

What to Do after a Death in Scotland - A Practical Guide for Executors

Registration of Death

A death must be registered within 8 days at the Registrar of Births, Deaths and Marriages. The registration of the death may be made in the Registrar's Office of the District either where the deceased lived or where the death took place, if different.

Registrars now prefer an appointment system for notification and registration. To Register the death, you will need the Medical Certificate of cause of death (this is obtained from the doctor or hospital certifying the death) and as much information about the deceased as possible i.e. full name (including maiden name), date of death, address, date of birth, country of birth, occupation, marital status, full names and occupation of deceased's parents and date of their marriage.

After registration the registrar will provide you with a white form, which should be passed immediately to the Undertaker, as this is required to finalise funeral arrangements, an abbreviated Extract Death Certificate (no charge) and if requested, an Extract Death Certificate which currently costs £10. We would recommend at least two full Extracts should be obtained for use in the executry administration as photocopies are not accepted as valid documents.

Tell Us Once Service

The Registrar will offer the "Tell Us Once" system and we recommend using that to ease administration at a difficult time. Tell Us Once is a service that lets you report a death to most government organisations in one go i.e. DWP, HMRC, Passport office, DVLA, local council etc.

You will need the Deceased's date of birth, National Insurance Number, Driving Licence Number, Passport Number, Vehicle Registration number and details of any benefits/pensions they were receiving

Duties of Executors

It is the responsibility of the Executor(s) to ingather details of all the assets and debts of the deceased, i.e. "the Estate", as soon as practicable. However, before Executors can deal with selling/transferring or obtaining funds of the estate, "Confirmation" will normally be required from the Sheriff Court. Once Confirmation (called "Probate" in England) the next duty of the Executor(s) is to pay any debts of the deceased. Thereafter any legacies can be paid to any beneficiaries in the Will and finally the Executor(s) can deal with the residue i.e. what is left after debts (including Legal Rights) and any legacies have been paid.

If no Will has been left, which is referred to as an "intestate estate", it may be necessary to Petition the Sheriff Court to appoint an Executor and obtain a Bond of Caution (pronounced "Kayshun").

In all these duties, the Executors can be assisted by any professional advisers they choose to appoint. In most cases, this is a firm of solicitors.

Small Estates

A small estate is an estate where the total value of the deceased's money and property is £36000 or less. In calculating the total value, you should not deduct any debts, such as funeral expenses, gas or electricity bills, balance of mortgage, owed by the deceased. Small estates may be administered without obtaining Confirmation. Generally Banks, Building Societies and Insurance Companies can provide indemnity forms for completion by Executors or, in some cases, by the next of kin. It should be noted however that each financial institution has its own limit for waiving the need for Confirmation.

Where the value of the estate does not exceed £36,000, the Sheriff Clerk's Office can advise and assist an Executor in obtaining Confirmation. The Sheriff Clerk will not charge an administration fee for this service however, Confirmation Dues are charged by the Court in all estates where Confirmation is required.

Caritas Legal can assist in the administration of even the smallest Estates.

The First Meeting with a Solicitor

The first meeting with the solicitor by the Executor/family normally takes place shortly after the funeral. However, if there are matters of pressing importance, an earlier meeting may be necessary.

You should bring to the first meeting as much of the deceased's papers and documents as can be located. In particular, the following information and/or documents are useful: Full Extract Death Certificate (not abbreviated version); National Insurance Number; details of any other pensions/benefits received; Bank/Building Society statements; Life Insurance policies etc.

A full Executors checklist is available to download from our website

If you are not able to identify all the appropriate paperwork then Caritas Legal will be able to assist you in the investigation of any missing items.

The Executors will be asked for proof of identity. This is a requirement of the Law Society of Scotland for the purposes of money laundering regulations. You should bring with you to the first meeting your own passport (or other form of proof of identity bearing your photograph) and a recent utility bill or bank statement (dated within 3 months of the meeting) which confirms your name and address.

