

Factsheet 14

Dealing with an estate

August 2016

About this factsheet

When a person dies, somebody has to deal with their estate, collect in their money, property and possessions, pay any debts and then distribute the estate to those entitled to it.

This factsheet provides general information for personal representatives on how to carry out their duties. It includes information on what happens if someone has not left a will.

For information on making a will, see factsheet 7, *Making a will*.

This factsheet describes the situation in England and Wales. There are different rules for dealing with estates in Northern Ireland and Scotland. Please contact Age Scotland or Age NI for their version of this factsheet – see section titled Age UK for details.

For details of how to order other Age UK factsheets and guides mentioned in this factsheet, contact Age UK Advice. Contact details for organisations mentioned in this factsheet can be found in the Useful Organisations section.

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1 Recent developments

From April 2017, the Government has announced that someone leaving their main home, or sale proceeds of that home, to direct descendants (children, grandchildren etc) is entitled to an additional exemption from Inheritance Tax of up to £100,000. This amount will increase by £25,000 each year until reaching £175,000 in April 2020.

2 Find out if there is a will

The money, possessions and property of a deceased person are called their '*estate*'. If they left a will, this should specify how their estate is to be passed on. They may have left other instructions in letters called '*letters of wishes*'. Before doing anything else, you should look for their will and any accompanying letters of wishes.

If you cannot find a will in their home, check if you can find a certificate of deposit, sent if the will is being kept by the Principal Registry of the Family Division. Even without a certificate of deposit, it is worth checking with the Registry to see if they hold the will. If they died in a hospital or care home, check if the will was left with them. You can contact the person's solicitor, accountant or bank to see if they hold the will.

Their will may be registered with Certainty the National Will Register, the Law Society's endorsed provider of a national Will register and Will Search service. You can pay for a search of wills registered on their database.

2.1 If there is no will

If the deceased person did not leave a valid will, they have died '*intestate*'. There are laws, known as intestacy rules, that govern how their estate should be distributed. Unmarried or divorced partners normally do not inherit anything under intestacy rules. For more on the rules of intestacy, see section 9.

3 Dealing with the estate

3.1 If there is a will

The will should state who has responsibility for dealing with the deceased's estate. This person is called an '*executor*'. There may be more than one executor named. Their role is to locate all assets, pay off taxes and debts and distribute leftover money, possessions and property to the deceased's heirs in accordance with the instructions in the will. The executor may need to apply for a '*grant of probate*'.

If the will does not name an executor or they cannot act for any reason there is a strict order in which the Beneficiaries can apply to the Probate Registry to be '*administrators*'.

3.2 If there is no will

The person who deals with the estate is called an '*administrator*'. This is usually a close relative, such as spouse, child or parent. The administrator may need to apply for '*letters of administration*', instead of a grant of probate. This also applies if a will does not name an executor, or the executor themselves has died, or is unwilling or unable to act.

3.3 How to apply for grants of representation

You need to apply for a grant of probate or letter of administration through the Probate Service in England and Wales. These are known as '*grants of representation*'. It is possible to make an application personally. However, there are some circumstances when it is advisable to use a probate specialist. For more information about applying for a grant of representation, see section 7.

4 Things to think about if you do it yourself

Dealing with the administration of someone's estate can take many months, depending on the complexity of their affairs. If you think of doing it yourself, make sure you can cope with the demands on your time.

If you do go ahead without a probate specialist, buy a book dealing with the detail of handling the process rather than relying on free guides or factsheets such as this.

4.1 What happens if you take responsibility?

As an executor or administrator, you are legally responsible for:

- collecting the assets
- paying all liabilities including tax
- correctly distributing the estate.

Simple precautions you can take include advertising in a local newspaper for creditors, so you do not find yourself liable to someone turning up years afterwards making a claim on the estate. If you are not confident about doing it by yourself, consider using a specialist.

4.2 Family relationships

Unfortunately, family disputes about who should take what assets, whether to sell assets quickly or hold out for a higher price do happen. Using a professional can avoid this problem.

4.3 When do you not need to apply for probate or administration?

Probate is almost always needed when the deceased's estate includes property or land held in their own name or jointly as a '*tenant in common*' (when each owner has a distinct share that does not have to be passed to the other joint owner). If the deceased's estate is worth less than £5,000, probate or letters of confirmation are not usually needed. This is called a '*small estate*'.

