

# Administering an Estate (Probate) Frequently Asked Questions

When a person dies their affairs need to be tidied up and any wishes or instructions the deceased left, followed. This includes dealing with all money, property and other possessions, referred to as “the Estate”. We would always advise seeking professional advice as there can be a number of pitfalls for the unwary.

## **Who registers the death?**

Usually a relative of the deceased registers the death by contacting the Registrar of Births, Deaths and Marriages in the area in which the death took place. This should be dealt with as soon as possible, as funeral arrangements cannot be finalised until the death has been registered. Where the Coroner is involved an interim death certificate will be issued prior to an inquest.

## **What is Probate?**

The grant of Probate of the Will, is a Court Order that acknowledges the executors’ authority to deal with the assets and property of the person who has died. Probate is only granted where the deceased left a Will.

## **What are Letters of Administration?**

Where there is no Will, the Court Order is known as a grant of Letters of Administration. The persons appointed by the grant of Letters of Administration are known as administrators. A grant of Letters of Administration is applied for in the same way as a grant of Probate.

## **Who are the Personal Representatives?**

This is a general term to describe both executors and administrators. It is the deceased’s personal representatives who deal with the estate.

## **Is it always necessary to obtain a grant of Probate/ Letters of Administration?**

Where the deceased has left very little (usually under £5000) or if they owned everything jointly with someone whose share automatically passes to them, it is unlikely that a grant of Probate will be required.

However where more significant assets are left, or in more complex situations, a grant is likely to be needed to administer the estate effectively. Some financial organisations will require a grant even if there is a small amount of money. Such situations include where the deceased:

- left significant funds in a bank account or building society (usually over £15,000)
- invested in an ISA or stocks and shares
- owned property in their sole name which needs to be sold
- had an interest in a Trust
- had funds under a death benefit which need to be released
- owned a business or farm land
- owned assets abroad

### **What happens to the Estate if there is no Will?**

If the deceased did not make a Will this is called an intestacy, and the Law decides how their estate will be shared out. These rules set out who deals with the estate and who benefits from it. There is a strict order of entitlement.

### **Who takes charge if there is no Will?**

An administrator is the person who deals with the estate if there is no Will. This can be anyone who has an “interest” in the estate for example a beneficiary or creditor.

### **Do all the Executors need to apply for Probate?**

If an executor wishes to stand down then they can renounce Probate and take no further part in the process. However, they can only renounce Probate if they have not taken any part in the administration of the estate up to that point. If they have, then they cannot then stand down.

As an alternative, power can be reserved to an executor. This means that the executor to whom power is reserved does not join in the application for the grant of Probate. It does not mean they have renounced their right to be an executor completely, but instead that they have reserved their right for the future, if they change their mind.

### **How do you apply for Probate or Letters of Administration?**

The application is made to the Probate Registry. The application is in the form of an oath that the personal representatives need to swear (sign) before a Solicitor, or officer of the Court. Once sworn, the oath is sent to the Probate Registry.

If there is a Will, the original Will is also sent. This is then retained by the Probate Registry. Once Probate has been granted the Will becomes a matter of public record.

Where there is no inheritance tax to pay Inheritance tax forms will also need to be prepared and forwarded to the Probate Registry as part of the application.

Where there is a liability, an inheritance tax reference number needs to be obtained and the relevant account and payment must be sent to the Inland Revenue (HMRC) prior to the application. The Probate Registry will then require confirmation of HMRC’s receipt of payment before proceeding.

The Probate Registry charges a fixed fee for the Grant and a further small charge for each additional sealed copy of the Grant. This must be paid when the papers are submitted.

### **How is inheritance tax calculated?**

If an Inland Revenue account is required then precise details of all the assets must be obtained including valuations at the date of death. In some cases it is possible to use estimates.

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In calculating inheritance tax all the deceased's assets are taken into consideration. These will include:

- All of the assets (less liabilities such as debts) which the deceased owned at the date of death. These will include bank accounts, property, interest in a business, life insurance policies, the contents of any houses and personal belongings
- Assets that the deceased owned abroad ( there are certain exceptions when this does not apply)
- The deceased's share of any jointly owned assets
- The value of some trust funds in which the deceased was entitled to receive the income
- The value of any assets which the deceased had given away within 7 years of the date of death

If these add up to more than the nil rate threshold applicable at the time then inheritance tax is payable at a rate of 40% (as at July 2016) of the amount over the threshold (or 36% if 10% or more of the estate is left to a recognised charity).

There are exemptions and reliefs that can reduce the inheritance tax bill.

### **Can an application for Probate or Letters of Administration be stopped?**

An objection can be made to a grant being issued. This is called a caveat and will stop the process going further. The reasons why an objection could be made will include situations where there is a dispute over who can apply for a grant or whether a Will exists. A caveat lasts 6 months.

### **Why use Linder Myers**

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