

INTRODUCTION TO THIS NOTE

This note sets out considerations and information.

It is an information note only intended for clients and is not intended to be taken as legal advice.

PROBATE: A GUIDE FOR NON-PROFESSIONALS

THIS DOCUMENT PROVIDES GENERAL GUIDANCE REGARDING THE PROBATE PROCEDURE FOR NON-PROFESSIONAL PERSONAL REPRESENTATIVES AND BEREAVED FAMILY MEMBERS. YOUR PROBATE PRACTITIONER WILL BE ABLE TO PROVIDE SPECIFIC ADVICE BASED ON YOUR CIRCUMSTANCES.

Dealing with the death of a loved one can involve many challenges, both emotional and practical. If you are also a personal representative (PR) officially dealing with the estate (the property and possessions of the person who has died) as either an executor or an administrator (these terms are explained below), you may find yourself in an alien situation with unusual and confusing terminology.

This guide aims to help you feel more comfortable about your obligations as a PR.

INTRODUCTION TO PROBATE

There are a number of things that must be dealt with immediately following a person's death, such as registering the death and arranging the funeral. For further guidance, see Immediate steps following a death—guide.

In time, it is necessary to start dealing with the legal aspects of administering the deceased person's estate. Unless there are immediate financial concerns and/or property needs to be dealt with for commercial reasons, there should be no harm in waiting for a few weeks. However, note that interest starts to accrue on unpaid inheritance tax (IHT) from six months after the end of month in which the person died and the filing deadline for the IHT account is twelve months from the end of the month in which the person died.

TERMINOLOGY

Administrators	The people who act in the estate administration where no Will can be found or the executors are unwilling or unable to take the role, and who are appointed in the grant of letters of administration.
Chattels	A deceased person's personal possessions such as jewellery, clothing, furniture, artwork, vehicles etc are included in their estate. They are known as chattels.
Estate	The property and affairs of the person who has died makes up their estate. This often includes a combination of their home (and perhaps other

	<p>properties, described as 'real property'), money and investments in bank, building society and investment accounts, cash and personal possessions. It may also include jointly owned assets, foreign assets, business assets and agricultural assets.</p> <p>Outside of the deceased person's estate, there may be trust assets in which the deceased person had an interest and which are affected by their death. The deceased person may also have had a pension and life assurance products which pay out a lump sum or annuity as a result of their death, but often these sums will pass outside the deceased person's estate and will not require a grant of representation.</p>
Executors	The people named in the deceased person's Will and appointed in the grant of probate to deal with the deceased person's estate.
Fixed net sum	The sum (currently £270,000) passing by law to the surviving spouse or civil partner of a deceased person who did not leave a valid Will and who is also survived by children or grandchildren.
IHT	The tax payable on the amount of a deceased person's net estate after all exemptions and reliefs have been deducted. There is a basic nil rate band available to all estates and a residence nil rate band available where the deceased person has left a residential property interest to children (or specified others). The maximum total nil rate band and residence nil rate band that could be available for a couple in 2020–21 is £1m. Above this, IHT is generally charged at 40%.
Intestacy rules	Where the deceased person did not leave a valid Will, their estate will pass according to legal rules known as the intestacy rules. These provide that the chattels and a fixed net sum pass to the deceased person's spouse or civil partner (if surviving) and the residuary estate passes on statutory trusts to specified relatives (including

	the surviving spouse and others, depending on who has survived the deceased person).
Pecuniary legacies	Sums of money left by the deceased person in their Will to specified individuals or charities.
Personal possessions legacy	Often a deceased person's Will will contain a specific gift of their personal possessions (known as chattels), either to an individual or to their executors to distribute taking account of a letter of wishes. Even where the deceased person did not leave a valid Will, the intestacy rules provide for their personal possessions to pass to their surviving spouse or civil partner.
PRs	This term includes both executors and administrators to mean the people dealing with the deceased's estate, whether under a grant of probate or a grant of letters of administration. Some implications of the deceased person leaving a Will or not are explained below. Many of the obligations will be the same for both executors and administrators.
Probate registry	Division of Her Majesty's Courts and Tribunals Service which processes the application and issues the grant of probate or letters of administration.
Residuary estate	This is what is left after all IHT, other taxes and debts and any administration expenses have been paid and any legacies have been distributed. Usually the deceased person's Will will provide for the residuary estate to pass to individuals or charities in specified shares. If the deceased person did not leave a Will, the personal possessions, fixed net sum and residuary estate will pass according to the intestacy rules.
Specific legacies	Particular personal possessions or other items left by the deceased person in their Will to specified individuals or charities.

