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Your guide to probate

The essentials



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Since 1889

Probate & Estate Administration

The Wills and Probate team at Judge & Priestley understand that, following a bereavement, paperwork is the last thing on your mind. We can handle all the legalities associated with the probate process.

What is probate?

Probate refers to the legal process of administering someone's estate when they die. Executors named in the Will (or administrators in the case of no will) should collect the assets of the estate, settle the debts and distribute between the beneficiaries.

Executors must first apply for a Grant of Probate from the Probate Registry before they can administer the estate. The grant of probate is a court order which formalises the executors' authority to act in their formal capacity. A Court fee is usually payable upon application for the Grant of Probate.

Is probate required in all cases?

No. There are certain circumstances when probate will not be required. The laws can be complex which is why it is always best to seek legal advice.

What if there is no Will?

If someone dies without leaving a valid Will, then the rules of intestacy apply and determines who is entitled to administer the estate and inherit. The administrator will have to apply for letters of administration and a Court fee is usually payable.

What are the roles of executors and administrators?

The main responsibility is to administer the estate in accordance with probate and inheritance tax laws.

- Executors and administrators must identify all assets, liabilities and income before completing the inheritance tax forms. Consideration must be given to the different ways of valuing assets, applying the correct inheritance tax allowances, reliefs and exemptions. There are specific timescales for submitting the inheritance tax forms and in some cases; interest may accrue on the outstanding tax.
- Once the grant of probate or letters of administration has been obtained, the assets will have to be 'cashed in' or transferred. Occasionally there may be Capital Gains Tax arising and it will have to be declared to HMRC. Executors and administrators must settle liabilities in the 'order of creditors'. In some cases, it is advisable to enter notices to creditors as it offers protection to executors and administrators, who assume a personal liability.
- Executors and administrators must consider all claims against the estate. In recent years there have been rising numbers of probate disputes. When dealing with such claims, executors or administrators must remain neutral.



- It is important to ensure the income tax position is up to date; not just up to the date of death but throughout the administration period. There can be advantages in implementing 'post death variations'.
- Executors and administrators must keep proper records and prepare estate accounts. It is good practise for beneficiaries to approve the estate accounts. Distribution must always take place in accordance with the provisions of the Will or intestacy law. Proper checks (e.g. will searches, ID verification and bankruptcy searches) must be done to minimise risk.

Executors and administrators have an underlying duty to act in the best interest of the estate. The role of executors and administrators is onerous and must not be taken lightly. Quite often, it is the unknown knowledge that poses the risk.

What expenses can be paid before probate is granted?

Executors should ensure that debts of the estate are settled in accordance with the order of priority set out in law.

Executors can pay the funeral expenses and inheritance tax before the grant of probate is issued. Most banks will release money for this purpose.

How long does it take to conclude the probate process?

- Straightforward estates take approx. 3-6 months.
- Estates with medium complexity take approx. 6-12 months.
- Complex estates take approx. 12 – 24 months.

Quite often the timescales are dependent on third party organisations and external factors (e.g. HMRC, DWP, sale of a property etc).

The Probate Process in a Nutshell

- Ascertain and obtain details of assets, liabilities and income for probate and inheritance tax purposes.
- Value assets in line with S160 Inheritance Tax Act and HMRC Inheritance Tax manual.
- Consider provisions of the Will / intestacy.
- Consider potential claims against the estate.



- Review details of assets, liabilities and income.
- Identify potential lifetime gifts, reliefs, exemptions and allowances.
- Complete the correct Inheritance Tax forms and preparing the bundle for HMRC.
- Complete the probate application paperwork.
- Pay the Inheritance Tax and submit the Inheritance Tax forms and bundle.
- Apply for the grant of probate.



Grant of Probate issued

- Review the grant.
- Close / transfer / realise all assets.
- Settle debts and liabilities.



- Reconsider Inheritance tax position and ensure clearance is received from HMRC.
- Finalise Income Tax position.
- Prepare estate accounts.



Distribute the estate



Free Initial Consultation

We appreciate how important it is for you to be able to manage your private affairs and recognise that financial planning is an integral part of providing for your family in the future.

Our highly experienced team are on hand to provide you with the advice and guidance you need to assist with organising and planning your property and money, giving you that all important peace of mind and where appropriate, save your estate the payment of unnecessary inheritance tax.



WHY J&P?

- **Experts** in probate and most of our probate solicitors are **STEP** qualified.
- **Dedicated solicitor** dealing with your matter.
- **Fixed fee** pricing.
- **Home visits** and out of office appointments.
- **Excellent feedback** and reviews.

OUR SERVICES INCLUDE:

- Probate and estate administration.
- Will writing.
- Lasting powers of attorney.
- Court of protection and deputyship applications.
- Trusts.
- Inheritance tax advice and planning.

Your Key Contact

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