

Probate Fact Sheet

When a person dies, someone has to deal with their affairs. This is called "administering the estate". "Grant of Probate" is the name of the formal document issued by the Probate Registry after someone has died leaving a Will to show that it is valid. However, Probate is also often a term or an expression used when referring to administering an estate.

If the person who has died leaves a Will

If the person who has died leaves a Will, the persons responsible for administering the estate are known as "Executors". If you are named as an Executor of the Will you may need to apply for Grant of Probate. A Grant of Probate is a formal document issued by a section of the Court known as the Probate Registry.

If there is no Will

If the person who has died has no Will, they are often referred to as dying "intestate". The person(s) responsible for administering the estate are known as "Administrators" and The Administration of Estates Act 1925 sets out who has the legal right to deal with the affairs of the estate and apply to the Probate Registry for Grant of Letters of Administration. Letters of Administration is a formal document issued by the Probate Registry to allow the Administrators access to the assets and to administer the estate.

Personal Representatives

This is a general term for Executors and Administrators. They are responsible for making sure the estate is administered correctly within a 'reasonable period'. If there is a Will, the executors must make sure the wishes of the person who has died are followed in accordance with the Will. If there is no Will then they must follow the Rules of Intestacy set out in the Administration of Estates Act 1925.

Grant of Representation

This is a general term for Grant of Probate or Grant of Letters of Administration. Many organisations such as banks, building societies and insurance companies may ask to see a copy of the Grant before they will allow the Executors access to the assets but this is not always the case. There are occasions when a Grant is not required by banks, building societies etc., for instance where the estate is valued at less than £5,000 in total then or where there are assets held in joint names, and some financial organisations will agree to pay funds to personal representatives without the need for a Grant. However, different financial organisations have their own criteria and enquiries will have to be made with the relevant organisation.

A Grant is usually required if the person who died left an estate in excess of £5,000, has stocks or shares, owns a house or land or has certain insurance policies. Once we have established the assets of the estate, we will advise you whether a Grant of Representation is required.

Tax

Personal representatives are also responsible for establishing whether inheritance tax is due on the estate and if so, making sure it is paid. If you instruct Kilvington Solicitors to deal with the administration of the estate we will assess whether inheritance tax is payable on the estate as soon as we have established the value of the property and investments and confirmed whether the deceased made any gifts before they died or benefited from any assets held in trust.

There may also be a liability in capital gains tax if an asset is sold or transferred during the administration period. Again, we can advise on this.

Income tax is also due on all taxable income received by the deceased up to the date of death and on any income earned during the administration period. Therefore an income tax return may also be required.

Likely timescales in administering an estate

Dealing with the administration of the estate can take some time. Generally, we will endeavour to obtain a Grant within 2 months of receiving your full instructions on the extent of the estate and we will endeavour to administer the estate within 6 - 12 months of receiving the Grant. There are a number of other factors which may affect this timescale:

- Whether the financial affairs of the person who has died were in order
- What the person who died owned and where it is
- Whether there is any property to be sold/transferred
- How many organisations the deceased held investments with
- Whether any tax liability is payable on the estate
- Whether the person who died had an interest in a business or a farm
- Whether the Will is valid or the contents disputed
- What the Will or the Rules of Intestacy say
- Whether there are persons intending to make a claim on the estate
- If there are disagreements between personal representatives, beneficiaries or family members

What are the basic steps of the process?

- Notify the beneficiaries of their interest in the estate
- Ascertain the assets in the estate by writing to all third parties
- Place statutory notices, if required
- Prepare the formal documents (including the oath for executors/administrators) to apply for a Grant of Representation
- Deal with Inland Revenue forms and any inheritance tax liability
- Carry out any wishes of the deceased in accordance with the Will or Rules of Intestacy
- Collect money and assets (e.g. stocks, shares, life policies etc.)
- Pay any debts or expenses (e.g. funeral, overpaid state benefits)
- Finalise any Tax affairs including the income tax return
- Make interim payments to beneficiaries on account of their entitlement
- Deal with the sale or transfer of any property owned by the deceased
- Prepare final Estate Accounts for approval showing all transactions during the administration
- Set up and administer any necessary Trusts (e.g. if a beneficiary is under 18)
- Make final distributions to the beneficiaries

You can decide to what extent you want to involve us in the above steps or we can carry out all the procedures in administering the estate. However, in order for us to proceed we require from you an original death certificate and details of the estate (both assets and liabilities/debts).

Please feel free to bring in all the private papers, passbooks, statements, accounts, outstanding bills or any other paperwork which you may feel may assist us in establishing the extent of the estate.