To find out if assets can be obtained without a grant, you need to write to each institution, e.g. bank, building society, etc informing them of the death of the owner and enclosing a photocopy of the death certificate. Check what other evidence they require before they will release any assets. Take copies if you are asked to send any original documents.

At a later stage you may be asked to complete an indemnity form – this means you undertake to reimburse the institution if it is proved that someone had a stronger claim to the assets than you. Depending on the requirements of the individual institutions involved, you may find it is more straightforward to obtain a grant of representation. There is no Probate Court fee if the estate is worth less than £5,000.

4.4 Complicated estates

There are circumstances when it is advisable to use a probate specialist. For example:

- the estate is over the Inheritance Tax threshold (£325,000 in 2016-2017) and is not exempt
- there are doubts over the validity of the will
- there is no will, the deceased was married with children and left an estate worth over £250,000
- dependants have been left out of the will but may have a claim for support from the estate
- the estate has complicated arrangements such as assets held in trust
- the estate is insolvent or there are doubts about solvency of the estate
- the estate includes foreign property
- the deceased was domiciled outside the UK for tax purposes.

4.5 How much do probate services cost?

Some probate specialists charge hourly rates but others charge a flat fee which may be calculated according to the value of the estate. Most specialists charge VAT at 20 per cent on their fees. Some charge both an hourly rate and a flat fee. This does not necessarily mean they are more expensive. The important thing is to shop around and compare quotes.

You may wish to make enquiries with several specialists to find the type of service and cost that suits you best. There will be other expenses (such as the cost of applying for the grant of probate) which also need to be paid. All these costs and expenses are payable out of the estate.

4.6 Finding a probate specialist

Many solicitors' firms offer administration of estate services. However, you do not have to use a solicitor. There are other companies offering these services. Most banks offer services to deal with the administration of the estate, as do some Trust Corporations. You can find a solicitor in England and Wales on the Law Society of England and Wales website.

5 How to work out the value of an estate

If you are responsible for managing someone's affairs after they die, valuing their estate is one of the first things you must do. Start with everything they owned at the date of death. This includes property, possessions and money, less everything they owed, such as mortgages, loans and credit card bills.

5.1 Why you need to value the estate

You need to work out the estate's value for two reasons:

- to calculate the amount of Inheritance Tax, if any, that must be paid
- to arrange the distribution of the estate according to the will (or the intestacy rules if there is no will).

The value of the estate for tax reasons and the value for distribution reasons may not be the same.

5.2 How to value individual assets

You need to know the market value (the realistic selling price) of all the deceased's assets at the time of their death. A realistic price is likely to be the value the item may fetch if sold at auction or through a local paper.

For assets such as property or land, you should get a professional valuation. HM Revenue and Customs recommend having items over £500 professionally valued, as they can challenge valuations if they disagree with them.

5.3 Valuing jointly owned assets

Before working out the value of the deceased's share of a jointly owned asset, you have to find out how it was owned. Assets including cars, houses and pieces of land may have been owned with other people.

They may have owned them:

- as '**joint tenants**', in which case:
 - they have equal rights to the whole property
 - the property automatically goes to the other owner(s) if they die
 - they cannot pass on ownership of the property in their will
- as '**tenants in common**', in which case:
 - they can own different shares of the property
 - the property does not automatically go to the other owner(s) if they die
 - they can pass on their share of the property in their will or through intestacy.

5.4 Not sure if land or property was jointly owned?

If you are not sure whether property or land was jointly owned, you can find out from the Land Registry for a small fee. This shows the owners of registered property in England and Wales. If the property is not registered, you need to see the deeds.

The papers signed when the property was bought normally sets out whether it is owned as joint tenants or in separate percentage shares as tenants in common if there are two or more names on the title.

5.5 Joint bank accounts

Joint bank accounts are nearly always held as '*joint tenants*'. The value to include in the estate in order to calculate the tax payable on the estate is usually the amount in the account divided by the number of owners.

Joint accounts automatically pass to the survivor, regardless of:

- unequal ownership
- what the will says
- what the intestacy rules say.

