

Probate Factsheet

This guide is an overview of the process of administering an estate. Although every person is unique and every estate is different, this factsheet sets out some of the common milestones in the process and the timescales in which you can expect the matter to progress. At the end of the factsheet is a glossary of common terms that you will hear throughout the process. You may find it helpful to refer to both documents as we go along.

The Personal Representatives are responsible for making sure that estate is administered correctly. If there is a Will, they are called Executors and will ensure that the instructions in the Will are carried out. If there is no Will, they are called Administrators and will follow the rules for inheritance set out by the law. I will use the term Personal Representatives in this factsheet.

The first three months

In the first three months after a person dies the Personal Representative will need to:-

- Register the death
- Arrange the funeral
- Instruct a legal adviser to assist, if you wish
- Gather details of all the person's assets and liabilities
- Write to the asset holders and creditors to obtain valuations of the estate – if we are advising you, we can do this for you
- Obtain three independent valuations of the person's property
- Value all the person's household goods and possessions
- Make a list of all gifts made by the person in the seven years prior to their death
- Arrange insurance for any property and contents
- Inform utility providers and the council that the person has died
- Notify government institutions such as the DWP and HMRC
- Review Income Tax position up to the date of death
- Assess whether you need a formal Grant of Representation to administer the estate
- Prepare the Inheritance Tax and Probate Application forms
- Start Estate Accounts

- Consider whether the estate qualifies as a Complex Estate which needs to be reported to the Trust Registration Service
- Obtain contact details for beneficiaries and inform them of their inheritance

Three to six months

The Personal Representatives, or their legal advisers, should now be ready to:-

- Finalise the Inheritance Tax and Probate Application forms
- Sign the Inheritance Tax and Probate Application forms stating that they have made their best efforts to disclose all relevant information. Failure to do this may be perjury and could result in a fine or a prison sentence where wrong information is reported fraudulently or negligently.
- Submit the Inheritance Tax account to HMRC
- Pay any Inheritance Tax due
- Submit the Probate Application form to the Probate Registry
- Pay the Probate Registry fee for the Grant of Representation and any copies of the Grant
- Answer any queries raised by the Probate Registry
- Receive the Grant of Representation

Six to twelve months

Now that the Personal Representatives have the Grant of Representation they will need to:-

- Complete forms to close bank accounts
- Complete forms to close or transfer investments or shares
- Place statutory notices advertising for creditors
- Notify the council that the Grant of Representation has been issued
- Start paying liabilities and administration expenses
- Put any property on the market for sale
- Arrange for the property to be cleared and personal possessions sold or transferred to a beneficiary
- Once a sale has been agreed, instruct conveyancing solicitors
- Consider any Capital Gains Tax mitigation measures if assets are selling for more than the valuation submitted with the application for a Grant of Representation
- On completion of the sale, take final meter readings and submit to the utility providers
- Notify the buildings and contents insurers and council of the sale

- Report any Capital Gains to HMRC
- Work out whether any refund of Inheritance Tax is due after the sale of assets
- Complete forms to claim any Inheritance Tax refund
- Submit bankruptcy searches before making any payments to beneficiaries
- Pay any legacies contained in the Will
- Consider whether an interim payment to the residuary beneficiaries is appropriate
- Update Estate Accounts

Twelve to eighteen months

We are now approaching the end of the administration process. To finalise the estate the Personal Representatives will need to:-

- Finalise Income and Capital Gains Tax for the period of administration. Work out whether a tax return is required or if the submission can be made informally.
- Pay final Income Tax
- Obtain Inheritance Tax clearance from HMRC
- Prepare forms confirming each residuary beneficiary's share of income received from the estate
- Prepare final Estate Accounts for approval by the Personal Representatives and residuary beneficiaries
- Submit bankruptcy searches before making any payments to beneficiaries
- Arrange a final distribution to the residuary beneficiaries

Other things to consider

- It is possible that someone may make a claim against the estate or say that the Will is invalid. The costs of such challenges are generally paid out of the estate. It is important that you take specialist advice as soon as you become aware of any potential challenge.
- A beneficiary can choose to vary or disclaim their inheritance. This must be completed in a formal way and within specific timescales. This can have an impact on the Inheritance Tax payable and you should take advice if you are unsure of the effect of a variation on the estate.
- A person may set up a Trust in their Will. There are different types of Trust which have different rules and different tax treatment. You should take advice to understand how the Trust affects the distribution of the estate.

