

A client's guide to probate

If you are named as an executor in someone's will then you may need to obtain what is known as a 'Grant of Probate' in order to deal with the deceased's person's affairs. This guide touches briefly on various aspects of the probate process and aims to answer some of the most common queries. If you need further information then please contact a member of our Probate Team using the contact details at the end of this guide.

1. What is meant by probate?

Probate is the process whereby a will is proved to be valid in the Court, meaning that the will of the deceased person is shown to be correct. The court will issue a Grant of Probate which names the executors appointed in the will as the people having authority to deal with the assets of the estate. Until a Grant of Probate is obtained you may not be able to access the deceased's bank accounts or sell any property belonging to them. You may also not be able to pay any legacies left in the will to the beneficiaries.

If the deceased leaves a will naming executors, those executors apply for a Grant of Probate. If the deceased did not leave a will, or if there is a will which does not name executors (or if the named executors do not wish to act as executors) 'Grant of Letters of Administration' is applied for instead of a 'Grant of Probate'... Usually a beneficiary, who is someone who benefits from the will, applies. The person to whom the grant is issued is known as the Administrator.

The term probate is often used to refer to obtaining a Grant of Probate and a Grant of Letters of Administration and in this guide the term "grant" will refer to both unless otherwise specified.

The term "personal representatives" (PRs) covers both executors and administrators, and the maximum who can be appointed in an estate is four.

If you are dealing with the estate of someone who died without leaving a will then you may find our [Client's Guide to Intestacy](#) helpful.

2. Will I need to obtain a grant?

Generally a grant is needed to give the PRs authority to deal with the assets of an estate. It may not be required in some circumstances, for example:

- where assets are jointly owned and on the death of one of the co-owners the asset passes automatically to the survivor(s)
- where the value of the estate does not exceed £15,000

3. How can I obtain a grant?

To obtain a grant it is necessary to complete the necessary forms for HMRC, which is something that we can help you with. These forms are an inheritance tax account which give details of the assets and liabilities of the deceased at the date of death. In addition, the PRs will have to swear an Oath for the Probate Registry. Again, we can assist you

with the preparation of this Oath and explain to you how to swear it.

If no inheritance tax is due on the estate a short form of account (IHT205), known as a Return of Estate Information is usually completed.

If inheritance tax is due on the estate or if certain other factors apply, a longer form, called an IHT400 has to be completed. It is necessary to give full details of all the assets and liabilities of the estate at the date of death, plus details of relevant life time gifts and various other matters to give a full picture of the financial position of the deceased at the date of death. This involves writing to various banks, building societies, investment managers, utility companies and many others to get the necessary information and is something that we can do on your behalf.

If the inheritance tax is payable on the estate some of the tax due (see section 7 below) has to be paid on the submission of the inheritance tax account to HMRC. A receipt for tax paid is issued and then the oath and will (if there is one) are sent to the Probate Registry.

4. Is there a time limit in which I must obtain a grant?

There is no deadline by which a grant must be obtained, but:

- interest is payable on outstanding inheritance tax from the first day of the seventh month after the date of death (see below), and
- if an account is not submitted to the Revenue within twelve months of the date of death the Revenue may impose penalties

5. How long does it take to obtain a grant?

How long it takes to obtain a grant depends on how quickly all the information for the inheritance tax account can be assembled. If we receive instructions soon after the death has occurred, generally we aim to obtain the grant within approximately three months of the death. If the estate is very complicated this can take longer.

6. How long does the administration of an estate take?

The administration of the estate is what occurs after the grant has been obtained. It involves collecting in all the assets of the estate and distributing them amongst the beneficiaries of the estate. Once the grant has been obtained the PRs have the authority to close accounts and sell assets. They are responsible for ensuring that all debts and inheritance tax are paid and that the estate is distributed correctly.

How long all this takes is dependent on a huge number of factors. There may be a property to sell or protracted dealings with HMRC over valuations or the deceased's own tax affairs to the date of death. There may be foreign assets necessitating lengthy procedures abroad. Any dispute about assets, the terms of the will or the distribution of the estate will almost certainly prolong the administration.

Although it is difficult to estimate, for a straightforward estate it would be reasonable to expect everything to be completed between six and twelve months from the date of death.

7. Inheritance tax and interest

Inheritance tax is charged at 40% on the estate above the nil rate, or tax free, band. At present the nil rate band is £325,000. The main exception to this rule is that gifts to spouses, civil partners and charities are exempt from inheritance tax. Everyone has a nil rate band available for use on their death. In the case of spouses or civil partners, if the nil rate band is not used in whole or in part on the first death, the unused portion can be transferred and added to the nil rate band available on the second death. This is known as the transferrable nil rate band. This is something that PRs must apply for on the second death and they will need to supply certain pieces of information. We can assist you with this application if we are helping you with the administration of the estate.

If inheritance tax is due on the estate the total inheritance tax bill is calculated when the inheritance tax account (the form IHT400) is completed. The proportion of the total tax bill which is applicable to land, property and business assets can be deferred and paid by instalments (the instalment option). The proportion applicable to the rest of the estate (for example on bank accounts or shareholdings) has to be paid on submission of the inheritance tax account.

The instalment option for payment of inheritance tax provides for tax to be paid over 10 years by instalments. The first instalment is payable on the last day of the sixth month after the date of death. The instalment option ceases if the asset to which the tax relates is sold. All outstanding tax on that asset then becomes payable.

The Revenue charges interest from the first day of the seventh month after the date of death on all outstanding inheritance tax, whether or not any assessments for the tax have been issued. Currently the rate of interest is 3%.

Inheritance tax can be complicated and it is advisable for you to seek expert advice. Problems can be caused by the tax (or at least part of it) being payable in order to obtain the grant of probate. In some cases PRs find it impossible to find the money to pay the tax in advance, as without the grant of probate then cannot sell the assets of the estate and so cannot raise the funds for the tax. If you find yourself in this position let us know and we will be able to advise you further.

8. Summary of important dates

The deadlines referred to in this guide are summarised below, together with some additional important dates which may be relevant in some cases:

- first instalment of instalment option tax payable on the last day of the sixth month after the date of death
- interest payable on outstanding inheritance tax from the first day of the seventh month after the date of death
- penalties may be imposed for accounts submitted more than twelve months after the date of death
- Inheritance Act (Provision for Family and Dependents) Act 1975 claims should be made within six months of the grant being issued. These are claims which in certain circumstances members of the deceased's family or his dependents can make if the will or intestacy does not provide adequate financial provision. If you want further information about such claims then please contact our Contentious Probate and Trusts Team on +44(0)20 8394 6549

- Deeds of Variation must be made within two years of the date of death to be effective for inheritance tax and capital gains tax purposes. The terms of a will or intestacy can be varied with the consent of those concerned so that for inheritance tax and capital gains tax purposes the terms of the variation are deemed to be terms of the original will or intestacy
- a claim to transfer an unused nil rate band must be made within 24 months of the end of the month in which the deceased died

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