

WHAT HAPPENS TO DEBT WHEN SOMEONE DIES?

The Protocol for Debts when someone passes away

What is the Estate?

- Debts are retrievable through the estate.
- Any assets or money left behind
- The debts do not move personnel unless another individual has signed a personal guarantee.

Two Types of Tenancy For a Bought House

- Joint Tenants and Tenants in Common

Joint Tenants:

- If one member dies, the property is automatically transferred to the other owner in full ownership.
- The creditors, before five years of the individual passing away, can submit an application for an 'insolvency administration order.'
- This would enforce, by court, the new owner to pay in full, the previous joint tenant's equity into the estate.
- However, you can convince the creditors to allow you to pay a reduced amount to resolve the outstanding money owed rather than risk selling the property.
- It is crucial for the new owner to communicate with the creditors to agree on future instalments or payment plans to resolve the debts in order to stop the 'insolvency administration procedure' coming into play.

Tenants in Common

- In this case the property is not automatically transferred through ownership.
- It is a formal process.
- If debts were applicable, the individual who passed away would release their share of the house to settle the debt.
- Once the debts have been settled, the individuals' share would pass onto the named individual in the will.
- In the case of no existing will, the next of kin would be entitled to the share.

Can an agreement be made to stop the property being sold?

You must first look into the will regarding the property. The joint owners, that in the event of one passing away, can make a decision that the other can pay off the debts in question and prevent the selling of the property. A mortgage may be needed to keep the house, especially if the owner is residing there or inheriting the deceased persons share in the property.

Is it an issue if my name is not on the mortgage?

If you are not legally married to the owner and you yourself are not a part owner in the property then you may experience difficulties living in the property long term. It would be advisable to look into the will and see if you are the next of kin in the event of the owner passing away.

Is it possible for an individual residing in the property, to occupy the tenancy?

A partner, husband, wife or another member of the tenants' family, can succeed the tenancy if they are residing within the home when the original tenant passed away. There is a time frame in which you would have had to be living with the tenant, but this is variable depending on the tenancy in place.

If I succeed the tenancy, am I accountable for the rent arrears?

No, only in the circumstance of you being a joint tenant would you be accountable. The estate should cover the arrears up until the point you succeed the tenancy. From that point on you are responsible for the rent payments.

Informing The Department for Work and Pensions:

You will need to as soon as possible, give back any order books and notify the department of the individual who has passed away. If there is a delay in this process it could lead to overpaid benefits, which would then at a later date lead to payments needing to be made back through the covering of the estate.

Notifying the Council:

This needs to be done in the case of housing benefit or council tax reduction benefits. Potentially there could be outstanding money to the individual, which can be rectified.

What if I cannot afford Funeral Costs?

In the case of funeral support you may be able to seek assistance from the social fund office. This is only possible to claim on if you are accountable for the funeral expenses and already are subject to benefit support through the means of any of the following:

- Income Support
- Income-related Employment Allowance
- Support Allowance
- Pension Credit
- Income-based Jobseeker's Allowance
- Universal Credit
- Housing Benefit
- Working Tax Credit (disability element)
- Child Tax Credit (higher than the basic family element)

Who is accountable for the Energy bills?

Even in the case of your name not being on the bill as responsible for payments, the Energy companies will contest this and say you have still been using the systems, therefore have benefited and are now responsible for the outstanding payments. If the property is jointly owned or jointly rented it is likely you will be accountable for the outstanding charges. In other circumstances, the estate may be able to cover the payments.

Who is accountable for the Water Rates?

The estate in most cases will cover the charges, the case where it does not, is if another individual is residing in the property. The individual will become accountable for outstanding payments regardless if they are named within the bill or not. From this point on, you will be accountable for the future payments.

Who is accountable for the Council Tax?

If the property is now empty, the responsibility alters. Therefore the council needs to be notified immediately and within six weeks of the individual passing away. Whoever now becomes accountable for the wellbeing of the estate, they may also become accountable for the council tax.

If a partner is residing in the property they become accountable for any outstanding payments. If you are not named on the billing details, the council will need to draw up a new set of documents carrying your details before any money can be retrievable. In addition, the partner will be responsible for the future payments. Reductions may be applicable now of 25% if you are the only individual remaining in the property.

Who is accountable in the case of a hire-purchase agreement?

The agreement is not simply cancelled upon when a death occurs. The installments can be responsible by the executor of the will. In some cases, if another member of the property wants to hold onto the items, they can communicate with the lender regarding the set-up of a new agreement.

If the agreement is regarding a vehicle and over a third of the installments had been completed, the creditor could not simply just take back the vehicle and would need a court order before doing so. The vehicle although in your possession does not legally belong to you until the final installment is completed. Be sure to check the agreement, as you do not want to give something back that actually belonged to the individual and thus should be included amongst the estate assets.

Insurance on the vehicle may also be a factor. Some insurance policies pay out upon a death and therefore the credit agreement may well be covered and the vehicle is now an asset and belongs within the estate.

Who is accountable for any debts by credit card, overdrafts and catalogues?

Payment can only be retrievable once the estate has been sorted out. In the case the property is drawn up within the estate and in order to settle the debts the property needs to be sold, you must consult the creditors and reach an agreement for future payments to prevent this. If there is a shortage of money left for the debts within the estate, tell the creditors and advise they simply cancel the debt.

Sorting out Bank Accounts:

- Joint names means the account can still be used.
- Solely named means the account cannot be handled before the estate is sorted.
- Keep on top of any direct debits or standing orders for property payments.

Sorting out Savings:

- Savings in a lost bank or building society can be found online at www.mylostaccount.org.uk

Sorting out Pensions:

- Verify if there was a personal pension
- Verify if there was an occupational pension.
- Check no sum has been paid out through insurance policies.

Sorting out Life Insurance:

- Verify if there was any life insurance.
- In some cases, mortgages are paid off through the policy.
- This can be an endowment policy that takes care of the mortgage.

Sorting out Income Tax:

- Communicate with HMRC regarding the death.
- Tax Rebate may be outstanding.
- Tax arrears will be taken care of by the estate.

Personal Representative: This is an individual who will take care of all the assets and affairs owned by the individual that passed away.

Probate: This is official consent to handle the assets and arrears in the case of the estate being extremely complex to organise.

For instances where no will has been drawn up, contact a solicitor to learn the conditions (Intestacy Rules) of how assets are inherited and who by.