GLOSSARY

Administrator

A person appointed to distribute the estate if someone dies without a valid Will or if there is a Will but Executors are not acting.

Asset

An item for example a property, bank account, or personal item owned by an individual which forms part of the estate.

Bankruptcy Search

A search to check that a beneficiary is not bankrupt before a distribution payment is made or legacy given.

Beneficiary

A person entitled to an inheritance from a person who has died.

Capital

Monies or assets that are used to generate income or held as an investment.

Capital Gains Tax

A tax on the profit made when the Personal Representatives sell an asset that has increased in value since the date of death. A Capital Gains Tax Return may need to be made and tax paid on the gain.

Creditor

A person or company to whom money is owed (e.g. tax/bills/services).

Codicil

A separate document amending the terms of an existing will.

Complex estate

If the tax affairs cannot be dealt with informally with HMRC, the estate is considered to be complex and further steps must be taken to settle the estate tax matters.

Distribution

Payments of the estate in accordance with the terms of the Will or the Intestacy Rules.

DWP

The Department for Work and Pensions should be notified of death so that they can confirm whether there has been any under or over payment of state benefits. They will collect or pay any sums due to the date of death.

Estate

All the assets and liabilities of a person at the time of death.

Estate accounts

Will show all credits and debits in the estate and how they have been distributed in accordance with the Will or Intestacy Rules.

Executor

A person(s) named in the Will and appointed to administer the estate.

Grant of probate

Is the legal document granted to the person(s) named in the Will to collect in the assets, pay the liabilities and distribute the estate in accordance with the Will.

Grant of representation

Generic term for Letters of Administration and Grant of Probate.

Income

Receipts of rents/interest/dividends generated on assets in an estate.

Income tax

A tax levied on income received by the estate

HMRC

HM Revenue & Customs should be notified of the death so that they can confirm whether there has been any under or overpayment of tax during the lifetime of the deceased. They will also wish to deal with tax payable during the course of the administration of the estate

IHT (Inheritance Tax)

Tax paid on the value of a deceased's estate above a set threshold. Allowances may be available to increase the amount of the tax free estate before tax is paid

Legacy

A gift under the terms of a will for example a fixed sum of money or a specific item.

Letters of Administration

Is the legal document granted to the Administrator to collect in the assets, pay the liabilities and distribute the estate.

Intestate/Intestacy

When a person dies without a valid will they are said to be intestate. The estate is then distributed according to statutory regulations called the Rules of Intestacy

Liability

A debt that needs to be repaid before the estate can be distributed.

Negligent

Occurs when a mistake is made in the administration process due to failing to take proper care over something, resulting in a potential loss to the estate or a beneficiary

Personal Representative

Generic term for Executors and Administrators.

Probate

Is the general term used for the process of dealing with a person's estate after they have died. It involves making a full inventory of their assets and any debts, possibly applying for a Grant of Representation, collecting in the assets and paying liabilities before making payment to beneficiaries. At the end of the administration process, there should be nothing remaining in the name of the deceased and the beneficiaries know that they have received their full inheritance which they can then use as they wish.

Probate Registry

The Court which issues the Grant of Representation to enable the administration of the estate.

Residuary Beneficiary

The person(s) who receive what remains of an estate after all other legacies, liabilities, tax and expenses have been paid.

Statutory Notices

The Personal Representatives are responsible for any claims against the estate. Placing statutory advertisements in the London Gazette and a local newspaper protects the Personal Representative(s) against unidentified creditors once the estate has been distributed.

Trust

A Trust is the formal transfer of assets (it might be property, shares or just cash) to a small group of people (called Trustees) or to a trust company with instructions that they hold the assets for the benefit of others (called the Trust Beneficiaries). A Trust can be set up during lifetime usually evidenced by a Trust Deed, or created in a Will.

Trust registration

Where a Trust is set up within the course of the estate administration, it will need to be registered with HMRC within a specified time period.

Offices at Brighton 01273 775533, Crawley 01293 561965 Eastbourne 01323 730543, East Grinstead 01342 310600, Lewes 01273 477071, Seaford 01323 891412 and Storrington 01903 743201.

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