

PROBATE GUIDE

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The Law Society recommends that in order to avoid the possibility of an misunderstanding arising at a later date, we let you know how we will deal with the matter for which you have received this Guide, and that we confirm our Terms of Business. All such information is contained in our Terms and Conditions of Business and this Guide, save when other more specific terms may have been agreed in writing.

A CLIENT CARE

Client care commitment

We want the best relationship between us as we help you with this matter, and therefore aim to provide you with a thoroughly professional service.

You will be told the name of the person looking after your matter. Certain general information is contained in our Terms and Conditions of Business, including our normal office hours in paragraph 1 and our fees in paragraphs 4-7. You will be told how long we estimate this matter will take to complete, either when you receive this Guide or as soon as we have sufficient information to enable us to give you a realistic estimate.

We aim to:

- (1) Respond to urgent correspondence within two working days.
- (2) Respond to routine correspondence within five working days.
- (3) Confirm in writing:
 - your instructions;
 - our advice, and what action we will take;
 - any action we need you to take, and any information we need from you;

- details of major developments during the period of administration;
- when next you are likely to hear from us;
- progress in the matter, with details of any delays and the reasons for them;
- changes in our fees forecasts and personnel dealing with the matter.

How you can help us generally

You can play a very important part in helping us to deal with the matter efficiently, quickly and economically by:

- giving us clear instructions;
- telling us in good time if you have important time limits;
- making sure we have understood each other correctly, asking us if you are not sure about anything;
- dealing promptly with any important questions which may arise;
- keeping in regular contact, including asking for news of progress if you did not hear from us when you expected to.

How you can help us work efficiently and economically

We wish to provide you with the professional and responsive service you seek at the seniority you require and at the cost you expect. You can help us in a number of ways. If you need an issue to be dealt with urgently, please feel free to telephone us. It is generally preferable, however, for us to deal with matters by correspondence. This will enable the personnel dealing with the matter to work most efficiently, with the minimum of interruptions. One client's telephone call is generally another client's work interrupted.

You can also help keep our charges down by:

- avoiding unnecessary telephone calls and appointments;
- (when appropriate, upon calling into the office or telephoning) asking to speak to a more junior person;
- undertaking certain of the more personal aspects of the administration which it is more appropriate for an executor to attend to personally (having first discussed with us your intention to do so, so that there is no breakdown in communication);
- (in appropriate cases, with clear agreement as to what you will be doing) undertaking certain other aspects of the administration which will not result

in duplication of effort in respect of what it has been agreed that we should do.

B WINDING UP AN ESTATE

This summarises the more usual aspects of administering an estate. It has been prepared to help you know what to expect or do and what work is involved at different stages in winding up the estate. Not all of it may be relevant to this estate. Please do not hesitate to contact us for further information.

1. *Collect all the deceased's papers*

This is the first thing which needs to be done.

2. *Find out if there is a will*

If there is, find its original and check it for any funeral directions.

3. *Register the death*

This has to be done with the Registrar of Deaths in the area in which the death took place and should be dealt with as soon as possible, as funeral arrangements cannot be finalised until this is done.

4. *Who winds up the estate ?*

If there is a will, its executors should administer the estate, and we act on their instructions. If there is no will, we will advise on the persons (called 'administrators') who should wind up the estate and who will inherit. In this Guide, 'executor' is used in all cases unless the distinction is important.

5. *Probate checklist*

In order to administer the estate properly, we need to have:

- The Registrar's copy of the death certificate.
- Full details and supporting evidence of assets and liabilities, e.g. pension book, passbooks, bank statements, share certificates, any relevant references and addresses.
- Full details (including addresses and references) of the deceased's professional advisers, and of the heirs.

To help with this, we generally give the executors our probate checklist, or go through it with the executors.

6. *Verifying*

Once we have all the appropriate papers and necessary information, we:

- notify the appropriate authorities of the death, e.g. bank, building societies, DSS and
- verify the extent and value of the assets and liabilities, obtaining valuations where necessary.

