

# DUTIES OF A PERSONAL REPRESENTATIVE



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## **DUTIES OF A PERSONAL REPRESENTATIVE**

It is inevitable that we will all, at some time, experience the death of a family member or friend. As distressing as this is in itself, many of us will also have to become involved in the administration of the estate. If that is the case then we hope that this booklet will be of practical assistance in complementing the help and advice we can offer.

### **First Steps**

Immediately following the death of a person, all their assets, finances and property are effectively “frozen”. Any empty property should be secured and the insurers should be notified that it is unoccupied whilst any valuables should be protected. Answers will also be required to the following questions:

Is there a Will? If so, where is the original and who are the Executors? If there is no Will, who is entitled to administer the estate?

Except in the cases of couples who held everything in joint names or small estates (which can sometimes be administered without formality) the administration of the estate cannot proceed until the persons entitled to administer the estate (known as the Personal Representatives or PRs, namely the Executors named in the Will or, in absence of a Will, the Administrators) have proved their right to act on behalf of the estate. They do this by making an application for and obtaining a formal Grant of Representation, which can take the form of either a Grant of Probate or a Grant of Letters of Administration.

### **What is a Grant of Probate?**

A Grant of Probate is a document issued by a department of the High Court, called the Probate Registry, in cases where the person who has died left a valid Will. It gives the Executor(s) named in the Will proof of their right to administer the estate, although the Executors’ authority begins on the date of death.

### **What are Letters of Administration?**

If there is no Will there is no-one with immediate authority to act and an application must be made by one or more of the Deceased’s nearest relatives for a Grant of Letters of Administration. The law sets down the order in which the relatives of the Deceased are entitled to apply for the Grant. Once issued, it gives the person or people named (known as Administrators) authority to administer the estate.

### **What is the role of an Executor or Administrator?**

- a) To ensure that funeral arrangements are properly carried out.
- b) To calculate the value of the estate and to complete the account detailing the assets and liabilities that has to be submitted to the Inland Revenue. This can sometimes be needed even if no Grant is required to deal with the estate.

- c) To obtain the appropriate Grant.
- d) To ensure that all of the Deceased's assets are brought under his control and where necessary converted to cash.
- e) To ensure that the Deceased's liabilities are settled in full (including the funeral account and any Inheritance Tax liability).
- f) To finalise the Deceased's tax affairs to the date of death with the Inland Revenue and to pay any outstanding tax or alternatively to obtain any refund that may be due to the estate. This may be necessary even if a Grant is not required to deal with the estate.
- g) To submit details of any income received after the date of death to the Inland Revenue, to notify the Inland Revenue of the sale of such assets as properties and stocks and shares and to pay any Income Tax and Capital Gains Tax that may be due.
- h) To ensure that any legacies contained or referred to in the Will are either paid or distributed.
- i) To prepare Estate Accounts showing how the amount due to the beneficiaries entitled to the remainder of the estate (known as the residuary beneficiaries) has been calculated.
- j) To ensure that the remainder of the estate is paid to the appropriate beneficiaries.

### **How is the Grant Obtained?**

In the case of both a Grant of Probate and a Grant of Letters of Administration, an application to the Court at the Probate Registry is made on oath, accompanied by the Will, where appropriate, and by payment of the Probate Registry fee. Any Inheritance Tax has, usually, to be paid wholly or in part before the application is made. Depending on the particular circumstances, we can assist by:

- Advising regarding the payment of Inheritance Tax and other tax liabilities.
- Where necessary, preparing an Inland Revenue Account detailing the Deceased's assets and liabilities.

### **Is Inheritance Tax Payable?**

Where the total value of the estate does not exceed the Inheritance Tax threshold, there is unlikely to be a charge to Inheritance Tax. If gifts have been made by the Deceased in the preceding seven years, these may need to be taken into account. The liability for tax may also be affected if the Deceased, while alive, was beneficiary under a trust or settlement.

Where the value of the estate exceeds the Inheritance Tax threshold there will be liability for Inheritance Tax except where the estate passes to exempt beneficiaries such as a spouse or a charity, or where specific reliefs apply, for example in relation to agricultural land and family businesses.

Where Inheritance Tax does have to be paid we will be able to give advice on whether steps can be taken to reduce the tax or avoid it completely.

### **What happens when the Grant is made?**

Once a Grant has been made the Executors or Administrators will be able to proceed with the administration of the estate. This will involve registering the Grant with the institutions with whom the Deceased held assets in order to deal with some, if not all, of the following matters:

- a) Selling the Deceased's house at the best possible price or arranging to transfer it into a beneficiary's name.
- b) Closing bank and building society accounts.
- c) Obtaining monies due under life insurance policies.
- d) Realising any sums due from pensions, National Savings Certificates, Premium Bonds, stocks and shares or arranging transfer, where appropriate, into a beneficiary's name.
- e) Claiming payment of any debts owed to the Deceased.
- f) Dealing with the Deceased's debts and liabilities such as funeral expenses, Income Tax and Capital Gains Tax.
- g) Dealing with the Inland Revenue in finalising the Inheritance Tax liability, if any, and agreeing any Income Tax and Capital Gains Tax that may be payable after the date of death.
- h) Resolving any disputes that may arise.
- i) Maintaining detailed Accounts as to the capital, income and liabilities of the estate.

As solicitors we are well placed both to advise and to share with the Executors or Administrators the burden of their responsibilities. With the benefit of our experience we can ensure that the administration proceeds as effectively and as quickly as possible. We can safeguard against the possibility of problems arising once the estate has been distributed to the beneficiaries, such as the subsequent discovery of unknown liabilities, and can advise the Executors or Administrators as to how to avoid personal liability.

### **Distributing the Estate**

Once the Executors or Administrators are satisfied that they have completed the administration or made provision for any outstanding matters, they can distribute the estate to the residuary beneficiaries. When doing so they have to submit to those beneficiaries Estate Accounts detailing all capital assets and income received by them in the course of the administration and all payments made on behalf of the estate.

They will need to account for the estate's liability for Inheritance Tax, if any, and any Income Tax and Capital Gains Tax arising during the administration period.

They can then arrive at the final net amount (in cash or in the value of assets) for distribution. In addition they will have to be prepared to answer any questions raised by the residuary beneficiaries and may have to justify the action they have taken in dealing with the estate.

### **Claims against the estate**

It is possible that someone may dispute the validity of a Will. It is also possible that someone who does not benefit under a Will, or on an intestacy, may make a claim against the estate.

With our knowledge and experience in these areas we will be able to deal with any such claims on behalf of the Executors or Administrators and advise fully as to the course of action to be adopted in the best interests of the estate.

### **How long will it take?**

There is usually much to do and the time that it takes will be dictated by the size and complexity of the estate. Please be assured however that we will handle the matter expeditiously, efficiently and sensitively.