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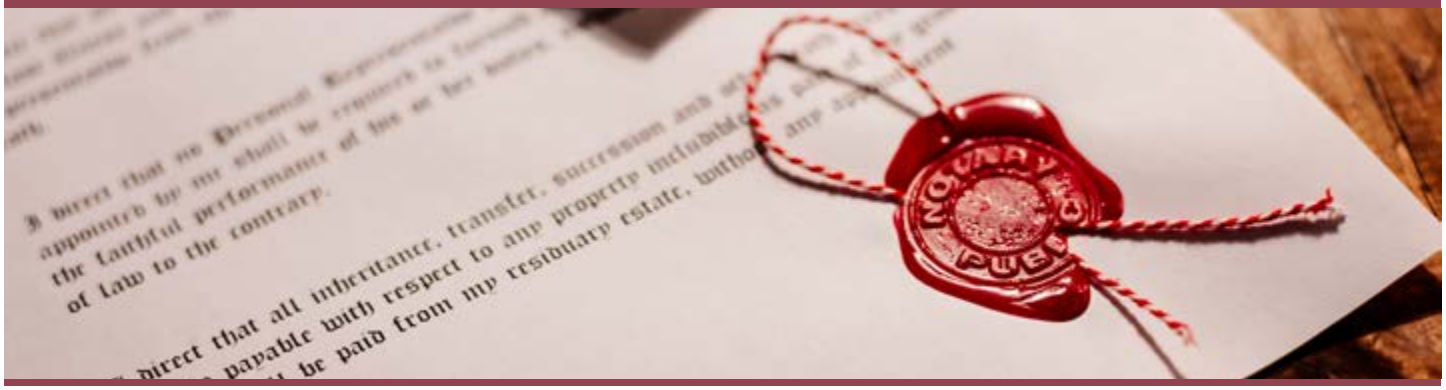
Dealing with probate



Dealing with the administration of an individual's estate can be a complex and time-consuming experience, which carries with it a number of legal obligations. Here we outline some key elements of the process, as well as suggesting some tax-efficient measures for you to consider as part of your own estate planning strategy.

Probate is the process of dealing with a deceased individual's estate, in order to ensure that their property, money and possessions are distributed in accordance with their wishes.

This factsheet considers the probate process as it applies in England and Wales. Please note that the process is known as 'confirmation' in Scotland and 'grant of probate' in Northern Ireland and is dealt with separately in those countries.

Dealing with probate involves a fair amount of form-filling and it will be necessary to gather a variety of information relating to the deceased person's assets, as well as dealing with inheritance tax (IHT), corresponding with beneficiaries and financial institutions, and keeping various records and accounts. We can help you with the probate process.

The Will and grant of representation

A Will normally determines who will administer an estate. If you are named as an executor of the estate in a valid Will, you can apply to the Probate Registry for a 'grant of representation' by completing probate application form (PA1), or by having a qualified professional apply on your behalf. A grant of representation is an official document issued by the probate registry, proving your entitlement to deal with the individual's affairs.

In the absence of a valid Will, the rules of intestacy will apply. In this situation, the individual's next of kin (as defined by a set order of priority) will normally need to apply to the Probate Registry for letters of administration, allowing them to deal with the deceased person's assets.

A grant of representation need not always be obtained, for example in cases where the deceased's assets are worth less than £5,000, or all assets pass directly by survivorship to a joint owner. However, some financial institutions may still require a grant.

Valuing the estate

The executor or administrator must establish the value of the estate. This will mean locating all relevant documents relating to the deceased. It is important to carefully ascertain all of the assets, investments and liabilities relating to the estate, which may include land and property, household goods and personal belongings, business assets, savings and investments and any debts owing on the estate. You must also identify any gifts made by the deceased during the last seven years, for IHT purposes. You should always obtain a professional valuation of any land and property or other items of significant value.

The valuation can then be used to complete the probate forms and to ascertain whether IHT is payable.

Dealing with inheritance tax

IHT is normally payable at 40% on any part of an estate that is worth more than £325,000 at the time of death (the 'nil-rate band'). IHT may not be payable in some circumstances, for example in the case of business assets, most gifts given between spouses and civil partners, and assets given as gifts while the deceased was alive (as long as they lived for seven years after giving the gift, or certain anti-avoidance provisions don't apply). A range of reliefs, exceptions and exemptions apply, including, for example, the Residence Nil Rate Band (RNRB) which came into effect on 6 April 2017 – please contact us for further information on IHT.

The executor or administrator will normally be responsible for paying any IHT due on the estate, except in the case of trusts. Where there is IHT to pay, form IHT400 and perhaps some subsidiary schedules must be completed and sent to HM Revenue & Customs (HMRC). Where there is no IHT liability, form IHT205 must be completed and sent together with the probate application.

You may need to arrange funds or a loan for paying the IHT and probate fees. It may be possible to make early payments, or to pay IHT in instalments. It is important to note that penalties may apply for inaccurate information.

Completing your application

Once your probate and IHT forms have been completed, your application must be submitted together with an official copy of the death certificate, the original Will and any codicils (and three copies), and an application fee.

You will be sent details of how to arrange an appointment to swear the executor's or administrator's oath, confirming that the information you have provided is true to the best of your knowledge.

Collecting the assets

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Estate planning strategies

Effective estate planning, and the presence of a valid and up-to-date Will, should form an essential part of your own financial planning strategy. Your estate plan will help to ensure that your assets are distributed in accordance with your wishes and in as tax-efficient a manner as possible.

Writing a Will

A Will is a powerful planning tool. As well as making the process of probate easier, your Will allows you to exercise control over your property and personal belongings, including specifying who will be responsible for distributing your estate, and what provision should be made for your family and loved ones.

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Please contact us for further as

Acting as a personal representative carries with it a number of legal obligations. We are experts in this area and can offer a range of professional services, from dealing with probate and executorships to the handling of trusts.

This information is intended for general guidance only, and professional advice should always be obtained.

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are available in the following formats:

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