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Caesar & Howie
The Central Scotland Law Group

After a Death

www.caesar-howie.co.uk

For more information or to speak to one of our trained Advisers please telephone our team on 0800 005 1755.

The Caesar& Howie Group
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No matter how "expected" a death is - it still comes as a shock to loved ones close to the deceased. However, once the dreaded event happens things have to be done and done pretty quickly - usually by the closest next of kin - who in most cases will end up as the executor to the deceased. Below is our guide as to what happens after a death in Scotland. This is just a basic information guide to help you follow the procedure. Most people need help through the process and we can take you through every step – so don't worry, you will not be left to do this on your own.

Stage 1 - Immediately After the Death.

A medical certificate showing the cause of death (form 11) must be obtained by the next of kin. If the death is at home the local doctor should be called and he or she will provide the certificate. The doctor should be called immediately the death occurs, even if during the night. If the death is in hospital a hospital doctor will provide the certificate. Normally these certificates are granted immediately. In a small minority of cases there may be unusual circumstances, such as in sudden or accidental deaths - and the certifying doctor may report matters to the Procurator Fiscal, who may order a post mortem. In the case of a natural death in hospital the authorities may request the next of kin's consent to a post mortem examination to assist medical knowledge.

At this point if the next of kin is aware of the deceased's wish to donate organs or his or her remains for medical research the doctors should be advised immediately. If the next of kin is aware that the deceased wished to be cremated the certifying doctor will obtain another certificate authorising this from another doctor.

Stage 2 - Very Soon After the Death.

Usually it is wise to call an undertaker – as soon as possible. Generally bereaved families find the guidance and support of undertakers invaluable at a difficult time.

Undertakers will usually arrange to "lay out the body" and to remove it to an agreed place, usually in an undertakers parlour. Sometimes laying out is in the home – depending on custom.

Stage 3 - Is There a Will?

At this point the next of kin should try to establish if there is a will because the will appoints someone (the executor) to deal with matters from now on. Frequently the next of kin knows of the will and is the same person appointed to make the arrangements. If there is no will then various relatives could take the role of executor. The law sets out a strict order of preference although the executor will have to be a beneficiary of the estate. However no one can be compelled to take on the role of executor and an unwilling relative may decline to take the post even if he or she is first in the legal order of preference. Almost always someone on the preferred list is prepared to take on the role. If you are in doubt as to the legal position on taking things further at this stage – phone our consultants on 0800 152 2037 for advice.

Stage 4 - Registering the Death.

Any death occurring in Scotland must be registered with the Register of Births Marriages and Deaths within 8 days of the death. There is a wide range of people who may register the death but again it is usually done by close next of kin. The death can be registered at any registrar's office in Scotland. It does not have to be in the registry area where a death occurred or where the deceased lived.

If calling to register a death next of kin should take with them the medical certificate of death (form 11), the deceased's marriage and birth certificates, their NHS medical certificate, and any documents showing state pensions or benefits payable to the deceased.

The next of kin will be expected to give the registrar full details of the deceased's spouse or civil partner.

Once the death is registered the person registering it will receive a certificate (Form 14) which will be needed for the funeral to proceed. For a further fee additional "extracts" (copies really) of the extract of death certificate, which will help in dealing with the property of the deceased, can be purchased.

Stage 5 - Arranging the Funeral.

This can be a bit daunting and most people rely heavily on the help and guidance of funeral directors at this point. Here are just a few things which need to be decided:-

-) Is there to be a ceremony of some type?
-) Is there to be cremation or burial?

- J What dates and timescales are appropriate?
- J What notices are to be placed in the papers?
- J Is the service to be conducted by a minister or priest?
- J Would a humanist ceremony be preferred? Are there relatives to be informed?
- J What arrangements for flowers should there be?
- J Is there to be an address by a friend or relative?
- J Where will everything take place?
- J What are the costs likely to be?

But eventually all these decisions are made, and many Scottish funerals follow a similar pattern – so lots of help on the arrangements is available.

Stage 6 - Dealing With the Property of the Deceased.

