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Backhouse Solicitors Guide to Probate

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INTRODUCTION

Dealing with the Probate process can be long and challenging.

At Backhouse, we understand that this process often comes at an emotionally difficult time, and this guide offers a general insight into the probate process for non-professional personal representatives and bereaved family members.

It provides clear, practical information to help you understand what to expect during probate, the key steps involved, and how legal assistance can make the process smoother and less stressful.

TERMINOLOGY

If you are a personal representative (PR) officially dealing with the estate (the property and possessions of the person who has died) as either an executor or an administrator, you may find yourself facing unusual and confusing terminology.

Administrator – A person empowered by the grant of letters of administration to deal with the estate of a person who has died without leaving a Will or without effectively appointing an executor in a Will.

Chattels – Personal property, including furniture, furnishings and movable goods.

Estate – The assets and property belonging to a deceased person. It has different meanings for probate and IHT purposes.

Executor – A person appointed by a Will to deal with the administration of an estate.

Intestacy – The state of dying without a valid Will. There are rules on how assets and belongings are dealt with if someone dies without leaving a Will.

Personal representatives (PRs) – The generic term used to describe executors and administrators.

Real property – The term used to describe land as opposed to personal possessions.

FIRST STEPS

When the time comes to address the legal aspects of administering the deceased's estate, the probate process begins.

This involves identifying:

- ✓ Assets they owned
- ✓ Any debts outstanding
- ✓ Any money owed to them

In most cases, unless there are immediate financial concerns and/or property that needs to be managed for commercial reasons, there is usually no harm in waiting for a few weeks before starting the process.

It is important to note, however, that interest starts to accrue on any unpaid inheritance tax (IHT) from **six months** after the end of the month in which the person passed away.

In addition, the IHT account must be filed within **twelve months** from the end of the month in which the person passed away.

THE PROBATE PROCESS

As part of the probate process, it may be necessary to obtain a Grant of Probate. This entails getting legal authority from the Probate Registry to administer the estate of the deceased. There are several steps involved if probate is deemed necessary.

IS THERE A WILL?

If there is a Will

An executor's appointment in the Will takes effect from the date of death. However, their appointment is not formally confirmed until the Probate Registry issues an official document, known as the 'Grant of Probate'. This authorises the executors to collect in assets and settle debts. The executor also has the authority to make decisions and deal with many aspects of the estate immediately.

The role of an executor is an important, lifelong position. Executors can remain accountable for handling any future claims that may arise against the estate, even years later. If you are appointed in the Will as an executor and you are uncertain about taking on the role, it is advisable to seek advice from a probate specialist as soon as possible. They can explain the duties involved, clarify any concerns, and help you make informed decisions. If you still do not wish to act as executor, you can 'renounce'.

Please be aware that you may be unable to 'renounce' your appointment (step down from being an executor) if you have already taken actions that indicate acceptance of the role.

If there is not a Will

The situation is a little more complex if there is no Will. No one has the authority to make any real decisions until the Probate Registry issues the official document known as the Grant of Letters of Administration. This Grant appoints the administrators and authorises them to collect the assets and settle any debts. The Grant cannot be applied for until the estate has been properly valued and any Inheritance Tax paid, meaning there is nobody officially in charge until that point.

Administrators are effectively governed by the rules of intestacy, which establish who is entitled to apply for the grant and who will inherit the estate. Your probate expert can explain how these rules apply to your circumstances, but in many cases, it will be the deceased person's surviving spouse or civil partner and/or their children who are able to apply to act as administrators.

PERSONAL REPRESENTATIVES' OBLIGATIONS AND RESPONSIBILITIES

As a personal representative, there are several legal obligations and responsibilities that fall to you during what can be a challenging time.

The PRs must:

- ✓ **Keep assets safe** – Protect the deceased's property and possessions
- ✓ **Assess the estate** – Find out what they owned, owed or were owed
- ✓ **Deal with tax** – Submit the details of the estate to HMRC and the Probate Registry, and pay any Inheritance Tax due, including any income tax or capital gains tax
- ✓ **Settle debts** – Collect assets, pay any debts, including your own out-of-pocket expenses, and any outstanding tax
- ✓ **Advertise for creditors** – Publish notices and deal with any claims made against the estate
- ✓ **Finalise tax matters** – Confirm and settle the estate's final IHT position
- ✓ **Distribute the estate** – Share remaining assets with the beneficiaries in accordance with the Will or intestacy rules. If debts exceed assets, this process must be handled very carefully and will require specialist advice from a legal professional before any distribution.

