

Dealing with the Legal Affairs of Someone who has Died

The law describes how the financial affairs of someone who has died should be managed.

Victim Support Scotland cannot give legal advice, but can help you to find an appropriate solicitor.

A solicitor will ensure that you know what your legal rights and responsibilities are.

Useful Legal Words to Understand

There are a few special words that are useful for you to understand before reading any further:

The Estate The property and possessions of a person who has died

Inheritance When people receive something from the estate when it is shared out

The Beneficiaries The people or organisations that will receive something from the estate when it is shared out

A Will The legal document that outlines a person's wishes for who should receive something from the estate

An Executor The person who is allowed to manage the financial affairs of a person who has died is called an executor

Cohabiting A couple who are living together but are not married or in a civil partnership

A Solicitor One type of person who is licensed and trained to give legal advice and support to people

You Should First Find out If There Is a Will and Whose Job It Is to Deal with the Affairs of the Person Who Has Died

It is important to find any will(s) as soon as possible. Leaving a will is a very personal thing and sometimes people want to keep it to themselves and don't tell the people around them.

If you think the person who died had a solicitor, you should try to find their name and office details to get in contact. Solicitors keep records of the wills they have made for people and can easily trace whether or not they hold a will.

If There Is a Will

It can often name the person who has been chosen to run their affairs. A person who is legally allowed to represent a person who has died is called 'an executor'

It is their job to deal with the person's 'estate'. An estate is a legal word used to mean someone's money, property and other possessions.

Anyone named as executor, including any professional organisations, can decide not to administer the estate of the deceased. If your resignation would mean there is no executor, you would first need to appoint an executor (such as a firm of solicitors), then resign.

Whatever the will says, the surviving husband, wife, civil partner or children can, challenge the decision.

If There Isn't a Will

- A solicitor or the courts can arrange for someone to be appointed
- The court will normally appoint the surviving spouse or civil partner
- If you were not married but were living together you will need to apply to the court if you want to become an executor to your partner

The Executor of the Will Is Responsible for the Following Tasks

Solicitors and other advisers can help you to carry out your role as an executor. In Scotland, you can find a solicitor who specialises in this and other areas by contacting The Law Society of Scotland.

You can tick the boxes in the checklist below as you complete the tasks at each stage

Stage 1: Investigation

- Find all the financial documentation belonging to the person who died
- Find out what debts the person owed and what money was due to them at the time they died, as well as details of their assets such as money in the bank, shares, property and valuables, as well any joint assets (for example joint bank accounts or jointly owned property). See 'Debt of the Person Who Has Died' section to learn more
- Suspend bank and credit card accounts, mortgage payments, and utility company accounts, although you may need to keep up insurance payments for property. See 'Stopping Direct Debits' section to learn more
- Work out the amount of Inheritance Tax payable and arrange to pay it
- Collect in money belonging to the estate from banks, insurance companies, pension funds and building societies

Stage 2: Applying for Confirmation

- Compile a detailed inventory of all the estate's assets including property, savings and investments, life assurance policies, vehicles and all items of value.
- Apply to The Sheriff Court for the legal certificate enabling you to receive and administer money and other assets belonging to the deceased.

Stage 3: Gathering the Estate

- Open a bank account in the name of the executor(s)
Contact all the institutions holding money belonging to the deceased to have them transfer funds into the new bank account. If you are using a solicitor, they will do this for you.
- Pay any debts and expenses - including funeral expenses - keep a record of any transactions.
- Report to HMRC any income tax of the deceased and any income received during the course of administering the estate.

Stage 4: Distributing the Estate

- Find out if anyone plans to claim their legal rights to a fixed share of the deceased's moveable estate
- It is usual to wait for six months before making final payments in case any unexpected creditor comes forward or anyone decides to claim their legal rights.
- Distribute the estate as per the will or the law.

If You Had a Joint Bank Account with the Person Who Has Died

The money in that account now belongs to you. The bank may need to see the death certificate in order to transfer the money to the other joint owner. It makes no difference whether you were a married couple or not.

If the Person Has Died with Outstanding Debts

You are not responsible for paying these off if they are in their name only. If the person who died had outstanding debts, these are paid for out of the estate before any remainder can be shared out. If the debts are greater than the value of an estate, you should seek legal advice.

The executor must wait six months before sharing out a person's property. This is to allow companies and individuals time to claim the debts they are owed from the estate.

Circumstances When You Can Be Responsible for the Debts of the Person Who Has Died

- If you have debts in joint names with them
- If you have acted as a guarantor for them
- If the debt relates to a property which you also live in e.g. TV subscription, energy bills, council tax

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