For unmarried couples and other combinations of joint account holders, a greater degree of scrutiny is required.

5.6 Other joint assets

If the deceased person owned other assets jointly, you have to work out:

- how the asset was held
- what proportion should be included in the estate.

5.7 What debts form part of the deceased's estate?

Outstanding debts or bills owed by the deceased at the date of death, such as credit card bills or loans, must be taken into account when valuing their estate. You can deduct a reasonable funeral bill. For debts owed jointly, including joint mortgages, joint credit cards or joint loans, use the deceased's share of the amount outstanding.

5.8 What else forms part of the estate?

You have to calculate the value of an estate so HM Revenue & Customs can see whether Inheritance Tax is due. They need to know about certain gifts the deceased made in the seven years before their death. This includes information or circumstances that may affect the tax position of their estate, such as continuing benefits received from a trust.

5.9 What does not form part of the estate?

Life insurance payouts do not usually form part of the estate if they are '*written in trust*' and nominated to a specific recipient. Instead, they are paid direct to the person nominated. The same is often true for death-in-service benefits, which may be payable by the deceased's employer direct to the nominated recipient.

6 Inheritance tax

Inheritance Tax (IHT) of 40 per cent is payable on estates whose value exceeds a certain amount (or 'threshold'). For the tax year 2016/17 the IHT threshold is £325,000. Someone leaving their main home, or sale proceeds of that home, to direct descendants (children, grandchildren etc) is entitled to an additional exemption from IHT of up to £100,000 from April 2017. This amount will increase by £25,000 each year until reaching £175,000 in April 2020.

The amount inherited by a spouse or civil partner is usually exempt in any event. The situation is more complex if the survivor is not domiciled in the UK. Some estates may be classed as an '*excepted estate*' in which case, no IHT will be payable. The IHT Return may be in long or short form depending on the size and nature of the assets and the identity of the Beneficiaries. More information on excepted estates is on the Gov.uk website at www.gov.uk/hmrc-internal-manuals/inheritance-tax-manual/ihtm06011.

6.1 Transferring the nil-rate band

The nil-rate allowance is the part of the estate on which IHT is not charged as it is below the IHT threshold. If not all the nil-rate band allowance (£325,000) is used, the unused proportion can be transferred to the deceased's spouse or civil partner's estate after their death. Note that it is the percentage portion unused, not the unused amount.

When the spouse or civil partner dies, the unused proportion is added to their own nil-rate band allowance. The date of death of the first spouse must have occurred after 1975. Whichever tax applied at the time (IHT was introduced in 1986 and before this Capital Transfer Duty or Estate Tax applied) if there was any unused tax-free band, it can be transferred.

Example: Ahmed dies leaving £162,500 to his children and the rest of his estate to his wife Farah. He uses £162,500 (50 per cent) of his nil rate band allowance. Everything left to Farah is exempt from IHT. When Farah dies, the unused percentage nil rate band of Ahmed is added to her allowance. Farah has a £325,000 allowance plus 50 per cent (£162,500) of Ahmed's unused nil rate band. Her total allowance is £487,500. If her estate value is lower than this, no IHT is payable.

If someone outlives more than one spouse or civil partner, the unused allowances of more than one can be transferred, up to a maximum of an additional 100 per cent of the allowance applicable at time of death.

The transfer should be claimed within two years of the death of the surviving spouse or civil partner by their personal representatives using form IHT217 or IHT402. It is necessary to send documentation about the value of the estate of the spouse or civil partner who died first. This includes copies of the IHT return relating to their estate, their will, grant of representation, marriage certificate and valuations of assets. This information must be kept safe and available to the personal representatives on the death of the surviving spouse or civil partner.

6.2 Gifts exempt from IHT

Gifts of up to £3,000 in each tax year are exempt, plus up to £3,000 of the previous year's allowance if unused. Gifts to individuals of up to £250 each are exempt, as are wedding or civil partnership gifts of up to £5,000 by each parent or step-parent, £2,500 by each grandparent or great-grandparent, or £1,000 by other people.

Gifts to charities established in the United Kingdom, the main political parties, housing associations or for 'national purposes', e.g. a museum or university, are exempt.