Sometimes there is doubt about the validity of a Will. If you are concerned that there may be something irregular about the Will (either on the face of it or in the circumstances in which it was made), or if you believe that someone else may challenge it, you should consult a professional adviser as soon as possible.

As well as starting to ascertain the deceased's assets and liabilities, you should obtain professional legal advice before starting the administration process to ensure the correct steps are followed and to avoid potential complications later down the line.

INVOLVING PROFESSIONALS

If a professional has not been appointed as a PR alongside you, the first administrative step is to decide whether or not to instruct a probate practitioner to act or assist you in the estate administration.

The probate process can be a stressful experience. You should consider the amount of time this will involve and the emotional strain you may encounter by dealing with the estate yourself. What may appear straightforward at the outset can quickly become a more complex probate matter as the assets and liabilities are investigated. By appointing a trusted probate practitioner, you can receive professional support with most, if not all, of your responsibilities in administering the estate, helping to ease the burden.

A probate practitioner can be instructed to complete the entire administration of the deceased's estate. This includes constituting any trusts set up in the Will or by the intestacy rules, and dealing with any income tax or capital gains tax liabilities that arise during the administration period. Where the estate includes overseas assets, trust interests, business or agricultural assets, any foreign elements, or if there is reason to believe that a claim may be brought against the estate, professional advice should be sought at the outset.

Although probate practitioners are required to advertise their standard fees, every estate is different. Your practitioner will discuss the details and circumstances of the case with you and should then be able to provide an estimate of their firm's fees. The overall cost will depend on the extent of the probate practitioner's involvement, the size and complexity of the estate, whether there is a Will, any overseas assets or interests, trusts, or jointly owned business or agricultural property. If any claims are anticipated or have already been brought against the estate, this is likely to significantly impact the level of professional fees.

Reasonable legal and other professional fees incurred by the PRs in administering the estate can be paid from the estate itself. The position is slightly different where professionals act as PRs, although in most cases, there will be an appropriate charging clause in the deceased's Will. If no such clause exists, the fees can usually be agreed with the residuary beneficiaries.

LIST OF INFORMATION & DOCUMENTATION RELATING TO THE DECEASED'S ESTATE

In order to proceed with the administration of the estate of the deceased, there is various information that needs to be collated.



DETAILS OF ANY PROPERTY OWNED
(with valuation and title deeds if available)



DETAILS OF BANK ACCOUNTS



DETAILS OF PREMIUM BONDS, STOCKS AND SHARES
(with share certificates)



DETAILS OF ANY LIFE POLICIES AND PENSIONS
(both State and Private)



NATIONAL INSURANCE NUMBER

SUMMARY OF THE LEGAL ADMINISTRATION OF THE ESTATE

Ascertaining what is in the estate

A thorough search through all of the deceased's papers and property will need to be done to establish everything they owned or owed and the value of each asset or debt (and sometimes the whereabouts of tangible assets, like cars, jewellery, furniture, artwork and other chattels). This will include, amongst other things, gathering details of bank and building society accounts, chattels (see below), life insurance, tax records (particularly their last tax return and P60), information about the property to include council tax and services, mortgage details, tenancy or title information, employer or pension information, shares and or stockbroker address and monies owed or owing.

If the deceased had a computer or any other digital/storage device (including a mobile phone), there may be online accounts that also need to be considered. Check to see if there is a list of passwords or a memorandum of digital assets. This may be lodged with the solicitor who drafted the Will (if applicable). Otherwise, just knowing that there are online accounts is important.

If you are instructing a probate practitioner to handle the estate administration then you might just make a list of all of the assets (including digital assets) and liabilities, with approximate values and provide them with copies of relevant bank, building society and investment account statements and other records, so that they can write to the relevant institutions to get accurate valuations as at the date of the death and deal with collecting in or transferring the assets to beneficiaries in due course.

At Backhouse Solicitors, we can also carry out a financial asset and liability search. We can instruct a company for just over £200 to contact over 200 banks and other financial institutions to see if the deceased had an account with them.