An executor's appointment in the Will operates from the date of death. Although their appointment is not confirmed until the Probate Registry issues a grant of probate authorising the executors to collect in assets and pay debts, the executor has the authority to make decisions and deal with many aspects of the estate immediately. The role of an executor is an important, lifelong position. If any claims come up in the future from the estate, it will be up to the original executors to sort them out. If you are appointed in the Will as an executor and you are uncertain about taking on the role, you should contact your probate practitioner who can help explain the role to you and hopefully deal with any misgivings. If you still do not wish to take the role, the deceased person's (other) family members and Probate Registry should be informed. Please note; you may not be able to 'renounce' probate (step down from being an executor) if you have done anything which indicates that you have accepted the role so contact your probate practitioner as soon as possible.

If there is no Will, the situation is a little more complex. No-one can make any real decisions until the Probate Registry issues the grant of letters of administration appointing the administrators and authorising them to collect in the assets and pay debts. The grant cannot be applied for until the estate has been properly valued and any tax paid and there is nobody officially in charge until that point. Accordingly it can be more complex, time consuming and expensive than the position where the deceased person left a Will. Administrators are effectively governed by the intestacy rules. These rules establish the person or people entitled to take out the grant and who will inherit the estate. Your probate practitioner can help explain the rules, but in many cases it will be the deceased person's surviving spouse or civil partner and/or their children who are able to apply to be administrators.

PERSONAL REPRESENTATIVES' OBLIGATIONS AND RESPONSIBILITIES

The PRs must:

keep the property and possessions of the deceased person safe and secure during the administration process

find out exactly what the deceased person owned, owed or was owed,

submit the details of the deceased person's estate along with any IHT due to HMRC and the Probate Registry

collect in the deceased person's assets and pay off any debts, including your own out of pocket expenses and any tax owed in relation to the deceased's lifetime tax position and tax relating to the administration period

advertise for creditors and consider if any claims may be made against the estate

finalise the IHT position for the estate and settle any additional IHT liability

distribute the remainder of the estate in accordance with the Will or by following the intestacy rules. Those who inherit under the Will or intestacy rules are the 'beneficiaries'. If there are many debts, or more debts than money to cover gifts in the Will this process must be handled very carefully and in a specified order and will require specialist advice from a solicitor.

Sometimes there is doubt about the validity of a Will. If you are concerned that there is something amiss with the deceased person's Will (either on the face of it or the circumstances in which it was made) or think that someone else may challenge its validity, you should consult a professional adviser as soon as possible. Apart from starting to ascertain the deceased person's assets and liabilities, you should take professional advice before starting the administration process.

INVOLVING PROFESSIONALS

If no professional has been appointed as a PR alongside you, the first administrative step is to decide whether or not to instruct a probate practitioner to act or assist you in the estate administration. A probate practitioner must advertise their standard fees and, on discussing the particular circumstances, should be able to give you an idea of their firm's likely fees in your case, which will depend on factors such as the size and complexity of the deceased person's estate, whether there is a Will, whether there are any overseas, trust, jointly owned, business or agricultural assets passing as a result of their death and of course it will also depend on the extent to which the probate practitioner is to be involved. If any claims are anticipated or have already been brought against the estate, this is likely to significantly impact on the level of professional fees.

A probate practitioner may be instructed to complete the entire administration of the deceased person's estate, including constituting any trusts set up in the Will or on intestacy and dealing with any income tax or capital gains tax liabilities which arise during the administration period. Some PRs choose to instruct professionals just to prepare the IHT return and papers for the probate application. Alternatively, some PRs may wish to complete the entire process themselves. It is worth considering the amount of time this will involve, as well as the emotional strain of dealing with the deceased person's estate yourself. What may seem straightforward at the outset may become a more complex probate matter as the deceased person's assets and liabilities are investigated. A trusted probate practitioner can assist you with most if not all of your obligations in administering the estate. Where the deceased person's estate contains overseas assets, trust interests, business or agricultural assets, if there is any foreign element or if it is suspected that a claim may be brought against the estate, professional advice should be sought at the outset.

Reasonable legal or other professional fees incurred by the PRs in the administration of the estate can be paid out of the estate itself. The position is slightly different where professionals act as PRs themselves, but there will usually be an appropriate charging clause in the deceased person's Will or otherwise this can be agreed with the residuary beneficiaries.

