

# Guide to Probate & the Administration of the Estate

“Probate” is the term applied to the general act of winding up the estate of somebody who has died. An estate is wound up by executors – those named in the deceased’s Will – or by administrators – those appointed by statute where there is no will or no appointment made by the Will. Collectively these are called Personal Representatives.

## If the person who has died leaves a will

In this case one or more 'executors' may be named in the will to deal with the person's affairs after their death. The executor applies for a 'grant of probate' from a section of the court known as the probate registry. The grant is a legal document which confirms that the executor has the authority to deal with the deceased person's assets (property, money and possessions). They can use it to show they have the right to access funds, sort out finances, and collect and share out the deceased person's assets as set out in the will.

## If the person who has died didn't leave a will

If there is no will, a close relative of the deceased can apply to the probate registry to deal with the estate. In this case they apply for a 'grant of letters of administration'. If the grant is given, they are known as 'administrators' of the estate. Like the grant of probate, the grant of letters of administration is a legal document which confirms the administrator's authority to deal with the deceased person's assets. In some cases, for example, where the person who benefits is a child, the law states that more than one person must act as the administrator.

## The role of the Executor

The role of an Executor is significant responsibility. It is their duty to ascertain all the deceased’s assets and liabilities, to preserve those assets pending encashment (or transfer to a beneficiary), to discharge the deceased’s liabilities, ensure that the deceased’s tax affairs are finalised and ultimately deal with the assets in accordance with the deceased’s Will. Failure to comply with executors’ obligations can render them personally liable.

### Key duties

#### 1. Registration of the death and arrangements for the funeral

You may need to register the death with the Registrar of Births, Deaths & Marriages where there are no family members who are willing or able to do this. A number of copies of the death certificate are required. Technically, as an Executor it is your duty to arrange for the funeral although in practice this is usually done by members of the family. If the deceased carried a donor card or left any instructions concerning the use of their body for medical research it is necessary to contact the appropriate authorities immediately.

#### 2. Safeguarding the assets

As soon as possible after death, steps should be taken to ensure that the deceased's property and effects are properly secured and insured for their full value.

### **3. Ascertaining assets and liabilities**

You will need to ascertain details of all the assets and liabilities of the estate. This entails going through the deceased's belongings to establish details of bank accounts, pension arrangements, tax affairs etc; bank statements should also be checked to ensure that all regular payments in can be correctly identified with the assets to which they relate and payments out with all liabilities. The deceased's computer may also reveal a spreadsheet of assets and liabilities in addition to Internet-operated accounts which might not otherwise come to your attention.

Contact should be made with all asset holders to register the death, ascertain the value of the asset at the date of death (including accrued interest) and to obtain a withdrawal form to enable the asset ultimately to be encashed. Similarly utility companies and creditors should be contacted in order that they are aware that there will be a delay in settling any accounts and to ascertain the precise value of all liabilities.

Where the deceased was a widow(er) it is also important to check for papers relating to their spouse's estate. This information will be needed to clarify the inheritance tax position and in order to claim any portion of the nil rate band (the amount above which Inheritance Tax becomes payable) which was not used up on the first death. For example, in a situation where a couple leaves all their estate to each other, then the second spouse can make a claim which will effectively double the nil rate band.

### **4. Dealing with personal chattels and joint accounts**

The Executor's authority stems from the Will. This enables you, if you so wish, to deal with the deceased's personal chattels – furniture and effects and motor vehicles – before Probate is obtained. However, where Inheritance Tax is payable professional valuations will be needed before disposal. Where the deceased held a joint account with their spouse the death should be registered and the account transferred into the sole name of the surviving spouse.

### **5. Obtaining Probate**

Where the total value of the estate exceeds £15,000, asset holders will usually require production of a Grant of Probate before releasing monies due to the estate. Probate is the document issued by the Court confirming your authority to deal with the deceased's affairs.

To obtain Probate it is necessary to prepare and submit the appropriate Inheritance Tax form specifying the deceased's assets and liabilities. Where no Inheritance Tax is payable then it is usually possible to give an approximate indication of the assets and liabilities. However, where Inheritance Tax is payable, it is necessary for precise details of the assets and liabilities to be shown. In such cases a professional valuation of the deceased's property and personal effects is required together also with an accurate valuation of any business assets and unquoted shares.

An Inheritance Tax Return must be submitted within 12 months of death although in practice this is usually done as quickly as possible; interest will be chargeable on any unpaid Inheritance Tax with effect from the six months after the end of the month in which death occurred.

It is the Executor's duty to pay Inheritance Tax before Probate is granted. In many cases it will be possible to obtain payment from the deceased's bank or building society account or National Savings products. Where there are insufficient assets of this nature, a loan will be required to procure payment of Inheritance Tax. In the case of real property i.e. land, and certain other assets, Inheritance Tax may be paid by instalments.

