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## DEALING WITH PROBATE



**Dealing with the administration of an individual's estate can be a complex and time-consuming experience, which carries with it a number of legal obligations. Here we outline some key elements of the process, as well as suggesting some tax-efficient measures for you to consider as part of your own estate planning strategy.**

Probate is the process of dealing with a deceased individual's estate, in order to ensure that their property, money and possessions are distributed in accordance with their wishes.

This factsheet considers the probate process as it applies in England and Wales. Please note that the process is known as 'confirmation' in Scotland and 'grant of probate' in Northern Ireland and is dealt with separately in those countries.

Dealing with probate involves a fair amount of form-filling and it will be necessary to gather a variety of information relating to the deceased person's assets, as well as dealing with inheritance tax (IHT), corresponding with beneficiaries and financial institutions, and keeping various records and accounts. We can help you with the probate process.

### THE WILL AND GRANT OF REPRESENTATION

A Will normally determines who will administer an estate. If you are named as an executor of the estate in a valid Will, you can apply to the Probate Registry for a 'grant of representation' by completing probate application form (PA1), or by having a qualified professional apply on your behalf. A grant of representation is an official document issued by the probate registry, proving your entitlement to deal with the individual's affairs.

In the absence of a valid Will, the rules of intestacy will apply. In this situation, the individual's next of kin (as defined by a set order of priority) will normally need to apply to the Probate Registry for letters of administration, allowing them to deal with the deceased person's assets.

A grant of representation need not always be obtained, for example in cases where the deceased's assets are worth less than £5,000, or all assets pass directly by survivorship to a joint owner. However, some financial institutions may still require a grant.

### VALUING THE ESTATE

The executor or administrator must establish the value of the estate. This will mean locating all relevant documents relating to the deceased. It is important to carefully ascertain all of the assets, investments and liabilities relating to the estate, which may include land and property, household goods and personal belongings, business assets, savings and investments and any debts owing on the estate. You must also identify any gifts made by the deceased during the last seven years, for IHT purposes. You should always obtain a professional valuation of any land and property or other items of significant value.

The valuation can then be used to complete the probate forms and to ascertain whether IHT is payable.

### DEALING WITH INHERITANCE TAX

IHT is normally payable at 40% on any part of an estate that is worth more than £325,000 at the time of death (the 'nil-rate band'). IHT may not be payable in some circumstances, for example in the case of business assets, most gifts given between spouses and civil partners, and assets given as gifts while the deceased was alive (as long as they lived for seven years after giving the gift, or certain anti-avoidance provisions don't apply). A range of reliefs, exceptions and exemptions apply, including, for example, the Residence Nil Rate Band (RNRB) which came into effect on 6 April 2017 – please contact us for further information on IHT.

The executor or administrator will normally be responsible for paying any IHT due on the estate, except in the case of trusts. Where there is IHT to pay, form IHT400 and perhaps some subsidiary schedules must be completed and sent to HM Revenue & Customs (HMRC). Where there is no IHT liability, form IHT205 must be completed and sent together with the probate application.

You may need to arrange funds or a loan for paying the IHT and probate fees. It may be possible to make early payments, or to pay IHT in instalments. It is important to note that penalties may apply for inaccurate information.

## COMPLETING YOUR APPLICATION

Once your probate and IHT forms have been completed, your application must be submitted together with an official copy of the death certificate, the original Will and any codicils (and three copies), and an application fee.

You will be sent details of how to arrange an appointment to swear the executor's or administrator's oath, confirming that the information you have provided is true to the best of your knowledge.

## COLLECTING THE ASSETS

When the grant of representation has been issued, you then have the legal authority to deal with the estate. You must send a copy of the grant to all organisations controlling the estate's assets, such as banks and building societies, in order for them to release the assets.

Once you have secured the assets, you must settle any debts on the estate, including any outstanding funeral expenses, taxes and creditors, such as loans, mortgages or household bills. You should request settlement receipts for all payments made.

Placing a statutory Deceased Estates notice, or legal notice, in The Gazette (the UK's official public record) and a local newspaper will help to ensure that you are not personally liable should an unidentified creditor later come forward. Creditors then have only two months and one day from the date of publication to contact executors to raise a claim.

## DISTRIBUTING THE ESTATE

It is important to make sure that all expenses, liabilities and specific legacies have been paid before going on to distribute the remainder of the estate.

It is also necessary to account for any income received and capital gains made during the period of administration and to prepare final accounts for the estate.

Once the assets have been collected and the debts and liabilities paid, you can pay the beneficiaries and distribute the legacies in line with the Will or the rules of intestacy. You should always obtain signed receipts for any payments made.



## ESTATE PLANNING STRATEGIES

Effective estate planning, and the presence of a valid and up-to-date Will, should form an essential part of your own financial planning strategy. Your estate plan will help to ensure that your assets are distributed in accordance with your wishes and in as tax-efficient a manner as possible.

### Writing a Will

A Will is a powerful planning tool. As well as making the process of probate easier, your Will allows you to exercise control over your property and personal belongings, including specifying who will be responsible for distributing your estate, and what provision should be made for your family and loved ones.

You should consider such key questions as:

- **Who should benefit?** Consider who you want to benefit from your wealth, and whether your children should share equally in your estate. Also consider any grandchildren and whether you wish to make any charitable gifts.
- **How and when?** You may wish to place some assets into trust and restrict access to income and capital. If you have a business, decide whether you will pass it to all of your children, or only those involved in the business, with the others being compensated accordingly.

Remember, it is also important to review your Will from time to time, to ensure that it reflects any changes in your personal circumstances.

### Inheritance tax planning

IHT is another key consideration in your estate planning strategy. You should ensure that you make the best use of the available lifetime IHT exemptions, which include:

- the £3,000 annual exemption
- normal and regular expenditure out of 'excess' income
- gifts in consideration of marriage (up to specified limits)
- gifts you make of up to £250 per person per annum
- gifts to charity
- gifts between spouses – transfers of assets between spouses and civil partners are generally exempt from IHT, although other lifetime gifts may be more tax-efficient.

In the case of spouses and civil partners, the deceased's assets usually pass to the survivor. The percentage of the nil-rate band not used on the first death is added to the nil-rate band for the second death.

Remember, an estate plan can quickly become out of date, as your circumstances change. We can help you to put together a tax-efficient Will and estate plan that reflect your wishes and will offer financial security to you and your loved ones, now and in the future.

**As your accountants, we also have an in-depth understanding of your finances and can help with your financial planning needs, from the tax-efficient use of trusts and lifetime gifting strategies, to reviewing your estate plan. Please contact us for further assistance.**

**Acting as a personal representative carries with it a number of legal obligations. We are experts in this area and can offer a range of professional services, from dealing with probate and executorships to the handling of trusts.**

*This information is intended for general guidance only, and professional advice should always be obtained.*

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