How things proceed now depends on whether there is a will or not. (See stage 3 above) Up to now – all the work can safely be done by next of kin. From this point on we would not recommend anyone proceeding further without legal advice. Personal legal liability rests with anyone taking the remaining steps and making mistakes can be costly. We suggest you call 0800 152 2037 for one of our packs and let us help you through the rest of the process.

Stage 7 - Appointing an Executor.

An executor must now be appointed. The executor is the person eventually entitled to distribute the estate of the deceased. The process of becoming formally appointed is a court process – application is made to the local sheriff court in the sheriffdom where the deceased had his or her residence. The executor is either nominated in the deceased's will or usually is the nearest next of kin to the deceased.

Stage 8 – Investigating the Estate

The executor must investigate what assets were owned by the deceased. This maybe a house, bank accounts, shares, pensions or investments. The various banks or insurance companies etc. must be contacted to advise them of the death. Most executors prefer a solicitor to deal with this correspondence. A list of all the deceased's assets with their value at the date of death is prepared. A note of all the debts due must also be identified. If there are funds in a bank account then the bank will be happy to release a cheque to pay the funeral director at this stage. If there is

any concern that there will be insufficient funds in the estate to repay the debts then the executor should not proceed further without taking legal advice.

Stage 9 - Confirmation of the Executor.

Forms C1 and C5, which are court and tax forms, are prepared and submitted to the appropriate Sheriff Court. If the Sheriff Clerk is satisfied with the documentation then a document called the Grant of Confirmation is issued by the Court. This confirms that the person who applied to be executor is entitled to hold that office and to deal with the assets listed on the estate inventory. The Grant of Confirmation is important as it shows third parties that the executor named in it is entitled to deal lawfully with the deceased's property. And it is really important point to note here is that if there is any inheritance tax due to HM Revenue & Customs this must be paid before Confirmation will be granted. The executor is also responsible for ensuring that any outstanding income tax has been paid. If the executor fails to pay the correct tax he or she is personally liable to the revenue for any shortfall – so we strongly recommend legal advice be taken before this point is reached.

Stage 10 - Ingathering the Estate.

Armed with Confirmation the executor now “ingathers” the deceased's assets. This can be quite a long process, even in relatively modest sized estates. Most executors prefer to instruct a solicitor to deal with this procedure.

Stage 11 - Distributing the Estate.

This can be a complex area. Assets may be realised and monies distributed or property such as houses passed on to the beneficiaries. It all depends on the circumstances. If there is a will the executors must make over the property as stated in the will. But children have certain legal rights and they may claim part of the estate no matter what the will says. A surviving spouse also has legal rights which he or she can claim. Some surviving spouses and children do make such claims if it is more advantageous to them than accepting the terms of the will. But they must accept what they are left in the will or claim legal rights, they cannot do both. This is a difficult area and legal guidance is strongly recommended.

If there is no will the estate must be paid out in accordance with rules laid down by law. Again this is a complex area but the rules are designed to pay most of the estate over to any surviving spouse or children, with succession opening up to other

relatives if there is no surviving spouse or children. Again it is our strong view that distributing an estate without legal advice is a dangerous minefield – and we do not recommend a DIY approach here. But hopefully matters are concluded successfully with all parties receiving their entitlement.

Other Points to Note

Timescales – it is extremely difficult to place timescales on this type of work. For legal reasons it is not safe to distribute any estates in under 6 months. Most estates can be paid out within 6 or 12 months from death. However the legal executive cannot always control timescales in this work. Longer timescales are the norm for larger estates or can be caused by difficulties tracing people, tax issues, property sale issues, or disputes even. Where the estate is small – currently under £36,000, there is an accelerated procedure available at the local sheriff clerk's office – virtually a DIY procedure.

Insurance – we have full professional indemnity insurance to cover our work, so in the unlikely event of a mistake by us no loss should accrue to any party. Anyone doing this work without insurance cover is laying him or herself open to claims should things not be done properly.

A first meeting or telephone consultation is absolutely free. If after that meeting work is instructed, terms and conditions and fee levels will be fully explained to you at the outset.

We believe most clients can handle safely stages 1 to 5 above. After that we think it unwise to proceed without legal advice. All of our staff have received training in dealing with individuals who have suffered a bereavement and can take you through every step.