

PROBATE

A Guide to Gaining Probate and Duties and Responsibilities of the Executors

When someone dies, there are many decisions and arrangements to be made and unfortunately these may have to be made at a time of personal distress. This is a brief guide to the responsibilities and duties undertaken by executors when applying for a Grant of Probate and the administration of the deceased's estate.

Responsibilities of Executors and Personal Representatives

- Register the death
- Arrange the funeral – Give immediate consideration to the terms of the Will to ascertain any special directions as to funeral wishes.
- Original Will should be obtained
- Safeguard the house and remove any valuables for safe keeping. Tell the neighbours and police and provide a contact number.
- Make arrangements for any pets
- Check the terms of any insurance policies and advise the companies of the death
- Inform Bank and Credit Card companies of the death. Enquire whether the bank holds any safe custody for the deceased
- Apply for a Grant of Probate or Letters of Administration

What is Probate?

Someone has to deal with the deceased person's estate (money, property and possessions). All debts have to be paid out of the estate and the remainder has to be distributed to those entitled to it. Permission to do this has to be obtained by a legal document called a Grant of Representation issued by the Probate Registry. There are three types of Grant of Representation.

1. Probate - This is issued to the executors named in the deceased's Will
2. Letters of Administration With Will - This is issued when there is a Will, but there are no executors named or the executors are unwilling or unable to apply for the grant.
3. Letters of Administration - This is issued when the deceased made no Will, or the Will is invalid.

A grant is not always required if the whole of the estate is held in joint names and passes automatically to the surviving joint owner. However a grant will always be required to sell or transfer property held in the deceased's sole name or a share of a property held as tenants in common.

Obtaining a Grant of Representation

To obtain a grant of probate or letters of administration, it is necessary to file the necessary forms at the appropriate Probate Registry office. A fee is chargeable and must be paid when applying for the grant. The forms can be obtained from the Probate Registry or downloaded from their website

- **Probate and Inheritance Tax Helpline (Mon-Fri 9.00 am – 5.00 pm) - Telephone: 0845 30 20 900**
- **Website - <http://www.hmcourts-service.gov.uk/>**

The forms required are:

- Form PA1 – The probate application form
- Form IHT 205 – The Inland Revenue return of assets and liabilities

The forms ask for details of the deceased and their estate at the time of death. You need details of the deceased's property and of any debts outstanding at the date of death. Bank and building society balances should be obtained and the value of any stocks or shares should also be ascertained. A full market value of any house owned should be shown and the value of all household goods, jewellery and belongings should be listed as the amount for which they could be sold, not their value for insurance purposes. The amount of Inheritance Tax payable (if any) can now be determined.

On completion send the forms to the appropriate Probate Registry with all necessary paperwork and accompanying documents. The documents required are:

- An official copy of the death certificate
- The original Will – It is advisable to make and keep a copy of the Will before sending the original with the application forms by recorded delivery
- Any other documents requested in form PA1 e.g. decree absolute

Once the papers have been submitted and approved, an appointment will be made for the executor(s) to attend the Registry and you will be asked to take proof of identification with you. All the executors will be asked to sign a form of oath and to swear and affirm before the interviewing officer that the information they have given is true to the best of their knowledge.

After the appointment the grant will be prepared by the Probate Registry and send to you by post. The death certificate will be returned but the original Will is retained as it becomes a public record.

When you receive the grant you can show it to any person or organization holding the deceased's money or property in order that the asset can be released, sold or transferred. You may need to provide an official copy of the grant so it may be wise to get extra copies at the time of application as it will cost more for copies after the grant has been obtained.

Distributing the Estate

Once probate has been obtained it is the legal duty of the executor(s) to pay all debts of the estate, call in assets and then distribute the estate according to the Will. It is important to stress that a failure to do this will give rise to a personal liability.

Once this has been done, the executor(s) should prepare accounts of the administration. Typical accounts will show the capital and income derived from the estate against a distribution account.