

What is Probate?

'Probate' is a term loosely used to describe the court order which enables the personal representatives of a person who has died to deal with the administration of the estate. Where the person left a Will appointing executors, the court order is called a Grant of Probate. Where the person did not leave a Will, the court order is called a Grant of Letters of Administration. Applications for either orders are made to a Probate Registry, which is part of HM Courts & Tribunal Service. The term 'Grant' is often used interchangeably with the term 'Probate'. There are other types of Grant but Grants of Probate and Grants of Letters of Administration are by far the most common.

Who are the Personal Representatives?

If the deceased left a Will, the executors appointed in that Will are the personal representatives.

If the deceased did not leave a Will, the persons entitled to share in the estate usually become the personal representatives once a Grant of Letters of Administration is issued to them. They are known as administrators, rather than executors.

Is a Grant needed?

Sometimes a person's estate can be dealt with without the need to make an application to the Probate Registry. This is more often the case where the deceased left a Will because the personal representatives get their authority to deal with the estate from the Will itself. If there is no Will then there is no person with legal authority to deal with the estate until a Grant of Letters of Administration is issued.

Depending on the requirements of the relevant financial institutions, a Grant of Probate may still be needed when there is a Will, and a Grant of Letters of Administration may not be needed when there is no Will. Typically, where there are shareholdings or large sums of money in bank accounts, a Grant will be required regardless of whether or not there is a Will. If the deceased owned a house or land in their sole name, a Grant is always required before the house or land can be sold or transferred.

There are also various other circumstances in which a Grant should be obtained and where specialist legal advice should be sought. For example, it may be sensible for personal representatives to obtain a Grant where there is a possibility of a claim being made against the estate. In such cases, obtaining a Grant of Representation provides the personal representatives with protection in advance of the estate being distributed.

How is a Grant obtained?

An application must be made to the Probate Registry by the people entitled to apply. As part of the process, information about the applicants, the deceased and the estate must be provided including the values of all assets and any debts. If there is a Will, the original document will need to be sent to the Probate Registry. Providing the Probate Registry is satisfied with the information provided, a Grant will be issued. In straight forward cases a Grant can sometimes be issued within 3 to 4 weeks of making the application. In more complex cases the issuing of the Grant can take considerably longer. If Inheritance Tax is due on the estate then this must usually be paid before the Probate Registry will issue the Grant.

What next?

Once the Grant has been issued the personal representatives will be able to deal with the rest of the administration of the estate, collecting in the assets and discharging any liabilities, before distributing the estate to those entitled under the Will or the intestacy rules.

Do I need help?

Personal representatives often choose to appoint a suitably qualified professional to act on their behalf. Even with the simplest of matters, dealing with the administration of an estate is time consuming, challenging and can be complicated.

This note provides a very brief and simplified outline of the process but in practice there are many more aspects to consider, for example, any Income Tax or Capital Gains Tax liabilities, unknown creditors and debts, and reliefs which reduce or sometimes eliminate any Inheritance Tax liability. For more complex matters, specialist legal knowledge and advice is required in order to ensure that personal representatives are acting at all times in the best interests of the estate and that they are protected from any potential personal financial liability or risk.

The role of a personal representative often falls (sometimes unexpectedly) on people who are not emotionally equipped at that time to deal on their own with the heavy responsibility that comes with it. As such, they seek professional advice and support to ease the burden.

At Sills & Betteridge the team of dedicated lawyers in our Wills, Trusts and Probate department is able to assist personal representatives with all matters relating to the administration of estates. Our services in this area range from advising in estates where no Grant is required to dealing with all aspects of the administration of complex and taxable estates.