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PROBATE

When there's a death someone has to deal with the deceased's estate – their money, property, other assets and other personal items. The person or persons who do this will need authority through a legal document called a Grant of Representation from the Probate Registry. This is often referred to as 'getting probate'.

With a Grant of Representation, an authorised person can collect the money and assets, pay the liabilities e.g. tax, debts and funeral expenses and share out the estate to the people entitled to it. Before probate If there's a Will it may have directions for funeral arrangements and these should be carried out. It is usually family members who make these arrangements, but before doing so you will need a medical certificate from the GP or hospital to register the death. This must be done within five days. You may be able to use the Tell Us Once service, which will report the death to most government departments, including HMRC, DWP, the Passport Office, local council and the DVLA. To do this you will need:

- date of birth
- National Insurance number
- driving licence number
- passport number
- details of any benefits or entitlements they were getting e.g. state pension
- details of any local council services they were getting e.g. blue badge
- name and address of their next of kin
- name, address and contact details of the person or company dealing with their estate

Types of Grant of Representation

A Grant is legal proof that you are entitled to deal with the estate and distribute it. Production of the Grant will mean assets can be released to you.

There are some assets which will always require a Grant in order to be dealt with, such as property which is solely-owned or jointly-owned as tenants in common and company shares. However, in the following circumstances, a Grant may not be required:

- Pension trustees will usually pay out a death benefit on production of a death certificate.
- Where an asset is legally held in joint names, or as joint tenants, it will pass automatically to the surviving owner. Many couples hold their home this way for this reason.
- If the assets are nominated, which means the deceased has completed a nomination form indicating how the asset should pass after his/her death, a Grant will not be necessary. Some National Savings products and building society accounts operate in this way.
- Where the estate is mostly cash, held in banks or building societies and the amount is within the organisation's threshold for small estates, the death certificate will generally be sufficient for monies to be released. This is usually money held up to the value of between £5,000 and £10,000. Sometimes you may be asked to sign a statutory declaration or indemnity before the money is transferred.

There are three types of Grant:

Probate
Application for probate is made where the deceased had a Will and has named one or more persons to deal with the estate, known as executors, who will obtain the grant of probate. The authority to act where there is a Will, begins from the date of death, whether or not a formal application for a Grant is made. It allows for the executors to arrange the funeral, for example. Figures show that applications for a Grant, with a valid Will make up 80% of all applications.

Letters of administration with Will annexed
An application for letters of administration (with the Will attached) is made where the deceased had a Will but there is no executor to apply for a Grant. This could happen when no executor is named in the Will, there is an executor but he/she does not want to apply for the Grant or may not be able to because he/she is under age or has died.

Letters of administration
An application for letters of administration is made where the deceased did not have a Will, or did make a Will but it is invalid, which is known as dying intestate. You can see more about intestacy on the .GOV site here. Generally, 15% of all Grants are issued where no Will could be found.

Who is entitled to apply for a Grant?

This depends upon which of the three types of Grant is being applied for. There are rules setting out who is entitled to apply for a Grant and generally the applicant has to be over the age of 18 and fully able to complete the relevant duties to wind up the estate. If more than one person is entitled, either by virtue of the Will or the rules of intestacy, they can apply together but the maximum number of people who can apply is four.

The persons most commonly entitled to a Grant are:

- Executors named in the Will who are entitled to a Grant in priority to anyone else.
- Where there is a Will but no executor to act, the next person generally entitled to a Grant would be a person named in the Will who has been left the residuary estate i.e. the person who is to receive the estate or what is left of it after all the other legacies (gifts) have been paid out.

Where there is no Will and the deceased died intestate, only those who have a potential interest in the estate (next of kin) are entitled to apply for the Grant. There is an order of priority as follows:

- a surviving husband or wife
- children and the children of any child who died before the deceased. The term children does not include step-children
- father or mother
- brothers and sisters and the children of any brother or sister who died before the deceased
- uncles, aunts and the children of any uncle or aunt who died before the deceased

There are sometimes disputes about who may apply for a Grant. In this case, is possible to stop the application by lodging a caveat with the Probate Registry. This will stop any further action being possible for six months. However, this can be an extreme action, so care and further advice should be taken in these circumstances.

Who are the personal representatives of an estate?

The term personal representatives (PR) can be divided into two categories:

- Personal representatives appointed by the Will are called executors (or executrix if female).
- Personal representatives not appointed by the Will (i.e. where there is an intestacy) are called administrators.

Our advisors often received calls from individuals who are concerned about their own personal circumstances when dealing with an estate. In particular there may be worries that they may be personally responsible for the debts of the deceased if they are executors. This is not generally the case unless you have a joint debt with the person who has died.

As a PR you are responsible for making sure everything which needs to be done, is done to a reasonable standard. If you are negligent and mishandle the estate and any assets you could be liable for that loss.

A single PR can administer an estate, but where there is an infant beneficiary or a Trust is created by the Will, two will be needed.

What does a personal representative have to do?

- Know and understand the terms of the Will and/ or the rules of intestacy (see above).
- Preserve all property and assets, which includes collecting in the assets and paying any debts.
- Keep accounts to show fully how the money has been dealt with.
- Inform beneficiaries about any inheritance they are likely to receive.
- Undertake all responsibilities in a timely and effective manner.
- If there is more than one PR, act jointly in all things and not act unilaterally i.e. without the others.
- Not endeavour to profit from the role unless they are a professional trustee and a charging clause was included in the Will.
- Divide the property and assets of the estate as set out by the Will or the rules of intestacy.

There are some PRs who do not wish to carry out the role, perhaps because they are ill. If that is the case, see below.