Outline of the Executory Process

There are essentially 6 stages in administering an estate as follows:-

1. The Initial Investigations

Including meeting with the executors, establishing if the deceased had a Will and identifying named and potential beneficiaries. Where no Will has been left and, under the laws of intestacy the estate is passing to a beneficiary other than a surviving spouse, a Bond of Caution requires to be obtained from an insurance company. Caution is an insurance which has to be put in place in order to safeguard the interest of the creditors and beneficiaries. The insurance company will insure the whole of the gross value of the estate and the premium will be based on the value of the estate together with the number of beneficiaries. The cost of this insurance will be charged against the estate. Confirmation will not be granted by the Court unless the Bond of Caution is exhibited along with the application for Confirmation.

2. Establishing the extent of the estate

Writing to all the organisations with which the deceased had an association to obtain values of assets as at the date of death. If a house is owned, it may be necessary to obtain a professional valuation by a surveyor. It may also be necessary to obtain a valuation of the deceased's furniture, jewellery and personal effects. Any stocks and shares owned by the deceased will require to be valued by a stockbroker. A fee is payable for such valuations. Professional valuations are required where the estate is likely to attract Inheritance Tax, Legal Rights claims or the residue is to be divided amongst a number of different residuary beneficiaries.

3. Establishing the tax position

Once the investigation is complete, an "Inventory" of the estate (i.e. a list of all the assets and liabilities of the deceased as at the date of death) is drawn up for approval by the Executors.

The Inventory serves two purposes: as an application to the Sheriff Court for Confirmation on the estate; as an Inheritance Tax Return Form for estates on which Inheritance Tax is payable. In estates where Inheritance Tax is payable, it is necessary to forward the Inventory to the Capital Taxes Office in Edinburgh (Inland Revenue) before application for Confirmation can be made to the Sheriff Court. The Capital Taxes will initially return the Inventory as quickly as possible to enable Confirmation to be obtained, however they may raise queries at a later stage.

Any Inheritance Tax payable on the estate at this time must be paid to the Capital Taxes Office with the Inventory, prior to lodging with the Sheriff Court for the issuing of Confirmation and before the Executors can deal with the assets of the deceased.

The Inheritance Tax (IHT) threshold is currently £325,000 for a single person. This means that the value of the deceased's estate has to be above the sum of £325,000 before inheritance tax is due to be paid. Between spouses/civil partners a combined threshold of £650,000 may be applied. These thresholds may be increased if the deceased owned a home, or a share of a home and the deceased's direct descendants such as children or grandchildren inherit the home, or a share of it. There are also other reliefs which may be available which Caritas Legal can assist you with.

IHT will be calculated on all the deceased's assets after deduction of debts and liabilities and which exceed the threshold and 40% tax will be exercised on such assets. (I.e. if the deceased's assets exceed the threshold limit by £10,000 the estate will be liable to pay £4,000 in tax).

Even when Inheritance Tax does not require to be paid, the Inventory is forwarded by the Sheriff Court to the Capital Taxes Office for consideration by them and the Capital Taxes Office has a period of 60 days from the date Confirmation is granted by the Court in which they can raise any queries they may have about the assets of the estate and on some occasions may request that professional valuations be obtained for property and personal effects.

4. Obtaining Confirmation

Finalising the application for Confirmation, having this approved and signed by the Executors and submitting the application to the Sheriff Court to be granted.

5. Ingathering the Estate

Once Confirmation has been granted it will be issued, together with a series of "Certificates of Confirmation". The Certificates are thereafter sent to the various banks, building societies etc. with whom the deceased held assets, together with the appropriate withdrawal or discharge forms signed by the Executors to enable payment. It is at this point any property can be transferred or marketed for sale.

The next duty is to deal with the payment of the debts of the deceased including any Legal Rights claims. Under Scots Law, the surviving spouse or civil partner and the children of the deceased have certain rights on their estate whether there is a Will or not. These are called Legal Rights.