At the same time as submitting the Inheritance Tax return the Executors must swear an oath in the required form confirming amongst other things that they will administer the deceased's estate in a proper manner. Once an application for Grant of Probate has been submitted Probate will normally be issued within four weeks where no Inheritance Tax is payable and within six weeks where the tax is payable.

## **6. Realisation of Assets**

As soon as Probate is granted it is usual to either encash assets or, where appropriate, arrange for them to be transferred to a beneficiary. When assets are encashed you should firstly discharge any liabilities and then pay any legacies specified in the Will.

When all the assets have been encashed (or transferred), liabilities paid and the deceased's tax affairs finalised a full set of accounts should be produced for the beneficiaries showing the estate's assets and liabilities, income arising during the administration of the estate, expenses and how the estate is being distributed.

The Inheritance Act 1975 enables certain close relatives of the deceased together with cohabitantes to make a claim against the estate if they believe that the deceased failed to make reasonable financial provision for them. Such a claim must (unless the Court otherwise consents) be made within six months of the date on which Probate is issued. Accordingly, where it is considered that such a claim may be made Executors would be ill advised to distribute the estate until six months after Probate has been issued.

## **Taxation**

It is your duty to ensure the estate pays any Inheritance Tax which may arise as a result of the deceased's death. In order to calculate the Inheritance Tax payable, if any, it will be necessary to ascertain the value of:

- The deceased's assets and liabilities at date of death;
- The value of any gifts which they have made in the seven years prior to death to the extent that these exceed the appropriate annual allowances;
- The value of any gifts made since 17 March 1986 where the deceased reserved a benefit from the gifted property;
- The value of any trust funds in respect of which the deceased had a right to income;

- Where the deceased was a widow(er) the proportion of the unused nil rate band on the estate of their spouse.

Where the aggregate value exceeds the nil rate band (the amount above which Inheritance Tax becomes payable) tax will be payable at 40% on the excess. No Inheritance Tax is payable in respect of assets passing to a spouse domiciled in the United Kingdom or to a UK registered charity. Failure to make full disclosure or to incorrectly value assets and liabilities can result in you receiving a penalty for which you are personally liable.

It is also your duty to ensure that the deceased's other tax affairs are finalised. This involves:

- Liaising with the deceased's Tax Inspector to ensure that Income Tax and Capital Gains Tax liability up to the date of death are finalised;
- Ensuring that any Income Tax and Capital Gains Tax liability arising during the course of the administration of the estate is settled.

In some cases it may be possible to mitigate the Capital Gains Tax payable during the administration of the estate. Similarly, a Deed of Variation of the Will may be advisable in order to mitigate the Inheritance Tax payable either in respect of the deceased's estate or in respect of any future Inheritance Tax liability of a beneficiary.

### Checklist summary of Executors' duties

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| <b>1</b>  | Inform next of kin, close family and any potential heirs of the death and that you are an executor.  |
| <b>2</b>  | Appoint a solicitor.   |
| <b>3</b>  | Obtain copy of will and carry out instructions within.   |
| <b>4</b>  | If necessary, register the death and assist with funeral arrangements.   |
| <b>5</b>  | Ensure assets are listed and if necessary made secure, for example, locating house keys and locking property.  |
| <b>6</b>  | Gather together vital paperwork, address book of deceased, wills, death certificate and any certified copies, personal effects such as handbag or wallet.          |
| <b>7</b>  | Gather all financial paperwork such as cheque books, bank statements, paying in books, credit card details, building society books, mortgage details and any cash. |
| <b>8</b>  | Locate life insurance policies and paperwork such as membership forms, shares and stocks, bonds and pension information.   |
| <b>9</b>  | Find all household bills including those that are unpaid.  |
| <b>10</b> | Collect together all tax records. At this stage do not dispose of things such as business related paperwork, tax records, wage slips etc.                          |
| <b>11</b> | If the deceased person is a business owner you will need all paperwork relating to the business including VAT records and accounts.                                |
| <b>12</b> | Gather details of professional advisors such as accountants, solicitors etc.   |

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| <b>13</b> | Check if probate is needed. When someone dies, a person must deal with their estate by collecting in money owed, paying debts and dividing the estate. In probate, a legal document is issued to a person to allow them to do this. This document is known as a Grant of Representation. |
| <b>14</b> | Complete a tax return if needed.   |
| <b>15</b> | With advice, consider inheritance tax issues.  |
| <b>16</b> | Pay off any outstanding debts.   |
| <b>17</b> | If you need to locate potential heirs or creditors then advertise in local/national papers.  |
| <b>18</b> | Distribute the contents of the will.   |

In summary there are many responsibilities and obligations from being an executor and it is a role to be taken seriously. In addition, administering an estate is complex and time consuming and professional legal advice should be sought.