The value of non-exempt gifts made during the last seven years may be taken into account in whole or in part depending on how recently the gift was made prior to the deceased's death. If the gift(s) add up to more than the nil rate allowance, there may be tax payable by the recipient of the gift and no nil rate allowance to set against the deceased's estate.

6.3 Inheritance tax reliefs

There are various circumstances which allow some assets to be passed on free of Inheritance Tax or with a reduced bill. These include business assets, agricultural property, woodlands, and heritage assets.

If active service caused or contributed to the death of a member of the armed forces, their estate does not have to pay Inheritance Tax.

The estate does not have to pay IHT if a person was helping in an emergency that caused or contributed to their death and was on-call or on-duty as a:

- member of the armed forces
- member of the emergency services
- humanitarian aid worker.

6.4 Arranging payment of IHT

In most cases, IHT must be paid before probate/administration is granted. Banks and building societies will release money for this but you may find that a bank or building society is unwilling to release money held in the deceased's account. In this case, it may be necessary to raise a loan for IHT and for probate court fees. The loan may be repaid from the estate after the grant has been issued and the assets released.

Tax on certain items such as houses, land, etc, may be paid by instalments over a period of 10 years but interest is charged. Further information on IHT can be obtained by calling the Probate and Inheritance Tax helpline on 0845 30 20 900. There is information on the Gov.uk website at www.gov.uk/inheritance-tax/overview.

6.5 Deeds of variation

A deed of variation may be used to change the terms of a will (within two years of the date of death). One reason for this might be to reduce IHT liability. All affected beneficiaries must agree to the changes. You should take legal advice to ensure that the deed has the effect you want.

7 How to apply for grant of representation

Whether you apply for a grant of probate or letters of administration, the procedure is the same. As noted, there are two options. You either instruct a probate specialist to deal with the matter on your behalf or you make a '*personal application*' and obtain the relevant forms from the Probate and Inheritance Tax Helpline or the local probate registry. There is an accompanying leaflet, *How to obtain probate* (PA2), explaining how to complete the forms.

Note

You can find the addresses of the Registries and local offices on the Gov.uk website at <https://courtribunalfinder.service.gov.uk/search/> or by phone the Probate and Inheritance Tax helpline on 0300 123 1072.

7.1 Application forms

For a personal application, the relevant forms are as follows:

PA1 - The probate application asks for details about the person who has died, surviving relatives, personal representatives and details of the will if there is one.

IHT205 - A '*return of estate information*' form asking for details of the estate and its value. If the value of the estate is less than the IHT threshold at the time of death, before deduction of debts and funeral expenses, you should usually complete IHT205.

IHT400 - If the estate value is over the IHT threshold, or if directed when completing the IHT205, you should complete form IHT400 (*Inheritance Tax Account*) and send this to HM Revenue and Customs.

Do not fill in an IHT205 and an IHT400 and do not send IHT400 with a probate application. If an IHT400 form is required, seek professional advice as the form is very complex, may require additional schedules, and needs to be completed accurately.

7.2 Information required about the estate

To complete these forms, you must obtain the following information:

- The value at the date of death of all assets owned by the deceased, including foreign assets.

This means the full market value of a house or flat or other property and the value of household goods, jewellery and belongings at the sum for which they could be sold. This includes assets held jointly with another person.

- Details of any money owed to the deceased or to their estate.
- Debts owed by the deceased person, including tax (income tax and capital gains tax) due to HM Revenue and Customs and pension over payments.
- Details of gifts made up to 7 years (sometimes 14 years) before the date of death and whether the deceased was the beneficiary of any trusts.

This information enables you to find out if IHT is payable and if so, to make arrangements to pay it. If IHT is payable, it must be paid before a grant will be issued.

You must make all reasonable enquiries to obtain this information. If the deceased's debts outweigh the value of the assets, seek legal advice. See section 5 for more information about valuing an estate.

7.3 Submitting the application

With personal applications, when all the forms are complete you should send them with the death certificate and original will (or any documents in which the deceased expresses wishes about the distribution of their estate) to your local Probate Registry.

It is advisable to send the documents by recorded delivery after making a copy of the will and other documents, and keep copies in a safe place. You must enclose a cheque for the application fee. The fee is £215, although there is no fee if the estate is valued at less than £5,000.

