

What To Do When Someone Dies



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A guide to the administration of an estate.

Introduction

The death of a relative or close friend is a difficult time even before you start thinking of dealing with the deceased's financial affairs. Most people will never have been involved with an 'estate' previously and can become confused by a host of legal terms and procedural matters. It is hoped that this guide will give an idea of the steps that have to be taken and help ease the process whether you are an executor, administrator or beneficiary and whether or not professional advisors are involved. There is also a short explanation of some of the legal terms that may be encountered. No two estates are the same, so what is explained may not be applicable in every case and only applies to Hong Kong.



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First steps

Initially, death must be registered with the Registrar of Births and Deaths and the funeral arranged. If there is a will it needs to be examined for any specific wishes of the deceased in relation to the funeral. The will is usually lodged with the deceased's solicitor, bank or other professional advisor or may be with their own papers. The will appoints one or more executors who will be responsible for putting into effect the wishes of the deceased expressed in the will. If there is no will, administrators are appointed by the Court to deal with the estate. They are usually the persons entitled to the estate under a set of rules laid down by law that take the place of a will known as the Rules of Intestacy. If the appointed executor has died or is unwilling or unable to act, then administrators are again appointed to carry out the terms of the will in their place.

Ascertaining details of the estate

The deceased's personal papers need to be examined to find out what they owned. Their last Tax Return is a very useful source of information. Unless the estate is small, the executors or administrators will not be able to gain control of the assets without producing the grant of probate or letters of administration. This is the legal confirmation of the validity of the will and the right of the person(s) to whom it is granted to deal with the estate, commonly referred to as 'probate'.

Before probate is granted, the executors or administrators need to prepare a detailed list of all assets and liabilities.

Anything owed by the deceased such as household bills, mortgages, loans and funeral expenses are liabilities of the estate.

If there is a property that is unoccupied, steps should be taken to ensure its security and the insurance position checked.

Applying for probate

Once the assets and liabilities of the estate have been established, the application for probate can proceed.

Any wills or codicils are retained by the Court to become a matter of public record, but the grant of probate will include a copy.

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Collecting the assets

Once the grant has been issued, it has to be registered with the holders of the assets, e.g. banks and company registrars. If these are numerous, to facilitate the process, the Court will, for a small charge, issue certified copies. Once the assets have been released, the liabilities of the estate can be paid.

If there is a property in the estate and it is to be sold then this will probably involve the appointment of estate agents to handle the sale. There is no reason why this should not be arranged prior to the grant, although this will be required before completion of the sale can take place.

Similar considerations apply if there is furniture or jewellery to be sold when the services of auctioneers may be appropriate.

Beneficiaries

These are the people entitled to share in the estate either in accordance with the terms of the will or under the Rules of Intestacy. There are various types of beneficiary (sometimes called legatees), depending on whether they are entitled to a fixed cash sum, a particular item such as jewellery or a share of what is left (residuary beneficiary).

It is normally considered courteous and good practice for the executors or administrators or professional advisors on their behalf to notify beneficiaries of their entitlement. Residuary beneficiaries should be given a copy of the will and details of the assets and liabilities of the estate as ultimately the executors or administrators have to account to them for what has happened to the estate.

Distributing the estate

Once the executors or administrators have gained control of the assets they must pay the liabilities and may then consider distributing to the beneficiaries. They will first need to assess what reserve to make to cover the remaining outgoings, such as any taxes and the expenses and costs of dealing with the estate.

It is usual to discharge the cash legacies and the specific items before making payments to the residuary beneficiaries as the former have a higher priority.



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Other matters

The deceased's Tax affairs have to be completed and this is a matter that should be initiated at an early stage. If an accountant or other advisor had been employed by the deceased, it is usually practical to arrange for them to complete this.

Assets abroad can often involve legal formalities in the country concerned, including tax. It is usually necessary to appoint lawyers or other agents there to deal with such aspects and this can lead to considerable delay in finalising the estate.

And finally

Once all the assets and liabilities have been established and the Tax position finalised, the distribution of the estate can then be finalised and payment made to the residuary beneficiaries. The executors or administrators should then prepare a full statement of account showing how they have dealt with the estate. The residuary beneficiaries are entitled to a copy of this.

If the estate is not to be distributed because some or all of it is to be held in trust under the terms of the will or Intestacy Rules or because there are minor beneficiaries, then it is at this stage that the duties of the trustees commence. The trustees will usually be one and the same as the executors or administrators.

In conclusion

It is never possible to say precisely how long the administration will take because this depends on the nature of the assets and what arises. If there is a business to wind up or claims against the estate involving legal proceedings then it may become protracted.

It is hoped that this brief outline will assist in guiding you through the process.

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Some common legal terms explained

Administrator

The person(s) appointed to distribute the estate if someone dies without a valid will or without appointing executors or if the appointed executor is unable or unwilling to act

Bequest

A term sometimes used instead of legacy

Codicil

A separate document amending the terms of an existing will

Estate

All the assets of a person at the time of death

Executor

Person appointed to put into effect the terms of a will

Intestate/Intestacy

When a person dies without a valid will they are said to be intestate. The estate is then distributed according to statutory regulations called the Rules of Intestacy.

Legacy

A gift under the terms of a will

Letters of Administration

Official acknowledgement by the Court of the appointment of administrators

Pecuniary Legacy

A fixed sum of money given by will

Personal Representative

Generic term for executors and administrators

Probate (Grant of)

Official confirmation by the Court of the validity of a will and the executors named in it

Probate Registry

A part of the High Court but not a Court in the popular concept – there are no judges and juries. Rather it is an administrative office staffed by Civil Servants under the control of the Registrar of the High Court who is a Lawyer.

Residuary Beneficiary

The person(s) who receive what remains of an estate after all other legacies, liabilities, tax and expenses have been paid

Residue

The remainder of the estate after all specific and pecuniary legacies, liabilities, tax and costs have been met

Specific Bequest

A gift of a particular item (not money) given in a will

Testator/Testatrix

The person making a will (male/female)



NOTE:

This booklet, and its companions “Why Make a Trust?” and “Why Make an Enduring Power of Attorney?”, have been prepared by the **Society of Trust and Estate Practitioners (STEP), Hong Kong Branch**, which brings together solicitors, accountants, barristers, bank trustees and probate practitioners who specialise in and have particular experience in this field. This brochure assumes that Hong Kong law is applicable.

Other STEP booklets in this series include “Why Make a Will?”, “Why Make a Trust?” and “Why Make an Enduring Power of Attorney?”. For more details on these, including how to order, go to www.step.org/leaflets

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