

Information Leaflet

GAINING PROBATE

An Executors Duties and Responsibilities

It is beyond the scope of this information to give more than a brief summary of the responsibilities and duties that an executor undertakes when applying for a Grant of Probate and the administration of the deceased's estate.

the first steps....

The Executors (PR's), often family and beneficiaries, have particular duties and responsibilities towards the estate. Before the estate can be distributed a Grant of Probate will be issued to one or more of the PR's willing and able to act.

Following a person's death, a number of matters will require immediate attention by the PR's.

1. The original of the Will should be obtained.
2. Give immediate consideration to the terms of the Will to ascertain any special directions as to funeral wishes. This will require careful discussion with the family.
3. Assist the family with making arrangements for the funeral, if requested.
4. Ensure that appropriate steps are taken to secure the deceased's property; for example, important and valuable assets and documents should be removed to a place of safe-keeping if they would otherwise remain in an empty house.
5. Advise on and, if appropriate, make arrangements for temporary loan facilities from a bank where members of the deceased's immediate family may otherwise have no money available to them until after the estate has been administered.
6. Obtain a copy (or copies) of the deceased's death certificate from the Registrar General.

Preparing to obtain a grant of representation

The PR's should obtain details of the deceased's property and of any debts outstanding at the date of death by asking for building society passbooks, share certificates and details of bank accounts etc. Precise valuations will be obtained by writing to the various institutions holding the deceased's assets, producing the death certificate as evidence if so required.

Enquiries should be made of the deceased's bank manager as to whether the bank holds in safe custody any share certificates or other property owned by the deceased. Remember to ask for withdrawal and transfer forms for signature by the PR's when writing to the institutions for information. These can be signed immediately so they are ready for use once the grant is obtained. Also details of income so that a tax return or tax repayment claim can be made if appropriate.

From the Will the PR's must establish the identity of the beneficiaries, and the nature and extent of their entitlement (e.g. whether as a legatee or as residuary beneficiary). If specific legacies have been given, it is important to ascertain whether the property given by those specific gifts is part of the estate (if not the gift will have failed)

Missing and/or unknown creditors and beneficiaries

The position as PR carries with it responsibility to administer the deceased's estate correctly and failure by a PR to carry out his duties can give rise to personal liability. PR's may be

faced with the problem of persons entitled under the Will having disappeared or being unknown to them.

Failure to pay an unknown creditor or beneficiary is a breach of duty. A PR should protect himself against personal liability by complying with the statutory advertisement provisions. Notice of the death must be placed in the local papers and the London Gazette.

The inland revenue account

All assets must be valued in accordance with the IHT valuation principles. Often PR's may need to instruct other professional people to prepare these valuations. These values and the amount of any debts and liabilities due at death will be inserted into the appropriate Inland Revenue account. The amount of IHT payable before the application for the grant is made can now be determined and arrangement made for its payment.

The probate papers

Every application for a grant of representation must be supported by the appropriate form of oath.

The purpose of the oath is to:

1. give details of the deceased
2. set out the basis of the applicant's claim to take the grant
3. require the applicant to swear that he will administer the estate correctly
4. in the case of oaths for executors with the Will annexed, to identify and exhibit the Will and any codicils.

The swearing of the oath must be done before a commissioner of oaths or independent solicitor before the grant of representation will be issued. The grant enables the PR's to prove their authority to deal with the deceased's property under the Will.

Administration of the estate

Having obtained the grant of representation, the PR's have full power to undertake the administration of the estate.

The administration of the estate can be divided into five stages as follows:

1. consideration of the duties and powers available to the PR's in carrying out their task;
2. collecting the deceased's assets;
3. paying the deceased's funeral and testamentary expenses and debts;
4. distributing the legacies; and
5. completing the administration and distributing the residuary estate.

The administration period

All the above stages in the administration occur within the 'administration period'. Which commences at the moment immediately following the death and ends when the PR's are in a position to vest the residue of the estate in the beneficiaries, or the trustees if a trust arises under the Will.

Duties of the PR's (Executors)

The PR's of a deceased person are under a duty 'to collect and get in the real and personal estate of the deceased and administer it according to law'. This includes paying the deceased's debts with due diligence and taking reasonable care in preserving the deceased's estate.

Accounting requirement

Accounts showing the real and personal estate of the deceased, its administration and distribution to the beneficiaries must be produced at the end of the administration period. It is important that adequate records be maintained from the start.

Preliminary considerations

1. As soon as possible pay the funeral account and any outstanding debts and testamentary expenses.
2. Repay any loans agreed with a bank, these would probably be a 'first proceeds' undertaking and PR's must use money first realised by them to repay the bank.
3. Decide which assets to sell to raise the money for payment of various outgoings. PR's must take considerable care when deciding which assets they will sell.
4. Where possible the wishes of the residual beneficiaries should be respected when deciding on the sale of assets.