SUMMARY OF THE LEGAL ADMINISTRATION OF THE DECEASED PERSON'S ESTATE

ASCERTAINING WHAT IS IN THE ESTATE

A thorough search will need to be made through all of the deceased's papers and property to establish everything the deceased person owned or owed and the approximate value of each asset or debt (and sometimes the whereabouts of tangible assets, like cars, jewellery, furniture, artwork and other chattels). This will include, amongst other things, gathering details of bank and building society accounts, chattels (see below), life insurance, tax records (particularly the last tax return and P60 (end of year tax certificate) of the deceased person), information about the property to include council tax and services, and mortgage, tenancy or title information, employer or pension information, shares and or stockbroker address and monies owed or owing. If the deceased person had a computer or any other digital/storage device (including a mobile phone) there may be online accounts that also need to be considered. Check to see if there is a list of passwords or memorandum of digital assets. This may be lodged with the solicitor who drafted the Will (if applicable). Otherwise just knowing that there are online accounts is important.

If you are instructing a probate practitioner to handle the estate administration then you might just make a list of all of the assets (including digital assets) and liabilities, with approximate values and provide them with copies of relevant bank, building society and investment account statements and other records, in order that they can write to the relevant institutions to get accurate valuations as at the date of the death and deal with collecting in or transferring the assets to beneficiaries in due course.

LIFETIME GIFTS AND TRUST INTERESTS

The PRs have to establish whether any gifts or transfers into a trust were made by the deceased person in the last 14 years of their life. You will also need to know whether the deceased person was entitled to benefit from another person's estate which hadn't been distributed at the time of their death, or if they were a beneficiary of a trust. This information is required by HMRC and might affect the amount of IHT the estate has to pay.

OVERSEAS INTERESTS AND DOMICILE

If the deceased person was born or lived abroad for significant periods of their life, if their parents were born abroad or even if they just owned assets outside the UK, this information may need to be included in the IHT return and may impact on the type of IHT return required, as well as the amount of IHT payable. Your probate practitioner will be able to advise you on the deceased person's domicile for IHT purposes as well as how the overseas assets will be dealt with.

JOINTLY OWNED ASSETS

The deceased person might have owned some assets jointly with another person. While this may simplify the procedure for dealing with the asset after their death (as some assets might pass automatically, by 'survivorship' rather than having to be administered once the grant has been issued), the value of their interest will still be relevant for IHT purposes and will need to be included in the IHT return. Gather as much information as you can about the background to jointly owned assets, including when the deceased person's interest arose, each person's contributions and what the deceased person's share was at the time of their death.

BUSINESS AND AGRICULTURAL ASSETS

If the deceased person owned a business or agricultural assets or woodland, these interests will need to be valued as at the date of their death and are likely to require specialist involvement. Your probate practitioner will be able to explain how these assets are to be dealt with and whether or not any IHT reliefs or exemptions might be available.

PENSIONS AND LIFE INSURANCE POLICIES

If the deceased contributed to a pension scheme or had taken out life insurance during their lifetime, you will need some details of these interests. Often the deceased person may have completed a declaration of wishes or nomination, which allows a lump sum to be paid out to the nominated person outside the estate administration process (and without the need to wait for the grant to be issued). Often, but not always, these amounts will fall outside the deceased person's estate for IHT purposes. This means that they may not be subject to IHT as a result of the deceased person's death. However, the IHT account often requires the PRs to give some, if minor, details of such policies. If you are in any doubt about how these interests should be dealt with, you should discuss it with your probate practitioner.

ACCOUNTING TO HMRC

Once the deceased person's assets and liabilities and any other interests have been ascertained and at least estimated values are available, the PRs will usually need to complete an IHT return (commonly Form IHT400 and related schedules) and account for any IHT due on the estate to HMRC. If the net value of the estate (what is left after any debts due to be paid by the deceased person) is over the IHT nil rate threshold (which is £325,000 for deaths in 2019–20 and 2020–21), there are several exemptions and reliefs which might apply to reduce the IHT

actually payable. There is also an option to pay IHT on the deceased person's house or other real property in instalments in some circumstances. Your probate practitioner can help you with the IHT return and calculations but will need to know, amongst other things, whether the deceased person had ever been a widow or widower as it may be possible to use a previous spouse's nil rate band, even if they had remarried.