Lifetime gifts and trust interests

The PRs have to establish whether the deceased made any gifts or transfers during their lifetime. You will also need to ascertain whether they were entitled to benefit from another person's estate, which hadn't been distributed at the time of their death, or if they were a beneficiary of a trust. This information is required by HMRC and might affect the amount of IHT the estate has to pay.

Overseas interests and domicile

If the deceased was born or lived abroad for significant periods of their life or even if they just owned assets outside the UK, this information must be included in the IHT return and may impact the type of IHT return required, as well as the amount of IHT payable.

Your probate practitioner will be able to advise you on the deceased's domicile for IHT purposes as well as how the overseas assets will be dealt with.

Jointly owned assets

The deceased may have jointly owned assets. While this may simplify the procedure for dealing with the asset after their death (as some assets might pass automatically by 'survivorship' rather than having to be administered once the grant has been issued), the value of their interest will still be relevant for IHT purposes and will need to be included in the IHT return. Gather as much information as you can about the background of jointly owned assets, including when the interest arose, who contributed what, when the asset was acquired and what their share was at the time of their death.

Business and agricultural assets

If they owned a business or agricultural assets or woodland, these interests will need to be valued as at the date of their death and are likely to require specialist involvement. Your probate practitioner will be able to explain how these assets are to be dealt with and whether or not any IHT reliefs or exemptions might be available.

Pensions and life insurance policies

If the deceased contributed to a pension scheme or had taken out life insurance during their lifetime, you will need to obtain details. The deceased may have completed a declaration of wishes or nomination, which allows a lump sum to be paid out to the nominated person outside the estate administration process (and without the need to wait for the grant to be issued). Often, but not always, these amounts will fall outside the deceased's estate for IHT purposes. This means they may not be subject to IHT. However, the IHT account often requires the PRs to give details of such policies. If you are in any doubt about how these interests should be dealt with, you should seek professional advice.

Accounting to HMRC

Once the assets and liabilities and any other interests have been ascertained and estimated values are available, the PRs will usually need to complete an IHT return (commonly Form IHT400 and related schedules), and account for any IHT due on the estate to HMRC.

If the net value of the estate (what is left after any debts due to be paid) is over the IHT nil rate band threshold (which is currently £325,000), there are several exemptions and reliefs which might apply to reduce the IHT actually payable. In some circumstances, there is also an option to pay IHT on the house or other real property in instalments. Your probate practitioner can help you with the IHT return and calculations, but will need to know, amongst other things, whether the deceased had ever been a widow or widower as it may be possible to use a previous spouse's nil rate band, even if they had remarried.

Whoever prepares the IHT account, you and any other PRs will each need to sign it to confirm that the information and statements contained in it are correct and complete to the best of your knowledge.

The IHT calculated as due at this stage, even if based on estimated values, needs to be paid to HMRC in order for them to provide a code together with the net and gross values of the estate. The application can then be made to the Probate Registry who can then process and issue the grant of probate or grant of letters of administration. However, many assets cannot be dealt with (ie transferred to the PRs or sold as necessary) without the grant of probate or grant of letters of administration. This can lead to a circular problem of PRs not having access to sufficient funds to pay the IHT due to the lack of a grant.

Some of the deceased's assets (such as accounts with relatively small values) might be accessed without needing to have a grant, and you should try to collect these as soon as possible. If they had bank or building society, or National Savings & Investment accounts, you may be able to apply for those funds to be paid directly to HMRC to settle IHT prior to the grant, under the direct payment scheme. A life insurance policy may be in place, or there could be a lump sum payable from their pension due to the estate, without the need for the grant. Depending on the identity of the recipients and the beneficiaries under the Will or on intestacy, these funds might be used to settle the IHT. Alternatively, a family member or bank may agree to loan you the funds to settle the IHT on the basis that they can be refunded from the estate once the assets have been collected in after the grant is issued.

Once the grant has been issued and the estate's assets have been collected, a corrective account may be required to update HMRC with revised asset values where estimates were previously submitted. If the updated valuations result in additional IHT being payable, the PR's will be responsible for settling the balance. HMRC may also raise queries about the contents of the IHT return, which can lead to discussions or negotiations over asset valuations (eg real property). Having a professional adviser involved at this stage to negotiate with specialist teams at HMRC, such as the District Valuer of the Valuation Office Agency, can be invaluable.

