

## PROBATE AND THE ADMINISTRATION OF ESTATES

**Probate is the process of dealing with the affairs of someone who has died and administering their estate. It can be a long job, and it is especially difficult if you have to do it when also coming to terms with the loss of a loved one.**

**This Guide sets out the basic elements of the probate process and of obtaining a grant of probate.**

### 1. WHAT EXACTLY IS PROBATE?

Probate and the administration of an estate involves working out what is included in the 'estate' of someone who has died (their money, property and other assets), valuing the estate, paying any tax due on the estate and paying any debts owed. The assets can then be distributed to the beneficiaries according to the terms of the will.

### 2. THE GRANT OF PROBATE

The task of dealing with probate falls on the executors (or administrators) of the person who has died. The executors need to be able to show banks, pension companies and official bodies that they are legally entitled to deal with the estate. They do this by obtaining a 'grant of probate', which is a formal legal document. It allows the executors to administer the estate and ultimately distribute it to the beneficiaries.

A grant of probate is not always required. Where the estate is very small or uncomplicated, no grant will be required. This might happen if any property and bank accounts were owned jointly by the deceased and a co-owner – in which case they would become solely owned by the surviving co-owner. This is the typical position with spouses and civil partners.

### 3. WHO DEALS WITH PROBATE?

Many people act as the executor of a relative or friend without involving a lawyer. It requires someone who is good with administrative tasks, and more importantly has got the time required.

However, it is more common to instruct a lawyer to act, particularly where the executor is grieving and cannot face completing the probate process as well, or is worried that they won't have the time required, or simply does not want the responsibility.

#### 4. WHAT TO DO WHEN SOMEONE DIES

The death of a family member or close friend is a distressing time. The last thing you want when you are grieving and coming to terms with the situation is to be bothered with admin and paperwork. However there are a few practicalities that need to be dealt with.

- You need to **register the death** within 5 days. You'll need a medical certificate for this, so ask the GP or hospital doctor for it. Call the local Registry Office to make an appointment and take in the medical certificate. You will be issued with the death certificate, and it often helps to ask for official copies, in case they are needed in future.
- **Arrange the funeral.** Contact a funeral director and/or crematorium. When you register the death, you'll get a 'certificate for burial or cremation' which you should give to the funeral director or crematorium. This must happen before the funeral can take place.

If the deceased left a written record or told family or friends what arrangements they would prefer for their funeral, then arranging the funeral will be made simpler. If not, the funeral director will guide and support you in all aspects of arranging the funeral.

- **Notify government departments** about the death. The reason for this is that tax, pensions and benefits will be affected. You can use the 'Tell Us Once' service, which notifies all relevant government departments. You should also notify other organisations, such as banks, utility companies, landlord, etc. They will need to be notified individually. The Registry Office may be able to help with notifying government departments – they may offer this when you register the death.
- **Secure the deceased's assets.** If the deceased's home is left unoccupied, it is important to make sure that it is locked and that the deceased's valuables are secure. Post should be redirected to the address of one of the executors. If the deceased owned a car, the insurance company should be informed, as the insurance policy will automatically become invalid.

#### 5. PROBATE CHECKLIST

##### Find the will and check it's valid

If the deceased left a will, then it will say who the executors are, and they will need to administer the estate, i.e. deal with the deceased's will, money and property. If they did not leave a will, a close relative or friend may need to apply for a **grant of representation** (not a grant of probate).

Usually someone's will is stored with other important documents in a secure location. This could be in a box file or a safe. In many cases a copy also be kept with the solicitors who prepared it.

## Tasks for executors

Once the executors have been contacted, they should begin the administration of the estate. The executors have a number of important tasks:

- Prove that the will is the last will, or that no other will exists, by doing a will search
- Establish the total assets of the deceased - the executors should collect the personal documents belonging to the deceased and make a list of the deceased's assets and liabilities, and any debts they were owed. If the deceased was employed, write to the employer to ask for a final assessment of outstanding wages. Cancel utility services and pay any outstanding amounts. Ask asset holders for the value of each asset at the date of death.
- Paying any tax owed, such as Inheritance Tax (IHT) – the executors should fill out and submit form IHT400 if the value of the estate is subject to IHT, calculate the tax due and pay it (from the funds in the estate, if available). IHT will need to be paid before the grant of representation has been received, although payment can be made in instalments.
- Apply for a grant of probate - after you have received this, you can start to collect the money from the estate.
- Pay the deceased's debts.
- Distribute assets to beneficiaries, in accordance with the will – it is also common to prepare final 'estate accounts', and for the main beneficiaries to sign them.

This Guide is for reference purposes only, and does not provide advice for any particular set of circumstances.

For further information, and to discuss your situation with no obligation, please contact us:

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