

## Probate and estate administration

This information sheet is intended to give a brief, general outline of the procedures involved in administering the estate of someone who has died. This area of law can be quite complex and no two persons' estates are ever the same, so comprehensive, tailored advice will be required in particular situations.

### What is probate?

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The court, through the probate registry, will issue a grant of representation which is a legal document that gives a deceased person's personal representatives the entitlement to deal with the estate. The personal representatives are known as executors if appointed under the will, or administrators if the appointment under the will fails for any reason or where there is no will.

### Why is a grant of representation necessary?

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Obtaining the grant of representation gives the deceased's personal representatives legal authority to deal with the estate, for example to withdraw money from bank accounts or sell any property.

In some very small estates, typically where the person who died had only bank or building society accounts worth less than £5,000 in their sole name, it may not be necessary to obtain a grant. In this circumstance, the bank or building society would usually want the deceased's representatives to complete indemnity forms confirming that they would be responsible if any disputes arose about who is entitled to the money.

It may also be unnecessary to obtain a grant if everything that the deceased person owned were able to be dealt with other than under the terms of their will, or the rules of intestacy if no will had been completed. This might be the case if all assets were owned jointly with someone else. Depending on the way that the joint assets were held, these might pass automatically to the surviving owner when the first person dies.

However, where someone dies leaving assets such as a house, land, shares or over £5,000 on bank or building society accounts held in their sole name then a grant will be required.

### How is a grant obtained?

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Initially any original will must be located and details established of all of the executors who survived the deceased person. If there were no surviving executors willing or able to act or there were no will the beneficiaries of the estate or other persons who would be entitled to a grant of representation would need to be ascertained.

Valuations of all of the deceased person's assets, and those jointly held, and details of all their debts and liabilities including the funeral account must be obtained to calculate and pay any inheritance tax due before the grant can be issued.

This part of administering the estate can take some time because it will be dependant on third parties such as banks providing the relevant information.

Once all the information is received an inheritance tax return must be prepared, and depending on the size and nature of the estate, sent to HM Revenue and Customs (HMRC) with the initial tax payment due. A sworn statement by the personal representatives about the deceased person, confirmation from HMRC that the initial inheritance tax has been paid or that none is due if appropriate and all other relevant documents are then delivered to the probate registry.

### What happens when the grant has been issued?

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At this point, the estate assets can be dealt with. The liquid assets can be collected in and, if there is a house, land or investments, these can be sold, or transferred to the beneficiaries. Once sufficient cash is received in the estate the debts can be settled and any legacies paid.

The personal representatives should also consider steps to protect themselves from liability from, for example, disappointed beneficiaries and creditors of the deceased. Statutory advertisements can be placed advising that the personal representatives will distribute the estate taking account of only those claims against it of which they were aware unless other claimants notify them within a set period. The personal representatives should also carry out bankruptcy searches on beneficiaries before making distributions in order to protect themselves from personal liability.

### Distributing the estate

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Once all matters have been resolved, final accounts of the estate setting out all the payments to and from it can be prepared and the distribution completed.

The estate beneficiaries may need further advice on their own tax position arising from their entitlements from the estate and any tax planning arrangements that might be beneficial for them.

Sometimes at least part of the estate might pass to a trust which will need to be administered on an ongoing basis on behalf of the trust beneficiaries.

For further information please get in touch with your usual Ladders contact or via:

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