7. *Frozen Assets*

It may take no time in one case, several months in another, to collect the information we need. It depends on the types of assets and liabilities involved. During this time all assets are frozen, with the exception of joint accounts, which can be immediately transferred to the surviving co-owner on production of a certified copy of the death certificate.

8. *Probate*

Once we have the necessary information, we prepare the 'probate papers' for the executors to sign and swear, and once signed and sworn, we then apply to the Court for the grant of probate (in the case of a will) or of letters of administration (if no will). 'Probate' is used in this Guide to cover all cases, unless the distinction is important. Probate is typically obtained within two to three months of the date of the death, or earlier for estates of lesser value.

9. *Financing inheritance tax and probate court fees*

When preparing the probate papers, we consider how to finance any inheritance tax liability payable (a) when applying for probate and (b) later, and any Probate Court fees payable when applying for the grant.

10. *Planning for the payment of debts, legacies & interim distributions*

Before applying for probate, we also plan ahead for paying any debts and legacies and, if appropriate, making an interim distribution to the 'residuary beneficiaries', and make the necessary proposals to the executors to carry out those tasks, so that these steps can be taken once probate is received.

11. *Trustee Act notice to claimants*

If executors mistakenly pay money to the wrong people (e.g. because they did not know of a debt or a legacy under a later will or codicil), they must usually pay the right people out of their own pockets and then try to recover the money from the persons who had been wrongly paid. The law allows executors to advertise for claimants and, provided certain conditions are met, then to distribute the estate. This only protects the executors in that capacity, however, and so if anyone has a valid claim against the estate he can still pursue this against the beneficiaries direct. Sometimes executors may feel it is not appropriate to advertise for claimants, as they may invite burglary of an

unoccupied property, but in others, that it is most important. Generally, executors can advertise immediately after the death, but administrators should only do so after obtaining letters of administration.

12. *Registering probate*

Once probate has been registered, official copies are then sent to relevant organisations, together with signed forms prepared at step 10 above, carrying out the executors' instructions to close accounts and sell/transfer assets etc.

13. *Inheritance tax*

An estate liable to inheritance tax will normally take several months longer, and sometimes years longer, to wind up than a non-taxable one.

Whether an estate is taxable, and if so the amount payable, can depend on a number of factors including whether the deceased:

- had an interest under a trust or settlement at any time during the seven years prior to the death
- had made lifetime gifts,

and the executors must fully investigate these points.

There are numerous inheritance tax exemptions and reliefs. In general, taxable lifetime gifts would be those made not more than seven years before death, certain small gifts made each tax year being disregarded.

The delays in winding up a taxable estate may be due to the time taken to:

- obtain final clearance from the Capital Taxes Office;
- negotiate asset values with the Capital Taxes Office, because some asset values cannot be determined at the date of death;
- agree the income tax/capital gains tax position at the date of death. The inheritance tax position (which is dealt with by a completely different part of the Inland Revenue) cannot in turn be agreed until this has been done.

14. *Completion of the administration*

During the administration of an estate the file is regularly reviewed and progress reported to the executors. Estate accounts are prepared and copies sent to the executors for approval. Inheritance tax clearance must first be obtained before winding up a taxable estate. Once the executors have approved the final estate accounts, it can then be wound up and what remains distributed to the residuary beneficiaries or trustees of any continuing trust arising on the death.

15. *Income tax and capital gains tax of the deceased*

Our tax department will be happy to deal with finalising the deceased's tax affairs to the date of death, unless this is dealt with by the professional advisers who acted for the deceased prior to his death. Income tax and capital gains tax returns of the personal representatives are prepared to the closure of administration.

16. *Court work*

If a will is disputed, or claims made against an estate, our litigation department will normally represent the executors, who will be advised of the new situation.

17. *Investment advice*

The Financial Services Act 1986, defines how solicitors can advise executors about investments in the estate. We are regulated by the Law Society.

