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SPECIALIST PRIVATE LAWYERS

## PROBATE & INTESTACY:

## WHAT TO DO WHEN SOMEONE DIES

Rumwell Hall  
Rumwell  
Taunton  
Somerset  
TA4 1EL  
01823 462500

Regional Rural  
Business Centre  
North Petherton  
Somerset  
Somerset  
TA6 6DF  
01278 664060

9 Parkhouse Road  
Minehead  
Somerset  
TA24 8AB  
01643 701888

1A Princes Street  
Yeovil  
Somerset  
BA20 1EN  
01935 426047

[www.amicuslaw.co.uk](http://www.amicuslaw.co.uk)

This leaflet explains what needs to be done when someone passes away and how to go about it. Sorting out the affairs of someone who has passed away can be complex and time consuming at what is already a difficult time.

The most important thing is to deal with grieving and the funeral - in most cases legal formalities can wait. That said, it is important to establish whether there is a Will in which the Deceased expressed any particular wishes with regard to their funeral arrangements. A Will may also specify what is and isn't to be considered part of the funeral expense.

Legal requirements following death vary depending on the size of the estate, how assets were owned and whether there is a Will.

If an estate is worth less than £5,000 (and in some cases up to £15,000) and only comprises cash accounts and/or National Savings, it may be possible to deal with the estate without any formal Grant (see below).

If all the Deceased's assets were owned jointly with someone, of whatever amount, they normally pass to the survivor automatically and can be transferred on production of the death certificate. If the assets pass other than to the Deceased's spouse though and their value exceeds the nil rate band for Inheritance Tax, then an Inheritance Tax return still needs to be completed and tax may be payable by those who have received the assets. The funeral costs, debts etc also still need to be paid.

It is the duty of the Deceased's personal representatives (PRs) to deal with the administration of the estate. If the Deceased didn't

have a Will the PRs, called Administrators, are normally those beneficiaries who will receive the estate according to the Intestacy Rules, provided they are over 18. The estate will be shared out in accordance with those rules, but until a Grant (in this case Letters of Administration) is obtained no-one has authority to deal with the estate so it is important to establish quickly who should act.

If there is a Will the PRs are called Executors. They are appointed from the moment of death and have authority from then, but to deal with most issues they will need a Grant of Probate to formally confirm their position and the validity of the Will.

If the Deceased had a Will but the Executors have died or are unable to act the Will is still valid as to distribution of the estate but substitute PRs, normally the main beneficiaries, are appointed (again called Administrators) who apply for a Grant of Letters of Administration with Will Annexed.

In all cases it is necessary to prepare a full inventory of the estate with exact values or balances for assets and liabilities as at the date of death, complete an Inheritance Tax Return and calculate and pay any tax arising. This has to be done before the Grant can be obtained and we can advise where funding for any tax payable can be obtained. If you apply for the Grant yourself, you will need to attend an interview at your local Probate Registry. If we submit it for you, it can be done by post. Once the Grant is received it is the duty of the personal representatives to get in all the assets of the Deceased, pay off all their liabilities (including taxes) and then distribute the balance as required. Specific items can be handed over immediately, and if cash gifts are not paid within one year of

death then interest has to be paid on them.

If you would like an estate to be distributed differently, either for personal reasons or for tax saving/planning reasons, then for up to two years after the date of death we can vary the estate for you, even if the administration of the estate is already complete. As long as it doesn't make more tax payable, you do not even need the agreement or involvement of the personal representatives.

Contesting an estate can be complex and expensive and is beyond the scope of this leaflet but we can advise on contesting a Will or making a claim against an estate or how to respond to a claim as the personal representative.

We take a flexible approach to costs and are happy to work to suit you depending upon how much of the administration you want us to deal with. We can agree costs on a fixed, percentage or hourly rate basis, or a combination of them, to deal with some or all of the estate, depending on what you prefer.

We can help with these issues and advise about incidental matters arising along the way. For more advice contact David Satchell ([david.satchell@amicuslaw.co.uk](mailto:david.satchell@amicuslaw.co.uk)) for our Taunton, Yeovil and North Petherton Offices on 01278 664060 or Andrew Bensley ([andrew.bensley@amicuslaw.co.uk](mailto:andrew.bensley@amicuslaw.co.uk)) at our Minehead Office on 01643 701888.

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