

Dealing with Probate

A Guide for Executors

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Introduction

Dealing with the estate of a loved one can be a daunting task. Executors are under certain legal duties and obligations and there are strict timescales that must be met. This guide sets out information to help you, as an executor, and highlights where further advice would be beneficial.

Although once an executor has accepted their role they cannot retire without a court order, an executor can choose to delegate some or most of their responsibilities to a professional if they wish. See section 'Using a Professional'.

Roles and Responsibilities

What is an executor?

An executor(s) is the person or people named in the Will who are responsible for dealing with the estate of the person who has died. If the Will contains ongoing trusts the executor may also be a trustee of those trusts.

Executors receive their powers from the Will and are authorised to act on behalf of the person immediately following their death.

Once an executor has accepted their role they cannot retire. They are also liable for any mistakes made with the administration of the estate. It is therefore vital that you consider your role and what it involves before undertaking any work in relation to the estate.

Summary of the executors' responsibilities

- Registering the death
- Organising the funeral
- Obtaining details of all assets owned
- Calculating all debts/liabilities
- Calculating whether there is a requirement to do income tax and/or capital gains tax (CGT) returns up to the date of death
- Calculating and submitting tax returns for period up to completion of the administration
- Calculating and submitting inheritance tax (IHT) returns
- Arranging payment of all taxes
- Obtaining Grant of Probate
- Obtaining confirmation from HMRC that all taxes are paid and their file is closed
- Collecting and distributing the assets
- Paying bills

Roles and Responsibilities

Grant of Probate

Generally, depending on the size and assets of the estate and the beneficiaries named in the Will, the executors will need to make an application for a Grant of Probate. The Grant of Probate is proof of the executors' entitlement to administer the estate and will be required to deal with any of the assets. Before the application for the Grant can be made the executors must swear an Oath setting out certain information about the person's Will and the extent of their estate. They must also deal with the IHT return and payment of IHT.

Assets and Liabilities

The executors must obtain details of all assets including, balances in bank and building society accounts as at the date of death and valuations of any stocks, shares, properties and personal effects owned by the person who has died. Cash balances must include any accrued interest to the date of death. Share valuations have to be carried out according to a strict set of rules and must include dividends declared before death but not yet paid.

Taxation

The executor is responsible for the preparation and submission of income tax and CGT returns covering both the period up to the death **and** the period when the executor is administering the estate, if required.

The executors must complete an IHT return regardless of whether tax will be payable. Any IHT due on the estate must be paid within six months after the end of the month in which death occurs otherwise interest is payable.

IHT relating to certain property has to be paid before a Grant of Probate can be obtained. Other assets where IHT is due, including land, houses and business property, may qualify for IHT to be paid by instalments. These are usually over ten years with interest payable on any unpaid instalments.

There are a number of IHT reliefs and exemptions that can reduce the tax payable including Business Property Relief, Agricultural Property Relief, Charitable exemption and Spouse/Civil Partnership exemption in addition to the transferable nil rate band. These can be complicated areas and care should be taken to ensure reliefs are maximised.

Roles and Responsibilities

Collection in and distribution of assets

The Grant of Probate allows the executors to collect in the assets in the estate and distribute them in line with the terms of the Will. The timescale to deal with the distribution of an estate depends on the size and nature of it and the beneficiaries named in the Will. However, typically it will take between 3 to 12 months.

Before the estate can be distributed the executors may have to deal with the sale of assets such as stocks, shares, property etc. Alternatively, the executors may choose to keep those assets and transfer them directly to the entitled beneficiaries. Where necessary, the executors will need to retain funds to cover future instalments of IHT and future bills etc. It is essential to ensure that all debts and liabilities are paid before distributing the estate and this may involve the executors ensuring that they are protected from liability by advertising for creditors in a manner set out by law. The executors also need to ensure that all income tax liabilities have been settled and that there is no prospect of a claim arising from overpayment of State benefits during the person's lifetime.

More complicated estates and ways to save tax

An estate will be more complex for the executors to deal with if it contains foreign property, business or agricultural assets. In addition, if the Will creates ongoing trusts the executors will either need to work with the trustees of those trusts or, if the executors are also the named trustees, the executors will need to ensure that they are acting both in the best interests of the estate and also in the best interests of the beneficiaries of the trust.

