



Chadwick Lawrence

Yorkshire's Legal People

Probate Information Sheet

Probate Information Sheet

This information sheet is designed to help you understand the process involved in administering an estate and provide guidance on some of the terms we may use in dealing with your matter (see 'Glossary' at the end of this sheet). This sheet is a basic overview and is designed to assist you to understand the usual process involved but of course every case is different and usually other steps/considerations will arise in each matter that are not covered here.

When someone passes away, it is necessary for the Personal Representative(s) to administer their estate, usually as Executors or Administrators. If there is a Will, it may be necessary to apply for a Grant of Probate which confers authority on the Executors to deal with the estate. If there is no Will, the Administrator of the estate is determined by the statutory Rules of Intestacy. The Administrators will apply for a Grant of Letters of Administration. Throughout this information sheet, we will refer to 'Grant of Representation' as an umbrella term for the process for both Executors and Administrators.

1. First Considerations

The death must be formally registered with the local Register Office, who will then issue a Death Certificate together with a certificate for burial or cremation, which should be passed to the funeral director. To register the death, you will need the medical certificate signed by a doctor showing the cause of death. A service called 'Tell Us Once' should be used, which will usually be offered by the Registrar and which notifies government institutions including HMRC, the DVLA, the DWP and the Passport Office. The family should then investigate whether there is a valid Will and if not, the Rules of Intestacy should be consulted to see who is entitled to deal with the administration of the estate and who is to receive the estate.

The funeral should then be arranged and the Personal Representatives should consult the deceased's Will for expressions of funeral wishes. The deceased's financial institutions are obliged to release funds to settle the funeral invoice so this cost should not fall to the Personal Representatives personally to deal with.

If the deceased has owned or occupied a property which as a result of death is now empty, immediate and urgent steps should be taken to secure the property and the insurance company (where applicable) should be notified. It may be that new conditions are imposed on the cover or that the insurance company can no longer continue to insure the property. If this is the case, we can arrange cover from an unoccupied property insurer for you.

2. Valuing the estate for the Grant of Representation.

Full details of the deceased's assets and liabilities at their date of death are required. The Personal Representatives therefore need to go through the deceased's paperwork to locate and prepare a list of institutions for us to contact on your behalf to establish what these are.

Formal valuations of assets such as property, business assets, cars, jewellery or property contents may be required but we will assist where relevant with this.

Details of accounts held in both the deceased's sole name and joint accounts must be declared.

3. Preparing the papers in support of the application for the Grant of Representation

Once valuations of the assets and liabilities have been obtained, we will need to work out whether there is any inheritance tax to pay. Inheritance tax must be paid within 6 months from the end of the month in which the deceased died.

Usually when someone passes away, inheritance tax is payable on the value of their estate over £325,000 (the allowance for the first £325,000 is commonly referred to as the 'Nil Rate Band') at the rate of 40%. An individual may also have an additional allowance of up to £175,000, called the 'Residence Nil Rate Band', if their residence passes to direct descendants. The full residence relief is only available if the deceased's estate is below £2,000,000; above that there is a tapering of the relief until it becomes zero.

Any assets passing to a spouse, civil partner or charity are exempt from inheritance tax so, if the first spouse does not use up their whole Nil Rate Band, on the second spouse's death the first spouse's unused Nil Rate Band and potentially Residence Nil Rate Band can be transferred.



It may be that a Grant of Representation is not required to deal with the estate if the assets are insufficient to require the same or the assets are held jointly and automatically pass to the surviving owner.

Remember that there are many exemptions and reliefs that may apply when calculating an individual's Inheritance Tax liability and we will advise you on this when we have perused and understood the deceased's unique circumstances. Additionally, there are different forms to complete depending on the estate value. We will then attend to paying the inheritance tax (if any arises) to HMRC.

Along with the formal HMRC account declaring the deceased's assets at the date of death, a standard form Probate Application Form is signed and submitted to the Probate Registry. We will draft and submit this on your behalf. This is the formal application for the Grant of Probate.

4. Considerations upon submitting the application for the Grant of Administration

When the application has been submitted, it is usually necessary to submit notices under Section 27 of the Trustee Act 1925. These notices are advertisements placed in a journal called the London Gazette and a local newspaper to advertise to any unknown creditors or beneficiaries that an individual has passed away. Such advertisements protect the Personal Representatives from any liability from claims against the estate (although, creditors/beneficiaries can seek the sums from the beneficiary at any time). The notice period expires after a statutory minimum period of 2 months, after which the Personal Representatives will not be personally liable for any claims against the estate.

It is not a legal requirement to arrange such notices, but it is necessary to do so in some situations. Please note that Trustee Act notices do not protect beneficiaries and we will advise you on the pros and cons of submitting such notices when necessary.