18. *Tax position of the residuary beneficiaries*

(a) Information we need from the beneficiaries

As you may appreciate, the executors are obliged to account to the appropriate Inspector of Taxes for income received and capital gains made during the period of administration. They also need to provide certain information to that Inspector for each residuary beneficiary who receives income from the estate, including his full name and address, tax district, reference, and national insurance number. Additionally, for reasons explained below, we will need to know whether a beneficiary is a basic rate income tax payer, close to being a higher rate tax payer, or already a higher rate tax payer.

(b) Distributing income during the administration period

The income which is received from an estate counts towards that person's total income for the purpose of calculating whether he pays income tax and if so, whether at the basic rate or the higher rate. Under the present income tax regime as it affects executors and beneficiaries, it is important (so far as practicable) for the executors to distribute income to the appropriate beneficiaries within the tax year in which it arises. Failure to do this by accumulating income may cause 'bunching' of a beneficiary's existing income and the amount of income from the estate to which he is entitled places him close to the higher rate income tax threshold.

(c) Advice to the beneficiaries receiving income during the administration period

A beneficiary should, whenever receiving a distribution of income (whether as part of a distribution comprising capital as well) receive an

income tax deduction certificate form R185E. He should immediately send it to his tax adviser, if any. Failing this, if he completes annual tax returns or claims, he may either send the form to his Inspector of Taxes immediately, or when next submitting a tax return or claim, declaring the net income received in the appropriate section of that return or claim form.

C SOME LEGAL TERMS EXPLAINED

Administration period

The period between the date of death and the date of the final estate accounts.

Administrator

A person responsible for winding up the estate of a person who has died leaving no will or the executors of whose will are unable or unwilling to act.

Appropriation

The transfer of an asset instead of its sale proceeds on account of a legacy or share of residue.

Codicil

A legal document by which a person amends his will.

Contingent gift

A gift conditional on the happening of a particular event, e.g. a beneficiary reaching 21.

Estate accounts

Accounts recording the financial transactions during the administration period.

Executor

A person appointed by a will or codicil to wind up the estate.

Grant of representation

The court order authorising a person to deal with the assets of the deceased. If a will is proved by executors, it is more precisely called a grant of probate; otherwise, a grant of letters of administration (with or without a will annexed).

Intestacy

Where a person dies without making a will fully disposing of all his assets. The administration of 'intestate' estates is largely governed by the Administration of Estates Act 1925.

Legacy/bequest/devise

A gift of chattles/money/other assets by will

Personal chattels

Basically means personal effects; more precisely defined in the Administration of Estates Act 1925, section 55 (1)(x) as including:

Carriages, horses, stable furniture and effects (not used for business purposes), garden effects, domestic animals, (silver) plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores,

but excluding:

any chattels used at the death for business purposes, or any money and securities for money.

Personel representative

An executor or administrator

Power reserved

Where a named executor declines to act as such, but reserves the right to do so at a later date.

Renouncing probate

Where a named executor signs a legal document which cancels his appointment from the start.

Residuary beneficiary

A person entitled to share in the residuary estate.

Residuary estate

What remains of the estate after payment of all debts, legacies and all taxes and expenses.

D BEREAVEMENT CARE

It is now widely recognised that close relatives and friends of someone who has died need to grieve for that person; bereavement typically involves a number of different processes, from disbelief at what has happened to acceptance, and often takes about two years, sometimes much more.

During this period, you may at times find it difficult to cope. If so, it is wise to seek help, rather than tell yourself that you should be able to cope. If any of the necessary processes involved in bereavement is not worked through, it is probable that the end of the bereavement process will be delayed.

You may have heard of a charity known as CRUSE, which is involved in bereavement counselling, and publishes leaflets which you may find helpful. To obtain a copy of their publications list, you should contact them at:

Cruse House
126 Sheen Road
Richmond
Surrey TW9 1VR
Telephone number – 0208 940 4818

To contact a bereavement counsellor you should get in touch with your local Citizens Advice Bureau, or your local branch of CRUSE, who telephone numbers you should be able to find your local telephone or Thomsons Directory.