How can I apply for a Grant?

You do not have to appoint a solicitor and can represent yourself. The most recent available statistics showed 61% of probate applications were made by solicitors, with the remainder being made personally.

The probate procedure is quite straightforward and can be done on line. You will find the relevant appliction and guidance notes here. It can take around 16 weeks for a grant to be issued.

There are normally two steps in making the application:

- Complete a probate application form
- Complete an Inheritance Tax form

If inheritance tax needs to be paid, this must be done before you can apply for a Grant of Representation.

You will need to submit the IHT400 form to HMRC and await return of a code from HMRC. This code will be needed to proceed with your application.

What if I don't want to apply for a Grant?

You do not have to if you do not want to. There are several options available:

- **Renouncing probate**
  If you do not want to be an executor you can renounce probate, which means you give up your entitlement and do not take any further part in the probate. A signed letter by the renouncing executor must be sent to the Probate Registry with the application for the Grant. Once this is done it cannot be undone easily – a further application would need to be made to the court.
- **Power reserved**
  You might want to reserve your right to apply for probate if it becomes necessary in the future, which is known as power reserved. This often happens where executors are in different parts of the country and it is more convenient for one to act than another. The Probate Registry will send a power reserved form for the executor to sign upon receipt of the application for a Grant.
- **Appointing someone else**
  You can appoint someone to be your attorney and obtain the Grant on your behalf. A signed letter by the executor who wants to appoint someone else must also be sent to the Probate Registry with the application for a Grant.

What about tax?

When someone dies, the tax paid on his or her estate is called Inheritance Tax (IHT). Generally, for

estates where the value is greater than £325,000 inheritance tax may be payable.

The majority of estates are not required to be filed with HM Revenue and Customs (HMRC) for IHT purposes as they fall within the definition of an excepted estate – to check whether an estate comes within the definition of an excepted estate or whether a full IHT account is required see the guidance here .

A full IHT account entails the completion of the more in-depth form known as IHT400 which you can find here.

If a full account is required the HMRC will provide a unique reference (typically within 20 days of the forms being submitted) to be used on the Probate application form and advise of 3 valuations/figures to be included

If a full account has not been required the following information will need to be included on the probate application form:

- **Gross estate value for IHT:** The total value of all assets when the person died.
- **Net estate value for IHT:** The gross value minus all debts and allowable expenses (e.g., mortgages, household bills, funeral expenses).
- **Net qualifying estate value for IHT:** The net estate value minus any exemptions for a spouse, civil partner, or charity.
- **Gross value for probate:** The gross estate value for IHT minus the value of assets that pass automatically to a surviving joint owner, gifts made in the last 7 years, assets held abroad, and assets held in a trust.
- **Net value for probate:** The gross value for probate minus any debts the deceased owed and the cost of the funeral.

HMRC will check to see whether any inheritance tax is payable. If there is you will have to pay at least some of it before the Grant can be issued. The remaining tax to be paid will be due six months after the end of the month in which the person died and interest accrues after that date if the tax is not paid. There is dedicated Inheritance Tax helpline, the details for which you can find here.

Where someone dies and there are more debts than assets it is known as an insolvent estate. When this happens, the contents of any Will or the rules of intestacy do not apply. Funeral and administration expenses are paid before debts and any other assets must be distributed according to the law of bankruptcy.

In such cases it is the duty of the PRs to look after the rights of the creditors and not those entitled under the Will or the rules of intestacy. In some cases the situation may require the PRs to apply for a formal insolvency order which will require the help of an insolvency practitioner.

How can I find out if a Grant has been made?

We sometimes talk to callers who are trying to find out if a Grant has been made. This may be because there has been a breakdown in relations and the PR is not keeping everyone informed, or it may be because a relative was unaware a family member had died.

In either case, it is possible to do a search of the probate records to find out if someone has been issued with a Grant. Equally, if you want to find out when a Grant is made and the person died in the last six months, you can do what is known as a Standing Search. This means you are notified when the Grant is issued. See here for more information.

Checklist of steps to be taken by PRs

- Examine the deceased's papers.
- Compile a list of assets and liabilities.
- Check any property insurance is current.
- Consider removal of any valuables for safekeeping.
- Consider the condition of the house and utilities if the property is likely to remain empty during the administration of the Estate.
- Write to the deceased's banks and building societies to inform them of the death. Ask for the balance of the accounts.
- Write to any life assurance companies where the deceased had policies and inform them of the death.

- Determine whether the deceased owned any shares and locate the share certificates. Shares must be valued at the date of the death.
- If the deceased had a pension, inform the pension fund or employer and provide a copy of the death certificate.
- Obtain a probate valuation of any property owned. Where property was owned abroad, seek advice.
- Did the deceased own any premium bonds or savings certificates? If so, notify National Savings and the Savings Certificate Office respectively.
- Personal assets in the Estate should be valued, such as paintings, furniture, vintage cars, etc.
- Find out whether the deceased made any lifetime gifts and if so, to whom and when.
- Was the deceased entitled to income from any existing trust? If so, the trust must be notified.
- Was there any jointly-owned property? Establish to whom it will pass.
- Notify all utility companies, as well as the Inland Revenue.
- Draw up a list of people who owed money to the deceased or to whom the deceased owed money.
- Write to beneficiaries of the Will informing them of their inheritance.
- Apply for probate by calling your nearest probate registry office. You will be sent the relevant forms.
- Once probate has been granted, place statutory notices in the London Gazette to check for creditors and beneficiaries of which you may be unaware. This is particularly important if the estate is insolvent and/or there is no Will. See here for more information.