A surviving spouse/civil partner is entitled to a one-half share of the net moveable estate if there are no surviving children. If there are surviving children, the right reduces to a one-third share of the net moveable estate.

Children are entitled to share in a one-half share of the net moveable estate if there is no surviving spouse/civil partner. If there is a surviving spouse/civil partner this right reduces to share in a one-third share of the net moveable estate.

Legal Rights claims only apply to what is termed "moveable" estate. This includes banks and building society balances, shareholdings and investments, household contents and furniture, cars etc. but excludes land and buildings.

Caritas Legal will require to make enquiry as to the existence of legal rights and will seek and obtain discharges of these rights, if appropriate. These rights can be claimed for up to 20 years after the date of death and if not dealt with the Executor will be held personally liable for any future claims.

As Creditors have a period of six months in which to lodge a claim against the estate, it is our practice that estates are not distributed until the expiry of the six month period from the date of death. Should a claim be made against the estate within six months and the residue has been distributed then the Executors would be personally liable.

After payment of all the deceased's debts (including Legal Rights claims), the Executor can pay any cash or specific legacies provided for in the deceased's Will. We will normally make a payment to the legatees of the amount of the legacy, or arrange for delivery of the items bequeathed, and issue a Form of Receipt, acknowledging such bequest, to be signed and returned by the person receiving the legacy.

6. Accounting and Finalisation

At this stage, an Executory Account is prepared detailing all the assets, debts/liabilities and legacies in the estate. The Account is approved by the Executors. From this Account, the exact value of the Residue can be established and payments thereafter made to the residuary beneficiaries. These payments will normally be organised by us and a relevant Form of Receipt and Discharge is obtained from each beneficiary.

Where there is no Will, a surviving spouse/civil partner is entitled to Prior Rights and these are as follows:

- A right to the deceased's dwellinghouse up to the value of £473,000
- Furniture/personal effects up to the value of £29,000
- If there are no children, cash to the sum of £89,000; If there are surviving children, cash to the sum of £50,000

Any residue is then distributed in line with the Laws of Intestacy.

Once the Inheritance Tax has been finalised and the balance of residue paid to the beneficiaries in terms of the Will or Laws of Intestacy, the winding up of the Estate has been concluded. Our File of papers is retained for many years in case of any query arising in the future, regarding the estate.

Legal Fees

At Caritas Legal our fees are not based on a percentage of the value of the estate but on the time and work actually carried out in winding up the estate. It is also our gal's practice to submit our file to external Law Accountants for assessing of our fees. This means that the file is independently assessed to establish a fair charge for the work undertaken. A charge is made by the party assessing our files and is normally paid from the estate. The file is assessed and charged at the point of Confirmation. But if the estate is complex an interim fee may be taken before this stage. Fees are payable from the estate including all the costs of administration.

It is difficult to estimate what the fees may be for a particular estate. A small estate of low or moderate value can often be as complicated, or more complicated, than an estate of a larger value. As a rough guide the costs in winding up a straightforward estate is on average around £2,000 plus VAT and outlays. However, as every estate is different this is purely a guide.

How Long will it Take?

We are often asked how it will take to wind up an Estate. Unfortunately, it is impossible to accurately predict the timescales of completion of an executry; timing in these matters is dependent upon a number of factors beyond our control such as an Intestate estate (no will); Inheritance Tax Valuations; House to be sold; Prior/Legal Rights claims; Missing Beneficiaries, creditor claims etc.

However, generally it can be possible to wind matters up within the following timescales:

- Total value of assets greater than £100,000 and not subject to Inheritance Tax - 6 to 9 months
- Larger estate (over £300,000) or subject to Inheritance Tax - 9 to 12 months
- Complex estate including assets requiring specialist valuations i.e. private company shares - 12 to 18 months