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## **8 THINGS EXECUTORS NEED TO KNOW - INFORMATION FOR CLIENTS Walsh West Private Client Legal 2021**

What do I need to know as an executor?

For thousands of executors-to-be the task of sorting out a loved one's estate is about to become a whole lot easier, thanks to the government's promise to sweep away reams of paperwork for most estates. Each year around 25,000 estates in the UK have to pay inheritance tax (IHT), but a further 250,000 currently have to jump through onerous and time-consuming hoops to establish that they don't.

Not everyone's off the hook, though, and for many the job of gathering every last detail of a friend's or relative's financial affairs, completing as many as 25 different forms and grappling with tax legislation, will remain unchanged.

Anyone can be an executor and very often they are the next of kin. The role includes completing the IHT forms (schedules), calculating and arranging the payment of any tax due, and applying for a grant of probate or, in Scotland, a certificate of confirmation.

These give executors the legal authority to manage the estate, and to sell and transfer assets. As an executor you also need to settle the individual's personal and sole trader business debts, and distribute the estate to the beneficiaries as set out in the will or according to the laws of intestacy.

Generally speaking, where an estate passes to a spouse or civil partner, there should be few complications.

### **1. First steps**

To clear the first hurdle – paying IHT – you should request IHT schedules from HM Revenue & Customs (HMRC) – you might not of course need the full set which comprises IHT 400, 402 to 422, 435 and 436, and PA1P, but if you later find you are missing a form you can also download forms from [www.gov.uk/inheritance-tax](http://www.gov.uk/inheritance-tax).

You cannot however file the returns online, they must be sent by post. HMRC will also send you its *Guide to completing your IHT Account*. It contains a helpful list of items and where to include them, among other things. You also need to apply for an IHT reference number online or by completing form IHT 422.



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You may be called up for duty on a very different estate to the one when the will was written so don't overlook any piece of the puzzle as you track down information. The forms will guide you regardless of your understanding of IHT, but knowledge helps.

To value the estate, you need details of and values for the person's savings and investments, properties (including any that were jointly owned), other assets, personal and household goods, life assurance policies, assets held in trust and business interests.

You also need a list of all gifts made out of the estate made by the person in the preceding seven years and gifts made since 1986, details of debts and liabilities with paperwork for key events such as birth and death (as well as for their spouse or civil partner, if applicable), marriages and divorces, and copies of any letting agreements for tenants.

If a spouse or civil partner died before them, you need the details of their wills and how much of their residence nil-rate band (RNRB) and nil-rate band (NRB) have been used up. Often no RNRB is used on the first death, but some NRB may be used and these details go in box 12 of form 402.

Also don't forget online accounts.

It can be difficult getting some providers to give you information.

Bank statements may contain clues to the existence of life policies or pension plans and individual savings account (Isa) contributions.

If assets are held in trust you need to complete form IHT 418 for each trust. But anyone unfamiliar with trust structures probably won't stand a chance due to the complicated nature and jargon.

## **2.Tackling tax**

IHT has to be paid within around six months of the death although you have a year to submit the forms. If tax is paid late, interest is charged. An income tax return for the year of death may need to be submitted and result in another tax bill.

If there are liquid funds in the estate these can sometimes be used to pay HMRC. Otherwise the beneficiaries have to pay. If the main asset, such as the person's home or business, is not being sold, IHT can be paid in 10 yearly instalments though interest will be charged. If the asset is sold later the balance must be paid in full.

Tax is paid at a rate of 40 per cent on the net value of a person's estate after exemptions, deductions, reliefs and allowances are applied. If more than 10 per cent of an estate is left to charity a lower rate of IHT – 36 per cent – applies. You can claim a tax refund if a property or shares are sold for less than their stated value on the IHT returns, but only within a limited timeframe.



You should not pay any beneficiary money until the tax bill has been settled. If you do and tax is outstanding, you are likely to be held personally liable by HMRC.

<b>HMRC IHT investigations</b>		
<b>Year</b>	<b>Number of IHT investigations opened</b>	<b>Additional tax collected</b>
2013/14	6088	£299,673,962
2014/15	5462	£310,856,321
2015/16	5907	£337,892,276
2016/17	5138	£204,305,616
2017/18	5354	£248,605,396
2018/19	5537	£270,645,113
2019/20	5347	£259,063,809

**Source: HMRC**

### **3. Gifts aren't always gifts**

Lifetime gifts are a popular way of reducing the value of an estate. Form 403 – a detailed 8-page schedule – requires you to declare all gifts made within the past seven years as these may still be part of the estate and may use up NRB, and all gifts made since 1986. Even gifts made outside the seven-year window can be caught by the reservation of benefit and pre-owned assets rules so may not be IHT-exempt.

An example of reservation of benefit would be when a parent gives their home to a child but continues to live there without paying market rent. If the parent sells their home and gives the proceeds to their child who uses them to buy a house in which the parent lives, this would potentially be caught by the pre-owned asset tax rules.

Loans from family members to the deceased generally won't be allowed as deductions from the estate if those relatives also received gifts from the individual.



Gifts have got to be true gifts otherwise they will remain within your estate. You can't have your cake and eat it. Ultimately individuals need to find the right blend when it comes to making gifts and deciding how much they need to live on.

