



Probate and estate administration

If you are an Executor in the Will of a deceased family member or friend you will be responsible for dealing with the estate.

You may wish to handle matters personally and you can deal directly with the Probate Registry and tax authorities yourself. Alternatively you may need to ask legal professionals to deal with certain aspects or you may want them to undertake all of the work involved on your behalf.

If solicitors are appointed as Executors in the will, this represents the wishes of the deceased person and the solicitor is likely to be under a duty to act in the administration.

Will you be reimbursed for expenses and can you charge for the time spent?

You are entitled to recover out of pocket expenses, such as travel costs, and you should keep detailed records of expenditure and all relevant receipts. A person who is not dealing with an estate in a professional capacity is not entitled to charge for the time spent. However, if you decide to instruct a professional to deal with matters on your behalf, the professional's fees can be paid from the estate.

What happens if something goes wrong?

You should bear in mind that you may be personally liable if a problem arises (for example if you overlook payment of a creditor when distributing the estate or if you do not interpret the provisions of the Will correctly).

You should consider taking expert advice to help you carry out your duties correctly, or you may decide to pass the responsibility on altogether by instructing legal professionals to deal with matters on your behalf.

What does administering an estate involve?

Administering the estate of a deceased person is the responsibility of those named as Executor in the Will (or those entitled under the rules of intestacy which apply if there is no valid Will).

Administering an estate broadly speaking involves:

- Establishing what the assets and liabilities of the deceased were at the date of death and obtaining date of death valuations;
- Calculating and arranging payment of any Inheritance Tax due;
- Obtaining a Grant of Representation ("Grant"). This is the form of legal authority granted to the person entitled to administer the estate - by completing and filing the relevant court forms and attending an interview at the Probate Registry;
- Collecting in the assets and settling the liabilities of the deceased, which generally requires production of the Grant to the relevant holding companies. The Grant is also required for any sale of the deceased's house or other land;

- Ensuring the deceased's tax position to the date of death has been closed off and accounting for any income and capital gains tax due in relation to the period when the estate is being administered;
- Distributing the estate in accordance with the Will to those named as beneficiaries, or in the absence of a Will to those entitled under the rules of intestacy. It is advisable to keep detailed accounts of all dealings with the estate which can be produced to the beneficiaries and approved by them prior to distribution.

Who is entitled to the estate if there is no valid Will?

In the absence of a Will the intestacy rules determine how the estate of the deceased will be distributed. The person or persons entitled to benefit from the estate under the intestacy rules will generally be authorised to take out the Grant of Representation. In that case they are called "administrators" rather than executors and the Grant is more specifically referred to as a "Grant of Letters of Administration", rather than "probate".

The intestacy rules are complicated and provide for the estate to pass to blood relatives in a particular order of priority and with certain limits on the amount to which a surviving spouse or civil partner and others are entitled.

In the absence of a Will you should seek advice from a legal professional to find out how the intestacy rules will apply.

Is a Grant of Representation always needed?

Where the value of assets in the sole name of the deceased is very low, typically under £15,000, it may be possible to deal with these without a Grant of Representation under the relevant holding company's "small estate procedure".

Assets owned jointly by the deceased and another person will often pass automatically to the surviving co-owner rather than under the Will or intestacy rules (depending upon precisely how they are held).

When is Inheritance Tax paid?

Inheritance Tax must be paid to the Capital Taxes Office before the issue of the Grant of Representation and within 6 months from the date of death (although an instalment option is available for certain types of property, such as land).

Interest may run on late payment.

If you think Inheritance Tax is likely to be due then you should consider seeking professional assistance to ensure that this is dealt with correctly, in good time and with any relevant exemptions and reliefs claimed.

There may be opportunities to save present or future Inheritance Tax through a "Deed of Variation". This effectively rearranges a person's estate in a tax efficient manner after the event (with an appropriate Deed executed within two years of the death).

This handout does not constitute legal advice – it has been produced for information purposes only and should not be relied upon. Please consult one of our specialist solicitors for legal advice.

www.sinclairslaw.co.uk

Tel: 02920 706444