There may be opportunities to reduce the IHT payable on an estate perhaps through claiming reliefs or by varying the terms of the Will within two years of the death. If a property or shares are sold at a lower value than at the time of death it may be advantageous, provided certain conditions are met, to claim a relief that will substitute the lower sale value for the date of death value.

What's Involved

What we have provided so far is an overview of the executor's roles and responsibilities. However, to help you identify the actual work that will need to be done we have put together a list of the type of tasks and considerations that are normally required to complete the administration of someone's estate.

The list is not exhaustive as the work of an executor varies vastly depending on a number of factors, including the nature and size of the estate and the type and dynamics of the beneficiaries. It will, though, give you a good basis for evaluating what needs to be done.

First Actions

- Understand the rules and regulations and identify what needs to be done
- Determine what information is required and what is obsolete
- Discuss whether all named executors need to be involved
- Evaluate when it is necessary to pay for formal probate valuations and when it is not
- Clarify your insurer's requirements for empty properties and ensure suitable cover is in place
- Understand the likely risk associated with unknown creditors and beneficiaries and how to mitigate this
- Where issues/queries/risks arise resolve them quickly and efficiently
- Handle demands for payments e.g. from utility companies
- Handle pressure from third party beneficiaries e.g. large charities
- Confirm that there are sufficient funds to pay all legacies in the Will or whether abatement is required
- Determine whether the person was a beneficiary of any trust or settlement

What's Involved

Tax Considerations

- Understand the requirement for IHT, CGT and income tax
- Investigate details and relevance of any gifts including trusts and lifetime IHT planning
- Ensure the correct forms are completed for HMRC. This will depend upon the nature and size of the estate e.g. value, nature of assets, foreign assets, gifts etc
- Meet deadlines imposed by HMRC
- Calculate the correct tax position
- Identify tax reliefs and allowances to minimise tax payable
- If appropriate discuss/challenge valuations with HMRC/District Valuer to minimise the tax payable
- Issue the correct tax forms for the beneficiaries own personal tax affairs
- Prepare full audit trail of activity and documentation for use with future queries or proof e.g. for transferable nil rate band applications
- Make arrangements for payment of IHT, particularly where this is a phased payment
- Investigate whether it is possible to make tax savings through a post-death deed of variation
- Arrange funds to pay IHT bill. Note; this needs to be done before you can apply for the grant of probate

Grant of Probate

- Complete relevant IHT forms
- Apply to transfer the nil rate band (if appropriate)
- Swear the Oath and Will
- Apply for the Grant

What's Involved

The Administration

- Collating all relevant information in relation to assets, ownership, values and liabilities
- Arrange Statutory advertisements if applicable
- Collect in all assets and pay all liabilities
- Claim any costs and expenses due to you in your capacity as executor
- Completion of R185 (Estate Income)
- Compile estate accounts to include capital, income and all distributions
- Keep all beneficiaries (including third parties such as charities) informed
- Liaise with other agencies including HMRC, DWP, Pension providers, Insurance company/broker, Financial Adviser, Accountant, Stockbroker, Bank
- Produce accounts, to be signed off by all the executors, detailing values at date of death, profit and losses on sales, expenses incurred, together with income during the administration period and all distributions including tax and other liabilities

It's worth noting that the term probate is used widely for the process of administering somebody's estate. However, it specifically means 'the right to deal with the estate of someone who's died' i.e. the grant of probate. As you can see above this is just a small part of what is involved in the full administration of an estate.

Deciding whether to do it yourself

Although obtaining probate and administering somebody's estate is something that you can do yourself it is very time consuming and there are some legal technicalities to deal with. This often means it is helpful to use a professional in some capacity.

Below are some questions for you to consider. If you are unsure of the answers to any it is probably worth at least having an initial conversation with a professional.

? Do you know what assets and liabilities relate to the estate?

? Can you be sure that you have discovered ALL liabilities?

? Do you have details of all owned property that forms part of the estate (even if it does not pass under the Will or intestacy)?

? Can you establish if any income tax or capital gains tax was due from the deceased at the date of their death?

? Is there a trust in the Will and if so, do you have the time/ knowledge to administer it?

? Is anyone likely to contest the Will?

? Can you establish whether any tax reliefs are available and/or IHT can be saved?

? Can you identify whether there are any benefits in doing a deed of variation?