It's important that people keep good records otherwise it will be a hugely time-consuming job for the executors to work out what gifts were made.

#### **4. Applying nil-rate bands and transferred nil-rate bands**

Forms 402, 435 and 436 deal with NRB and RNRB. RNRB can be applied if the person's main residence is left to direct lineal descendants or, in some cases, a spouse or civil partner of a direct descendant. A nephew, for example, is not a direct descendant.

RNRB can still be applied to the value of a person's original home if they downsized or sold their home after 8 July 2015, provided direct descendants inherit some of the estate. But if the deceased's home or share of their home is left in a discretionary trust, RNRB may not be available, although it is possible to have this read back into the will and treated as a disposition made by the deceased's will, says Etherington. For estates worth more than £2m, the RNRB is tapered away and can be reduced to zero.

RNRB can be transferred from a spouse or civil partner who died first. If no RNRB was used when they died, and their overall estate value was under £2m, their allowance is 100 per cent of that available at the time of the second death, currently £175,000. Otherwise the remaining unused percentage, based on the RNRB at the time they died, is applied to the current RNRB amount.

Unused NRB can also be transferred to the second spouse and, again, is applied on a percentage basis. For example, a husband might leave the bulk of his estate to his wife and £50,000 to his daughter. If the NRB when he dies is £150,000, the gift to his daughter will use up some of that but 66.6666 per cent remains, and that percentage of the current NRB – £325,000 – is available to add to his wife's NRB.

#### **5. Claiming relief for businesses and farms**

You can claim relief from IHT for some businesses and farms through Business Relief (BR) and Agricultural Relief (AR) using forms 413 and 414.

Sole trader businesses form part of their owners' estate, and if they were owned for at least two years prior to death and are a trading company they should qualify for BR.

Many business owners and entrepreneurs believe their assets are good for IHT purposes and they have nothing to worry about. But when you dig into the detail there may be parts of the business that do not qualify, particularly when the business is related to property investment and trading.



Buy-to-let activities are not covered by BR even if the individual was a full-time landlord and the properties are held in a corporate structure. They are always deemed investment activities, as are furnished holiday lettings.

If the business is a limited company, only the shares owned by the individual form part of the estate. Partnerships are more complex and it's possible that capital will be paid into the estate.

BR can be used to shelter holdings in qualifying unquoted companies, including many quoted on the Alternative Investment Market (Aim).

Farms that have been owned for either two years if occupied by the individual or seven years if occupied by someone else, and are used for agricultural purposes, should qualify for 100 per cent relief. If the farm is let it may qualify for 50 per cent relief.

You will be asked for full details of all the land and buildings and how they are used because parts of the farm may not qualify for relief.

## **6. Dealing with post-death income and life policy payouts**

It's common for income from investments and/or rental properties to continue to flow into the estate after the date of death. But this shouldn't be included in the value of the estate. Instead, the money should be held on behalf of the beneficiaries until probate is granted. In the meantime, if the estate is high-value or the post-death income is more than £10,000, you need to complete an estate tax return and pay the tax owed.

The executor should then inform the beneficiaries of the income using form R185 as it is distributed to them to enable them to complete their own tax returns, and either pay more tax or reclaim the tax paid.

Payouts from life policies that are written in trust aren't counted as part of the estate and can be paid without waiting for probate. But proceeds from policies not written in trust form part of the estate.

## **7. Pensions are easy**

Because pensions are typically written in trust they do not form part of an individual's estate, apart from any cash lump sums that have been drawn out, and they are not controlled by the will.

Providers should be informed and the pension trustees will decide how benefits and lump sums are distributed, which can be done without probate. Note that a pension transfer from a defined-benefit scheme into a self-invested personal pension (Sipp) within the two years preceding death will almost certainly lead to a challenge from HMRC that the pot is liable for IHT.



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## **8. Take care with the will**

When it comes to wills of any complexity, it can make sense to turn to external expertise. Trusts, for example, may need to be set up for children under the ages of 18 or 21, while interpreting the will isn't always easy.

An individual might leave their BMW to their daughter, but if the car has since been replaced with a different model the piano in the will no longer exists and the gift should fail.

Similarly, if the will leaves a specific legacy, and these items have been sold, then the son will go without.

Never pay beneficiaries before HMRC or before all debts have been settled. If you distribute the estate before you fully understand all the liabilities you can get into difficulty.

Certain categories of people can claim under the Provision for Family and Dependants Act 1975 within six months of the grant of probate, so executors should be wary of distributing before then.

You also have responsibilities to third-parties in the case of bankrupt beneficiaries. "A trustee in bankruptcy can make a claim against you if you distribute assets to a bankrupt beneficiary instead of them.

Professional executors are also good at spotting tax planning opportunities. For example, a deed of variation can be used to prevent the creation of new IHT liabilities on the beneficiaries' own estates by skipping a generation.

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For initial advice about Estate Planning including Lasting Powers of Attorney, Wills, Trusts and Probate; call our team on 0203 488 7503, 01992 236 110 or contact us by email at [welcome@walshwestcca.com](mailto:welcome@walshwestcca.com) or via our website [www.walshwestcca.com](http://www.walshwestcca.com).