You can pay for extra official copies of the grant of representation, which may be used to send to institutions in place of the original grant (an ordinary copy is not acceptable for this purpose). The fee for each official copy is 50p a copy if you request it with the application.

Note

Depending on your income and personal circumstances, you might not have to pay the whole probate application fee if it causes you financial hardship. You can apply for remission or reduction of the fee using forms EX160 and EX160a, available from the Probate Registry or the Gov.uk website:

www.gov.uk/government/publications/apply-for-help-with-court-and-tribunal-fees.

7.4 The interview

For a personal application, an interview is no longer required. As part of the application, you are asked to sign a form of oath and to swear or affirm that the information you have given is true to the best of your knowledge. It is possible to do this by appointment at the local Probate Registry. You are required to produce proof of your identity. An alternative is to swear or affirm the oath with a solicitor or commissioner for oaths.

8 Settling the estate

Once the application procedures have been completed and the Inheritance Tax and probate court fees paid, the grant of representation is issued in the form of the grant of probate or letters of administration.

A statement of the gross and net value of the estate is contained in the document and a copy of the will (if there is one) is attached. The original will is kept at the Probate Registry at the Principal Registry of the Family Division and anyone may obtain a copy of it.

You must then take the following steps:

- collect in the assets
- pay any funeral account, debts and outstanding expenses in strict order
- distribute the estate.

8.1 Collect in the assets

Except in the case of very small estates, it may be advisable at an early stage to open a separate bank or building society account, usually known as an '*executorship account*', into which money due to the estate can be paid. This prevents the estate's funds becoming confused with your personal funds and makes it easier to produce the necessary estate accounts.

After the grant of representation has been received, you must apply for the release of all assets belonging to the deceased, by sending a copy of the grant to each institution. As the money is received it should be placed in the '*executorship account*'. The assets include arrears of pensions, the balances from the deceased's bank and building society accounts, proceeds from the sale of shares and property, tax refunds, etc.

8.2 Paying any debts and outstanding expenses

When all assets have been received, any debts should be paid. If there is insufficient money in the estate to pay all the debts, seek legal advice before you pay any debts.

It may be advisable formally to advertise for creditors, in case a debt arises after the assets have been distributed. This is done by placing an advertisement in the London Gazette, PO Box 3584, Norwich, NR7 7WD, telephone: 0333 200 2434, website: www.thegazette.co.uk/ and in a newspaper covering the area where the deceased last resided. The notice should include the name of the deceased, the date of death, and the name and address of the personal representative to whom all claims should be sent.

A period of just over two months is normally allowed from the date of the advertisement for the submission of claims. Doing this protects you from personal responsibility, as long as you are not aware of any claims before the estate is distributed.

You may need to complete an income tax return and you should contact HM Revenue & Customs about this.

You are entitled to claim from the estate for '*out of pocket*' expenses such as copies of the grant, travel, etc, but not for time taken or for the work involved in administering the estate. A professional executor, such as a solicitor, charges fees for their time spent on the work. Their fees are paid out of the estate.

It is important to note that settlement of debts and all administration expenses is the clear priority of the personal representatives – before any distribution of the estate is made to the beneficiaries.

8.3 Distributing the estate

Once all taxes and debts have been paid and the costs of the funeral and administration have been totally settled, the estate can be distributed either according to the terms of the will or the rules of intestacy (see section 9). You should obtain a signed receipt from each beneficiary when they receive their share or bequest (for example a painting or a piece of jewellery), as this forms part of the estate accounts and may save disagreement later.

You may need to transfer a house or flat into the name of a beneficiary. For more information, see the Gov.uk website at www.gov.uk/update-property-records-someone-dies.

Prior to distributing the estate, you should prepare the estate accounts. These must be approved and signed by you, as well as approved and signed by residuary beneficiaries where possible. Then the residue (remainder) of the estate may be distributed, in accordance with the will or the rules of intestacy.

