

# A Legal Factsheet for the Bereaved

shoosmiths

When someone close to you dies you need to think about:

## Who will register the death?

Unless the Coroner is involved, you will be issued with a Medical Certificate showing Cause of Death by the doctor of the person who has died. You then need to contact the Registrar of Births, Deaths and Marriages in the area where the person died to make an appointment, and go to that appointment with the Medical Certificate. It is usually a relative who goes to the appointment, but if that is not possible you can discuss with the Registrar's Office when you call them who should attend.

You can find the telephone number and address of the relevant Registrar's Office in the telephone book under 'Registration of Births, Deaths and Marriages' or obtain it from the doctor, local council, Post Office or police station. In some areas of the UK you can register the death online through the local authority website.

When you are at the appointment, the Registrar will ask you questions to gather information for the Death Certificate, and statistical analysis. Typically asking:

## About the deceased

- date and place of death
- forenames and surname by which they were known, and any other names used, including a maiden name where the deceased was a married woman
- date and place of birth
- their occupation, and the full names and occupation of her husband if the deceased was a married woman or a widow (you do not have to provide this)
- their usual address
- whether they were in receipt of a specific employment pension from public funds, e.g. armed forces, teachers, police or civil service
- If they were married, then the date of birth of their spouse

## About the person registering the death

- forenames and surname by which they are known
- their usual address
- their relationship to the deceased
- name of the funeral director who will be used

Legally, the death has to be registered within five days.

The Registrar will give you two forms:

- the death certificate to be handed to the funeral director confirming to them that the burial or cremation can go ahead
- the other is to be forwarded to the Department of Work and Pensions to notify them of the death

You can also pay for a certified copy of the Death Certificate. The cost is presently £3.50 per copy if you ask at the time of registration, or £7 per copy if you ask for copies at a later date. Certified copies of the Death Certificate are often required by banks and other organisations before they will acknowledge the death, so it is usually worthwhile buying a few copies.

A Coroner will be involved if enquiries are needed to establish the cause of death. If this is going to take time, the Coroner can issue an Interim Death Certificate to enable transactions with bank accounts, insurance policies and social security payments etc to go ahead.

## Who will arrange the burial or cremation?

A burial or cremation cannot be carried out until the funeral director has the Death Certificate (and for a cremation they also need a Doctor's Certificate), but you can talk to them and agree arrangements before you have it.

Funeral directors only take instructions from the person who signs the funeral contract, so ensure you are clear who this is from the start, and allow that person to be the one who communicates with them.

The deceased may have had a savings plan to pay for the funeral, and you should look for this first. Sometimes it is called a Pre-Paid Funeral Plan. With it may come details of funeral arrangements the deceased has already made.

If there is no savings plan, payment for the funeral usually comes out of the deceased's estate. Although bank and building society accounts are frozen from the date of death, most banks and building societies allow the people with authority to deal with the estate to request a cheque from the deceased's account to pay for the funeral.

It is also advisable to check any Will the deceased made for any preferences: for example whether they wished to be buried or cremated, where they wished their ashes to be laid etc. Their preferences may have been stated in their Will.

### Whether there is a Will

If there is a Will it will usually say whom the deceased has chosen to deal with their affairs (the Executors), and how they want their assets distributed, so it is important to find out if there is a Will as quickly as possible.

By law, it is also the responsibility of the Executors to dispose of the body.

The deceased may have told you that they had made a Will and where to find a copy. They may have had the original at home or placed it somewhere for safe keeping. Often it will be with their solicitor or bank, possibly with the deeds to their home if they own their own property.

If you do not know whether the deceased made a Will, or if so where it is, it is possible to search on the UK's online Wills Register, called Certainty. People who make Wills using solicitors are encouraged to register the existence of their Will and where it is stored so that relatives and close friends can find it easily when the time comes. You can make the search yourself at <http://www.certainty.co.uk> or ask someone to do it for you.

### What to do with the deceased's belongings

If there is a Will it is the Executors who should gain access to the deceased's home and secure it. If the deceased owned the property, the Executors should check that it is insured and notify the insurers of the death.

If there is no Will, then the deceased will have died intestate (the legal term for having died without a Will). The law specifies who can administer the estate, who inherits, and in what amounts. These are known as the Intestacy Rules, and are very complex, so it is recommended that you ask a solicitor for advice on this.

If the deceased's financial assets (including belongings) are worth more than £5,000 the Executors/Next of Kin will, generally, need to obtain a Grant of Representation. This is a formal legal document allowing the Executors/Next of Kin to deal with the deceased's belongings. Grants are issued by the Court through Probate Registries. They are called 'Grants of Probate' if the deceased made a valid Will, and 'Grants of Letters of Administration' if the deceased died intestate.

It is only after the Grant has been obtained and all tax and other debts paid that any of the assets can be distributed.

However, if the deceased had a joint bank or building society account or any other property owned jointly with another, the asset will pass automatically to the surviving joint owner(s) by what is known as 'the law of survivorship'.

To enable the survivor to have access to the asset (e.g. bank or building society account), and for the asset to be transferred to the sole name of the survivor, he or she should take the original death certificate to the relevant bank or building society branch, or otherwise produce it to the asset holder.

The Executors/Next of Kin are able to apply for the Grant, give the necessary notifications of death, collect in the deceased's assets, pay bills, assess and pay any tax due, and then distribute what is left to those who will inherit from the Estate (the beneficiaries). However, many choose to instruct a solicitor to do this for them. If a solicitor is used, the cost can be paid for out of the deceased's estate.

If you would like more information about any topic in this Factsheet, please call Shoosmiths on 08700 863254.

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For advice please contact:



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