? Can you fully evaluate the time involved in gathering all information required and dealing with ongoing queries in relation to all assets, liabilities and stakeholders?

Deciding whether to do it yourself

Other things to consider when evaluating whether to involve a professional or not, include:

Executor Risk

As an executor you have a legal duty of care to all beneficiaries and can be held personally liable for any errors made. The types of things you are liable for include;

- Incorrect tax paid - you might have to pay penalties and interest
- Identification of all possible debtors, creditors and beneficiaries, including those who might not be easy to find
- Paying funds to the above people if you have already distributed the estate without identifying them
- The correct information being passed to the beneficiaries for their personal tax circumstances
- The appropriate insurance cover for, e.g. an empty property, is in place
- Obtaining appropriate tax reliefs

Time

Before embarking on the administration it is important to consider not only whether you have the time to do the work but also whether you can meet timescales that may be imposed on you.

- Are you able to respond in a timely manner to demands for payments?
- Are you able to meet the strict deadlines for paying tax? If not penalties and interest may be incurred

Deciding whether to do it yourself

Emotional Burden

For many it is not about having the time or knowledge to administer an estate but whether they find dealing with matters too emotional or stressful. This can be due to family dynamics or simply that it serves as a daily reminder that they have lost a loved one.

See what some of our clients say...

"Thank you for all your help with this complex situation, I really just wanted to ignore it!"

"We would like to take this opportunity to thank you for all your help and assistance in making things as easy and straight forward for us in what could have been quite painful and emotional process had we attempted to do this ourselves."

"Thank you for your excellent service. It would of been too much for me to cope with at this time, so to palm everything on to you has been a great relief."

Make sure you are honest with yourself when appraising your time and knowledge. It may end up costing more if you have to employ a professional at a later date.

Using a Professional

If you wish to use a professional the first thing to ensure is that the person you choose is a specialist. The most qualified people in this area of work are members of the 'Society of Trust and Estate Practitioners' (STEP). A member of STEP will have 'TEP' after their name.

The benefit of using a professional is not only the saving of your time and burden that it puts on you but that you now have access to their experience and knowledge. Things that you can therefore expect by using a professional are:

- Work completed quicker and more efficiently
- Beneficiaries to receive their inheritance sooner
- Possible tax savings through understanding of available tax reliefs and how to ensure that you benefit from them
- Potential cost saving e.g. only paying for formal valuations if necessary
- Reduction in errors that could be costly to correct
- HMRC asset valuation disputes to be dealt with effectively
- Management of payment demands, before money is available
- Access to other specialists in areas such as; contentious issues, conveyancing and probate valuations

It is possible that you may find by using a professional that you are ultimately able to save money as well as time.

Using a Professional

How much will it cost?

Different firms quote fees in different ways. Some quote as a percentage of the estate, others on an hourly basis or you may be provided with a fixed fee.

Our fees are solely based on the amount of work that's involved and we quote a capped fee i.e. guarantee that the fee will not be more than stated but it could be less. As a guide, things that add to the amount of work involved include; taxable estates, contentious issues, a variety of assets across different platforms and difficulty/delays in obtaining information.

The important thing is that you get a detailed explanation of what is included in the quote. If the person you are dealing with purports to be a specialist then they should be able to tell you. Things to look out for are:

- If you are getting more than one quote ensure you are comparing like with like, including whether the quotes are with or without VAT
- Some companies may just quote you for obtaining the grant of probate. Is this what you want? As highlighted already this is only a small portion of what is involved
- Check for any caveats e.g. only includes dealing with X amount of assets

What's Next?

If you wish to use a professional please contact us and we will be able to provide a quote for doing the work.

Alternatively, if you are unsure whether to do the work yourself, request a copy of our Probate Questionnaire. Use this as an aid for collecting the information you will require for administrating the estate. From this you will then be able to evaluate whether it will be helpful to use a professional.

Should you then decide that you may want some help send the form to us. Based on the information given we will provide you with a no obligation quote. By receiving a quote you will be able to make an informed decision on what is best for you, as the executor, and the beneficiaries.

Note: If you are thinking about using a professional it's advisable NOT to start any work at this stage, beyond completing our Probate Questionnaire, as this may lead to duplication of effort and possible extra costs.

Contact Details

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■ 01904 234 840

■ www.pavilionrow.com

■ probate@pavilionrow.com

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