8.4 Possible claims on the estate

The spouse, ex-spouse, partner, child (step-child in some instances) or someone who was financially dependent on the deceased, may be able to make a claim under the *Inheritance (Provision for Family and Dependants) Act 1975*, if they have been left without 'reasonable financial provision'. Usually such claims must be made within 6 months of the Grant of Representation but the Court may allow later claims to be made. If this happens, or you think there is a risk that it might then seek legal advice.

9 Intestacy

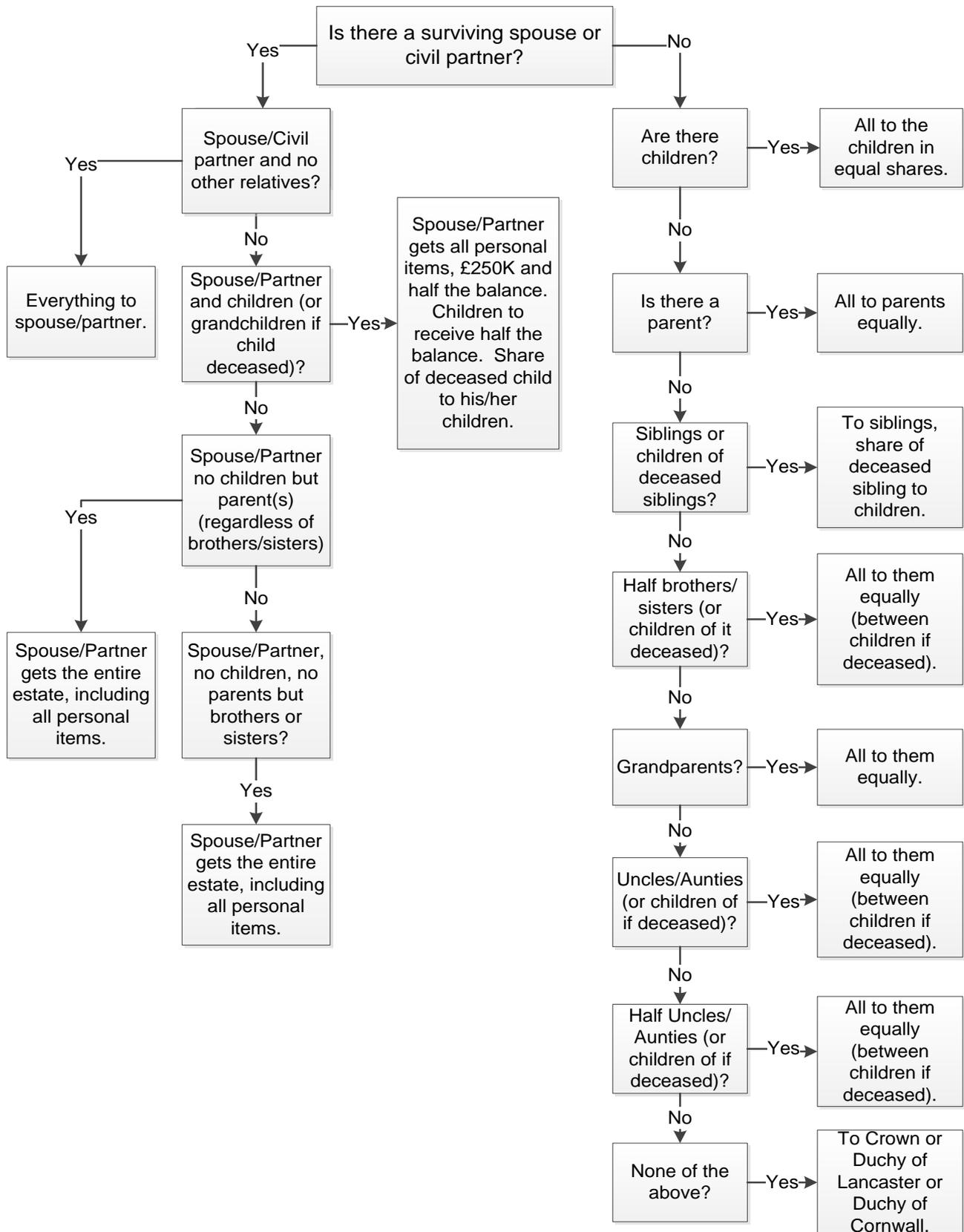
When someone dies without leaving a valid will, their estate must be shared out according to the 'rules of intestacy'. The person who dies is known as an 'intestate person'. Only married or civil partners and some other close relatives can inherit under these rules.

