



Real estate, mortgages and death

Where a deceased person owned a property at the date of their death, it is often the largest asset making up the 'estate' (everything owned by the deceased at the time of their death). It is, therefore, very important to understand how the property is owned, how much it is worth and to make sure that it is being properly protected and looked after. The main considerations are set out below.

How is the property owned?

The three most common ways a property can be owned are sole ownership, as joint tenants or as tenants in common.

Where a property is solely owned by a deceased person, the property will form part of their overall estate to be distributed according to the Will or, if they did not leave a Will, the intestacy rules (the rules setting out the order of priority for inheritance where someone dies without leaving a Will).

If a property is owned by the deceased as joint tenants (sometimes called 'beneficial joint tenants'), on death the property will automatically pass to the surviving joint tenant/s by operation of law under what is known as the 'doctrine of survivorship'. This happens outside of any Will and the surviving joint tenant/s will have absolute (and equal if more than one) rights to the whole property.

Where a property is owned by the deceased as a tenant in common, it is possible that the property is owned in different shares and the deceased's share will not automatically pass to the other tenant/s in common on death. A share of a property owned as tenants in common can be left via the Will of the deceased.

In order to update the title, an application in Form DJP (Deceased joint proprietor (DJP)) must be made to the Land Registry supported by the Death Certificate.

Where the property is to be sold, a Grant of Representation (the document giving the personal representatives legal authority to deal with the estate) is required. This can either be a Grant of Probate (where there is a Will) or Grant of Letters of Administration (where there is no Will).



Valuation

When a person dies, the assets and liabilities of their estate must be valued for Inheritance Tax ("IHT") reporting purposes. For property (land and buildings), an open market value of the property as at the date of death must be obtained and may be either a formal valuation carried out by a qualified valuer (for example a surveyor); or an informal valuation by at least two, preferably three, different estate agents.

The value of any outstanding mortgage on a property forming part of the deceased's estate on death must also be established and included in the IHT reporting to HMRC. Liability for a mortgage will depend on how it was set up, as liability may be sole, joint, several or joint and several.

If the deceased was solely liable for the mortgage, the general principle is that the personal representatives step into the deceased's shoes.

If the deceased was jointly liable with another co-owner, the deceased's joint liability ends on death and the whole liability passes to the surviving jointly liable party and not to the personal representatives.

If the deceased was jointly and severally liable with another co-owner, the deceased's joint liability ends on death but their several liability passes to the personal representatives. This makes the personal representatives and the surviving co-owner both theoretically liable for the full mortgage.

Capital Gains Tax ("CGT")

CGT is a tax on the gain made when you 'dispose of' (selling, giving away, swapping or receiving compensation for) an asset that has increased in value.

When someone dies, because all their assets are assessed for IHT (whether any IHT is actually payable or not – for example spouse relief may mean no IHT is actually due), under current tax any gains for CGT purposes on that person's property are cancelled and the estate acquires the property for CGT purposes at a new starting value - the IHT date of death valuation of it.

If the property is later sold in the estate administration and the value has increased since the IHT date of death valuation of it, the personal representatives will need to pay CGT (after deduction of any available reliefs) upon the gain.

Alternatively, beneficiaries can have the property transferred to them 'in specie' at its IHT date of death value rather than its value at date of transfer. Again the CGT will be calculated on any gains (after deduction of any available reliefs) since the IHT date of death valuation of the property. However, in this case, it is the receiving beneficiary, not the personal representatives, who reports and pays any CGT when they ultimately sell the property.

Insurance

The executors must ensure that the deceased's estate is properly protected during the estate administration, including property and home insurance. Relying on existing cover or failing to insure assets properly can have serious ramifications.

When an estate includes a house, which later becomes unoccupied, this changes the insurance position and it may not be possible to rely on any existing policy. While the deceased would have had adequate insurance on the property, for an unoccupied property, insurers will require that the policy is either updated or a new policy is purchased. Any amended or new policy should be in the name of the executors. For more information, please see our [blog on unoccupied property and home insurance](#).

Paying Inheritance Tax ("IHT") by instalments

It is possible to pay IHT on a property by 10 equal yearly instalments, on the basis that it may take a long time to sell the property. Interest will usually be payable. You can pay 10% and the interest each year if you decide to keep the house to live in. You must indicate on the IHT return submitted to HMRC if you intend to pay the IHT in instalments.

KINGSLEY NAPLEY

WHEN IT MATTERS MOST



Joseph Austin TEP
HEAD OF PROBATE

jaustin@kingsleynapley.co.uk
+44 (0)20 7369 3799

November 2022

This document has been drafted and provided by Kingsley Napley LLP.

This document should be used for information purposes only. This information is based on current legislation and should not be relied upon as an exhaustive explanation of the law or issues involved and is not a substitute for seeking legal advice.

+44 (0)20 7814 1200 | **www.kingsleynapley.co.uk** | **info@kingsleynapley.co.uk**

Kingsley Napley LLP, 20 Bonhill Street, London, EC2A 4DN

Kingsley Napley LLP is authorised and regulated by the Solicitors Regulation Authority, registration number 500046.

