knowledge and approval of the *caveator*<sup>27</sup>. If the potential claimant is aware of the death, they can apply for what is known as a 'standing search' at the Probate Registry which entitles them to be given a copy of any grant that has been made during the last twelve months and, also, they will be informed and sent copies of any grant made during the next six months from the date of application. The search can be renewed for further periods of six months each time it expires.

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<sup>26</sup> *Caveat* literally means 'beware' in Latin. By making application to a proper office of a court, in this case, the Probate Registry, the applicant can prevent certain steps from being taken without the knowledge or consent of the applicant and being given the opportunity of his views being heard and taken into account.

<sup>27</sup> A *Caveator* is a person who applies for, and is granted, a caveat.

For the sake of convenience, we will deal with each of the categories mentioned above insofar as the Act affects them.

- *A surviving spouse/civil partner*
- If a surviving spouse or civil partner should make an application, the court will apply the same rules and principles that it would do were it considering a divorce. A very important point to be made here is that the court will not be looking to decide what is a reasonable amount of maintenance for the claimant. Considerably more generously, it will look to see whether the deceased granted his spouse a fair share of the assets of the family. This is in contrast to the position of the other two categories. They are only entitled to be considered on the test of what is a reasonable amount of maintenance. Whilst it is possible for someone who is legally separated or divorced from the deceased to make a claim, it is likely that it will either fail altogether or any amount granted will be hugely reduced. This is because it is probable that, when the separation or divorce was granted, the issue of dividing the assets of the family was explored and an order made by the court at the time. As one would expect, if a former spouse remarries, he or she would disbar himself or herself from making a claim under this legislation and, if a claimant is successful and obtains an order for periodic payments, those payments would cease upon their remarriage. As a final point, any decision arrived at by the court will be based on making a comparison between the relative wealth of the deceased and the claimant as well as their outgoings and commitments exactly as though they were being divorced.
- *Children*
- There are two tests relevant to the act insofar as children are concerned. Firstly, were they children of the family? Secondly, were they wholly or partly maintained by the deceased? When making a claim under this legislation, the age of the child is immaterial as is his or her marital status or legitimacy. Additionally, in contrast to the position enjoyed by the surviving spouse outlined above, the child, assuming that he or she passes the already mentioned tests, will only be entitled to have reasonable maintenance (as determined by the court) granted rather than a share of the assets of the family.
- *Other Dependants*
- This is an area, written about above, where the 1975 Act has modernised and improved the thinking behind the 1938 Act. In order for a person to make a successful claim in this category, he or she does not have to prove that they had any blood or legal marital relationship, but they must prove that they were either partly or wholly maintained by the deceased during his or her lifetime. It therefore allows legitimate claims to be lodged by 'common law' spouses, mistresses or, indeed any other relationship. Although people in these relationships still have no rights under the intestacy rules, this does go at least some way toward making the situation fairer for people who were previously ignored in law. Under the 1938 legislation, many instances occurred where, for instance, a man, having left his wife many years previously but had not divorced, then formed a

**stable and long standing relationship with a new, female partner being married in all but name and, in many instances of course, they could easily have had children. On his death, neither the new partner nor the children had any claim on the estate and the wife with whom he had possibly had no contact for many years would inherit the whole of the estate and its assets under the intestacy rules. It is true to say that common law spouses still have no legal claim on the family assets of the deceased, but they may make claim for reasonable provision for maintenance as can the children as mentioned above.**