5. What happens when we have received the Grant of Representation

When the Grant of Representation has been received, we will then attend to calling in assets such as closing bank accounts and selling shares/investments etc. Sale of the property can also be finalised and we will settle utility accounts on your behalf. When all assets have been gathered in, an income tax calculation can be completed, and any tax paid to HMRC. The Estate Accounts can then be prepared and any inheritance tax paid reclaimed if appropriate.

6. The Estate Accounts

The Personal Representatives of the estate are under a duty to prepare a full inventory of all assets, liabilities and transactions to the estate. We will prepare the Estate Accounts in detail to include the administration expenses, income received and final figures for distribution to the beneficiaries for the Personal Representatives to approve. We will then attend to the distribution of the estate to the named Beneficiaries (including charities and individual's named in the Will or entitled on Intestacy) on your behalf.

7. Other considerations

Inheritance (Provision for Family and Dependants) Act 1975

We recommend that the estate is not distributed for a period of 6 months from the date of issue of the Grant of Representation to safeguard against claims under the Inheritance (Provision for Family and Dependants) Act 1975. This legislation entitles a dependant of the deceased to apply to Court for financial provision in the event that they have not received adequate provision under the Will or by Intestacy.

Department for Work and Pensions investigations

If the deceased has been in receipt of means-tested benefits, it is usual for the Department for Work and Pensions to request details of the assets at the date of death to compare against the assets declared when the deceased applied for the benefits. Although this type of investigation seems serious and often causes worry for the Personal Representatives, such investigations are standard

practice. If it transpires that the deceased did not declare all of their assets, the DWP will require repayment of the sums and therefore, due to the nature of the investigation, it is important to wait until the investigation has concluded to distribute the estate.

Deeds of Variation

If a beneficiary wishes to vary their entitlement (maybe for tax planning or to give another person greater benefit under the estate) a formal Deed of Variation can be put in place to change what was set out in the Will. A Deed of Variation must be executed within 2 years from the date of death for the tax benefits to take effect and we can advise you on the benefits on executing a Deed of Variation if required. We will advise you on the possibility of a Deed of Variation if necessary.

Probate Glossary

Administration of Estate	The process of dealing with a person's estate which includes obtaining the details of the assets and liabilities, paying testamentary expenses, applying for the Grant of Representation, preparing Estate Accounts and distributing the estate.
Administrator	The Personal Representative who will administer an estate where there is no Will. That person is determined by the Intestacy Rules and is usually the deceased's next of kin, or the person who is entitled to receive the estate.
Beneficiary	The individual or institution entitled to receive the estate.
Chattels	The term used to define the deceased's personal property, including all furniture and household effects.
Creditor	The term used to define someone the deceased owes money to.
Estate	An individual's estate is everything that they own.
Executor	An Executor is the term used to describe the Personal Representative who has been appointed by Will to deal with the administration of the estate.
Grant of Administration with Will Annexed	The Grant of Representation where there is a Will but there is no valid appointment of Executor. This may be because the Executor has predeceased the person that has passed away, or the Executor renounces their right to administer the estate.
Grant of Letters of Administration	The Grant of Representation where there is no Will. The Administrators (decided under the Intestacy Rules) apply for a Grant

of Letters of Administration which confers the authority for them to administer the estate.

Grant of Probate	The Grant of Representation where there is a Will which validly appoints Executors.
Grant of Representation	A Grant of Representation is the official document issued by the Probate Registry which confers authority on the Personal Representatives to deal with the administration of the estate.
Intestacy Rules	A statutory checklist which determines who is entitled to administer the deceased's estate and receive the estate where there is no Will.
Legatee	A beneficiary who only receives a set sum of specific legacy under the Will (i.e. not entitled to a share of the residue).
Power Reserved Executor	An Executor can have 'Power Reserved' to them where they decide to not take an active participation in the administration of the estate, but postpone their right to apply for a Grant of Probate if they wish to step in in the future.
Proving Executor	The Executor(s) who 'prove' the Will (i.e. applies for the Grant of Probate and administers the estate).
Probate Registry	The application for the Grant of Representation is submitted to the Probate Registry, which is a Court.
Renunciation of Executorship	An Executor can give up their right to apply for a Grant of Probate and deal with the administration of the estate by renouncing their entitlement. This means that the Executor could not step back in and



deal with the administration if they would wish to at a later date (unlike an Executor with Power Reserved).

Residuary Beneficiary

The individuals or organisations entitled to the residue of the estate. That is the sum available after all funeral, testamentary expenses and legacies have been paid out.

Testator

The term used to describe a person who has made a Will.