



Probate

“Probate” is the term applied to the general act of winding up the estate of somebody who has died. An estate is wound up by executors – those named in the deceased’s Will – or by administrators – those appointed by statute where there is no will or no appointment made by the Will. Collectively these are called Personal Representatives (PR’s).



The winding up of an estate can generally be broken down into the following steps:

- Valuing the estate – obtaining valuations and balances for all assets and liabilities
- Applying for the Grant – completing an oath and inheritance tax return
- Collecting in the assets – selling or transferring property, closing bank accounts, selling other assets etc
- Administering the estate – paying debts, finalizing tax liability, paying legacies and distributing the residue
- This practice is known as the “Administration of the Estate”, which refers to all of the steps which need to be taken before the estate can be completely wound up.
- Grants of Representation

The PR’s of most estates will require a grant before they can start properly administering the estate. The grant – a document issued by the Probate Registry – is a certificate which proves the personal representative’s right to deal with the deceased’s property. Thus, once the grant is issued, bank and other financial accounts can be dealt with, property transferred or sold, etc.

There are different types of grants:

- A Grant of Probate – when there is a will
- A Grant of Administration – when there is no Will
- A Grant of Administration with Will Annexed – when the Will is partially invalid or does not deal with the whole estate
- When a grant of representation is needed

A grant of representation is not always needed, for example, if the person who died: has left less than £5000 in total; or owned everything jointly with someone else. However, some financial organisations may require a grant before giving you access even to a small amount of money.



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Usually, a grant of representation will be needed when the person who has died left:

- more than £5000;
- stocks or shares;
- a house or land;
- or certain insurance policies

Applying for a Grant

We will apply for the Grant of Representation on your behalf. The application process requires an oath sworn by the PRs, and accompanying documents to be delivered to the Probate Registry. The Oath is a document whereby the PRs give various details relating to the deceased and his estate, swear to the validity of any Will or codicil, and affirm that they will administer the estate properly and correctly.

No grant will be conferred until any Inheritance Tax due has been paid.

Inheritance Tax

Inheritance tax ("IHT") is calculated by completing Inland Revenue Accounts – which detail the extent of the deceased's estate for IHT purposes. Sometimes there will be no IHT payable. However, whether or not IHT is payable, the PRs will have to complete Inland Revenue account forms. For this to be accurately done the PRs will have to have a complete and accurate picture of the deceased's estate, as well details of gifts made during his / her life.

PRs are liable for the payment of inheritance tax, and can become personally liable if the Revenue Accounts are incorrect, leading to an underpayment. If the IHT due is not paid within six months after the end of the month in which the deceased dies, the Revenue will also charge interest on the outstanding amount (currently 4%).

Post Grant Administration

Having received the Grant, the PRs will have full authority to undertake the remainder of the administration of the estate, namely:

- collecting the deceased's assets
- paying any outstanding expenses and debts
- distributing the legacies in accordance with the will or law
- completing the administration and distributing the residuary estate

Due care and diligence is required in completing these tasks, in particular with regard to the payment of debts and taxes. Generally the residuary estate – that is, what remains of the estate after legacies have been paid – will bear the cost of the estate's outgoings. However, this is not always the case, and in some circumstances, outgoings will be shared by all beneficiaries.

Estate Accounts

Before the administration of an estate can be completed, the PRs must get a discharge from the residuary beneficiaries. This will only be valid if there has been full disclosure of the estate assets, the outgoings and expenses, and the balances available for distribution.

To this end, PRs have a duty to maintain estate accounts. These should give a clear and accurate statement of the estate property and income, and contain full details of all receipts and payments.



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