Applying for the grant

Generally, your probate practitioner will prepare the probate application for you, and this can be done either online or using a paper application form and as PR, you will need to confirm the details and sign it. By signing the probate papers, you are confirming that you believe the facts to be true on the understanding that criminal proceedings for fraud may be brought against anyone found to have been deliberately untruthful or dishonest. Again, if you have any questions about the contents of the probate papers, you should check with your probate practitioner and notify them of any errors.

Once these details are accepted, and provided there has been no delay in settling the IHT due on the estate, the Probate Registry will issue a grant of probate (to executors) or a grant of letters of administration (to administrators).

Collecting in assets and settling liabilities

Once the grant has been issued, certified copies can be sent to the various banks and building societies with a request to close the accounts and transfer the proceeds to your PR's account or your probate practitioner's client account. It is advisable to discuss this stage with the residuary beneficiaries in advance, as they may prefer certain assets (such as an investment account) to be transferred into their own name rather than sold or cashed in. However, you have a duty to settle any liabilities of the estate, including reimbursing yourself or family members for funeral expenses and any loans made to settle IHT.

Interim distributions

Once the IHT position has been confirmed and provided it is clear that the estate is solvent (i.e there are sufficient assets to meet the liabilities), you can consider distributing specific items gifted in the Will, as well as specific gifts of money. It is not always necessary to wait until the estate administration has been concluded. It is sensible to obtain a receipt from each beneficiary, which should be kept with the probate papers. You should also consider whether to conduct bankruptcy searches before making distributions to beneficiaries. Your probate practitioner will be able to explain whether or not this is necessary.

Varying legacies and entitlements on intestacy

Sometimes, a beneficiary might wish to redirect their legacy to another party. Depending on the facts, this may be done by way of a disclaimer or a variation of the Will or intestacy provisions. Your probate practitioner will be able to advise on the options and potential implications of varying the estate in this way. HMRC needs to be notified if there is more or less IHT to pay, as a result of the variation.

Claims against the estate

Be prepared. Are there any potential claims against the estate? Is there someone who was financially dependent on the deceased but has not been adequately provided for in the Will or on intestacy? Although it may be a sensitive subject, you need to consider if there is anyone who might bring a claim against the estate because of their relationship with the deceased. In order to protect against claims for financial provision from the estate under the Inheritance (Provision for Family and Dependents) Act 1975, it is usual to wait for at least six months from the date of the grant before distributing the estate. You also need to establish if there are any debts that are not obvious from the papers.

PRs can protect themselves from liability against claims made by unknown creditors by advertising in certain publications and local press, in accordance with section 27 of the Trustee Act 1925. They must then wait until the specified notice period has expired before distributing the estate. Your probate practitioner can advise you on suitable insurance options and any indemnities that may be appropriate to further protect against potential claims.

Final Distributions

Once HMRC has confirmed the IHT position, all tax and other liabilities have been paid and all assets transferred or sold, the final distributions can take place, and the estate administration can be completed. This will include constituting any trusts set up by the deceased's Will or on intestacy. Often, this can be a year or more after the death.

Each estate is different, with different complexities and time limits. Your probate practitioner will be able to advise on the formalities in relation to any ongoing trusts. They will be able to keep you updated on the estate administration so that you know where you are in the process at any one time. The probate expert will also be able to tell you if circumstances change, which may affect the time that it will take to finalise the estate.

As a PR, you need to be able to account to the Probate Registry for the estate administration should they require it (usually at the instigation of a beneficiary). Therefore, it is important to keep careful records of the assets which have been collected in, sold or transferred directly to beneficiaries, liabilities that have been paid, and all interim and final distributions. Your probate practitioner can advise you on whether simple or formal estate accounts are required and arrange for their preparation.

HOW CAN BACKHOUSE SOLICITORS HELP?

Here at Backhouse Solicitors, our dedicated team of probate specialists can guide you through what to do when a loved one passes away. Our friendly experts will explain the probate process in simple terms and will help you every step of the way.

Contact our probate team today to arrange your free initial consultation.

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