9.1 What are the rules of intestacy?

If someone's will is not legally valid, the rules of intestacy decide how the estate is shared out, not the wishes expressed in the will.

See the flowchart on the next page which shows how the rules of intestacy work, how it is decided who will inherit and how much.

Intestacy Rules from 1st October 2014



9.2 If there are no surviving relatives

If there are no surviving relatives who inherit under intestacy rules, the estate passes to the Crown. This is known as *bona vacantia*. The Treasury Solicitor is responsible for dealing with the estate. The Crown can make grants from the estate but does not have to agree to them. If you are not a surviving relative, but you believe you have a good reason to apply for a grant, you should seek legal advice.

9.3 Rearranging the way the estate is shared out

It is possible to rearrange the way property is shared out when someone dies intestate, provided this is done within two years of the death. This is called making a deed of family arrangement or variation. All the people who would inherit under the rules of intestacy must agree.

If all agree, the property can be shared out differently so people who do not inherit under the intestacy rules still get some of the estate. They can agree the amount people get is different to the amount they would receive under the rules of intestacy.

If you think that the way the estate is shared out should be rearranged, you will need legal advice. You may get legal aid.

9.4 Applying for financial help

You may be able to apply to court for reasonable financial help from the estate of an intestate person. For example, if you lived with the person who died but were not married, you do not inherit under the rules of intestacy. However, you can apply to court for financial help.

You must have lived with them for at least two years immediately before their death. Another example is if you were always treated by the person who died as a child of the family. You would not inherit under the rules of intestacy but you could apply to the court for financial help.

You must make an application within a time limit although this sometimes can be extended.

The court may order:

- regular payments from the estate
- a lump sum payment from the estate
- property to be transferred from the estate.

If you want to apply to the court for financial help, you need to seek legal advice.

9.5 Rejecting your inheritance

If you reject your inheritance, known as disclaiming it, there are special rules about who can inherit. You should seek advice about this.

Useful organisations

Citizens Advice

England or Wales go to www.citizensadvice.org.uk

Telephone 0344 411 1444 (England)

Telephone 0344 477 2020 (Wales)

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

Joint Casualty and Compassionate Centre (JCCC)

www.gov.uk/guidance/joint-casualty-and-compassionate-centre-jccc

Telephone 01452 519951

For registration and administration of Military casualties, including estate support.

Land Registry

www.gov.uk/government/organisations/land-registry

Registers the ownership of land and property in England and Wales and has a search function for owners of property or land.

Law Society

<http://solicitors.lawsociety.org.uk/>

Telephone 020 7320 5650

For details of solicitors in your area.

National Will Register (Certainty)

www.nationalwillregister.co.uk/default.aspx

Telephone 0330 100 3660

Register of wills.

Probate and Inheritance Tax Helpline

www.gov.uk/government/organisations/hm-revenue-customs/contact/probate-and-inheritance-tax-enquiries

Telephone 0300 123 1072

Helpline that can answer questions on applying for probate and payment of Inheritance Tax and to order the relevant forms.

Probate Registry

www.gov.uk/find-persons-will

Telephone 020 7421 8500 or 020 7421 8509

For wills lodged for safe-keeping.

Public Trustee

www.gov.uk/public-trustee-executor-will

Telephone 020 3681 2759

Government official who can be an executor if there is no-one suitable to appoint.

Solicitors for the Elderly

www.sfe.legal/

Telephone 0844 567 6173

To find a solicitor specialising in wills and probate.

Treasury Solicitor

www.gov.uk/government/organisations/bona-vacantia

Telephone 020 7210 4700

For information on *bona vacantia* estates.

Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

Age UK Advice

www.ageuk.org.uk

0800 169 65 65

Lines are open seven days a week from 8.00am to 7.00pm

In Wales contact

Age Cymru

www.agecymru.org.uk

0800 022 3444

In Northern Ireland, contact

Age NI

www.ageni.org

0808 808 7575

In Scotland, contact Age Scotland by calling

Silver Line Scotland

www.agescotland.org.uk

0800 470 8090

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