

THE LIFE CYCLE OF FAMILY WEALTH

The five steps of probate

Dealing with the death of a family member or close friend is always difficult for those involved; the last thing anyone wants to deal with when grieving is navigating complicated tax and legal procedures. It is no wonder that the probate process can appear a daunting prospect to the personal representatives or "PRs" (the people entitled to deal with a deceased person's estate, who are also known as 'executors' when they are appointed in a Will).

Here we provide a helpful guide to the probate process, which can be broken down into five key steps:

STEP ONE - THE IMMEDIATE POST-DEATH REQUIREMENTS

When someone dies in the UK, apart from the funeral arrangements, there are several steps that the PRs need to take:

- **Registering the death and first steps:** The death must be registered with the UK authorities within five days. You will need to establish whether the deceased left any instructions (for example, they may have specified burial or cremation, or organ donation) to help you when making funeral arrangements.
- **Preserving the estate:** PRs are liable both to the deceased's creditors and to their beneficiaries, so you will need to ensure that the deceased's assets are adequately maintained and insured and



- **Trusts:** If the deceased was a settlor or beneficiary of any trusts, you should notify the trustees of the death.

Points to consider - who is entitled to the estate?

At this stage, it is wise to check the terms and the validity of the Will (if there is one) and in all cases to establish the beneficiaries of the estate and what each of them is entitled to receive.

Possible issues in an estate can range from the validity of the Will itself (for example, if it has been incorrectly executed or amended) to potential claims against the estate from people who relied on the deceased during their lifetime, but who are not entitled to anything under the Will.

It is helpful to identify any potential difficulties and for the PRs to seek appropriate advice as early possible.

STEP TWO - VALUING THE ESTATE

Once the initial steps have been completed, usually after the funeral has taken place, the PRs need to make enquiries into the deceased's assets and liabilities, to establish accurate figures for the HM Revenue and Customs ("HMRC") inheritance tax ("IHT") return.

Depending on the assets involved, formal market valuations may need to be obtained or it may simply be a case of writing to the relevant asset holder for the information required. Most assets will only be released to the PRs on production of the grant of probate later in the administration, although most banks will release funds to pay IHT. Any liabilities the deceased had during their lifetime, such as loans, overdrafts and outstanding tax liabilities, must also be recorded in the IHT account and later settled when funds are available.

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If the PRs are not sure that they have identified all of the deceased's assets and liabilities, a financial asset search can be conducted.

Points to consider - advertising for unknown creditors

A common concern at this stage is whether the deceased had any liabilities of which the PRs have no knowledge. As mentioned in Step one, PRs are personally liable to the deceased's creditors, even after the estate has been distributed. However, the PRs can protect themselves from personal liability by placing creditor notices (also known as "Trustee Act Notices") in the London Gazette and a newspaper local to the deceased's home.

STEP THREE - PREPARING THE IHT RETURN

Once the value of the assets and liabilities has been ascertained, the IHT return must be prepared. This provides HMRC with details of the estate's value. Depending on the value and composition of the estate and whether it is passing to charity or to the deceased's spouse, either an IHT205 (a shortened and simplified form for less complex estates) or an IHT400 (a full IHT return which requires more details to be included in numerous schedules) must be prepared. The PRs need to include details of any lifetime gifts made within seven years of the deceased's death with the IHT400 form.

A calculation of the IHT due must also be prepared. The PRs are responsible for settling any IHT arising on assets owned by the deceased at the date of his death. If the deceased made gifts during their lifetime in excess of their nil rate band (£325,000), also become liable to IHT as a result of the death. The recipients of the gifts will be liable to settle any tax due, unless



the Will specifies that the estate is to settle the tax.

Any inheritance tax due should be paid by the end of the sixth month after the deceased's death, otherwise interest will begin running on the tax. For certain assets (such as property or unlisted shareholdings) there is the option to pay IHT in instalments over ten years or (if earlier) until the asset is sold, with interest running on the outstanding balance until it is settled.

The IHT400 is submitted to HMRC and on payment of the IHT due, they will issue a stamped form of receipt (the IHT421) directly to the Probate Registry. The IHT205 simple account is sent straight to the Probate Registry. Receipt by the Probate Registry of either the IHT421 or the IHT205 allows the grant application to proceed.

Points to consider - assets discovered after submission of the IHT return

There is always a chance that assets may be found after an IHT return has been submitted, usually as a result of documents discovered during the post-grant administration. If this happens, it is important to report those assets to HMRC as soon as possible and arrange to pay any additional IHT and interest.

STEP FOUR - APPLYING FOR THE GRANT

When the IHT account is produced, the application for the grant of representation is also prepared.

The grant is the document which confirms the PRs' authority to deal with the deceased's UK assets, enabling them to collect those assets, pay liabilities and distribute the balance according to the terms of the deceased's will (or intestacy rules, in the absence of a Will).

The probate court issues different types of grants, the main types being a grant of probate, if the deceased had a Will, and a grant of letters of administration if the deceased died intestate (with no Will).

Points to consider - reservation and renunciation

Some executors named in a Will may not want to take on the responsibility of dealing with the estate, and there is no obligation (unless they have already 'intermeddled') for them to do so. Executors who wish to step aside have two choices; they can either choose to reserve their power to act as an executor or renounce the position entirely.

If an executor has power reserved to them, they will not be required to act for the time being. However, they could make their own separate application for a second grant at any point in the future and would then become an acting executor, for example, if the first executor could no longer act and they were needed.

If an executor chooses to renounce, they are giving up the role of executor entirely. They cannot reverse the decision if they later change their mind.

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STEP FIVE - POST-GRANT ESTATE ADMINISTRATION

Once the grant has been issued by the Probate Registry, the PRs have the authority to call in the deceased's assets. The PRs will then need to pay off all debts before proceeding to distribute specific legacies (gifts of particular items, such as paintings or jewellery) and pay the pecuniary legacies (cash gifts), if any, that are included in the Will. PRs need to keep estate accounts to document the money received, assets transferred to beneficiaries and amounts paid out of the estate. The accounts also confirm each beneficiary's entitlement (in accordance with the deceased's Will or the intestacy rules) and confirm whether an interim distribution (part payment of the beneficiary's share) can be made at an early stage, before the tax position is resolved.

Before finalising the estate, the PRs will need to complete estate tax returns, reporting any income and capital gains made during the administration period.

Once these are resolved, the final distributions can be made, either distributing cash (after collecting and selling estate assets), or by arranging to transfer estate assets directly to the beneficiaries (for example, transferring shares into a beneficiary's ownership).

**Points to consider - Post-Grant Estate Planning**

The post-grant administration period is an opportune moment to help the beneficiaries with their own estate planning, which may be advisable given that they may be receiving a valuable inheritance. This could include the use of a Deed of Variation, by which the Will of the deceased can be adjusted within two years of their death to achieve a more tax efficient outcome for the beneficiaries, when appropriate.

“THEY HAVE CONTINUALLY SATISFIED EXPECTATIONS FOR RELIABILITY AND EFFICIENCY AND ARE ALWAYS DEDICATED TO DELIVERING A QUALITY SERVICE.”

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HOW WE CAN HELP

Although each estate follows the same general administration framework, no two probate matters unfold in the same way; each set of circumstances differs and can require extensive technical knowledge. Forsters' Private Client and probate specialists have a wide range of experience with both UK-based estates and foreign estates involving UK assets, so are able to deal with the most complex matters. We can take on the practical burden of the difficult and complex estate administration process for PRs, explaining matters in a straightforward way whilst ensuring that clients receive the support they need during a period which is often one of the most difficult times of their lives.

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