Whoever prepares the IHT account, you and any other PRs will each need to sign it to confirm that the information and statements contained in it is correct and complete to the best of your knowledge. Therefore it is important that you check the IHT account and all schedules very carefully and raise any questions with your probate practitioner. Incomplete, inaccurate or even significantly overdue returns can result in penalties.

The IHT calculated as due at this stage (even if based on estimated values) needs to be paid to HMRC in order for them to stamp the Form IHT421 (Probate summary) and forward on to the Probate Registry who can then process and issue the grant of probate or grant of letters of administration. However many assets cannot be dealt with (ie transferred to the PRs or sold as necessary) without the grant of probate or grant of letters of administration. This can lead to a circular problem of PRs not having access to sufficient funds to pay the IHT due to the lack of a grant.

Some of the deceased person's assets (such as accounts with relatively small values) might be accessed without needing to have a grant and you should try to collect these in as soon as possible. If the deceased person held bank or building society or National Savings & Investment accounts, you may be able to apply for those funds to be paid directly to HMRC to settle IHT prior to the grant, under the direct payment scheme. The deceased person may have held a life insurance policy or there may be a lump sum payable from the deceased person's pension without the need for the grant. Depending on the identity of the recipients and the beneficiaries under the Will or on intestacy, these funds might be used to settle the IHT. Alternatively, a family member or bank may agree to loan you the funds to settle the IHT on the basis that they can be refunded from the estate once the assets have been collected in after the grant is issued.

Once the grant is issued and the assets are collected in, a corrective account might be required to update HMRC about any of the assets for which estimated values were submitted once updated values are known. If these result in further IHT being payable then the PRs will need to settle this. Additionally, HMRC may raise questions about the IHT return contents and some negotiation over asset valuations (eg real property) may ensue. Again it is helpful to have a professional involved at this stage, to negotiate with any specialist teams at HMRC such as the district valuer of the Valuation Office Agency.

APPLYING FOR THE GRANT

Generally your probate practitioner will prepare the probate application for you and this may be done either online or using a paper application form PA1P or PA1A. As PR, you will need to confirm the details and sign the application form containing a legal statement (previously contained in a separate statement of truth) either as executors (to confirm that you are the executors named in the Will, the Will is the last Will of the deceased person and confirmation of the estate's value) or as administrators (to confirm that the deceased person left no Will, that you are the person or people entitled under the rules on intestacy to administer the estate and confirmation of the estate's value). By signing the application form, you are confirming that you believe the facts to be true on the understanding that criminal proceedings for fraud may be brought against anyone found to have been deliberately untruthful or dishonest. Again if you have any questions about the contents of the application form, you should check with your probate practitioner and notify them of any errors.

Once these details are accepted and provided there has been no delay in settling the IHT due on the estate, the probate registry will issue a grant of probate (to executors) or a grant of letters of administration (to administrators).

COLLECTING IN ASSETS AND SETTLING LIABILITIES

Once the grant has been issued, a certified copy can be sent to the various banks and building societies with a request for the account to be closed and the proceeds paid to your PR's account or your probate practitioner's client account. It is advisable to discuss the position with the beneficiaries who are entitled to receive the residuary estate of the deceased person in advance in case they would prefer to have an asset (such as an investment account) transferred into their own name rather than for it to be sold or cashed in. However, you have a duty to settle any liabilities of the estate, including refunding yourself or family members for funeral expenses and any loans made to settle IHT. This will necessitate the cashing in of some of the estate assets.

INTERIM DISTRIBUTIONS

Once the IHT position has been confirmed and provided it is clear that the estate is solvent (ie there are sufficient assets to meet the liabilities), you can consider distributing items gifted as specific legacies in the Will early on in proceedings, as well as any specific legacies of money. It is not always necessary to wait until the estate administration is ready to be concluded. It is sensible to obtain a receipt from each beneficiary, which should be kept with the probate papers. You should also consider whether to conduct bankruptcy searches before making distributions to beneficiaries. Your probate practitioner will be able to explain whether or not this is appropriate in the circumstances.

VARYING LEGACIES AND ENTITLEMENTS ON INTESTACY

Sometimes a beneficiary might wish to redirect their legacy to another party. Depending on the facts, this may be done by way of a disclaimer or a variation of the Will or intestacy provisions. Your probate practitioner will be able to advise on the options and potential implications of varying the estate in this way. HMRC needs to be notified if there is more IHT to pay as a result of the variation.

CLAIMS AGAINST THE ESTATE

Be prepared. Are there any potential claims against the estate? Is there someone who was financially dependent on the deceased person but has not been adequately provided for in the Will or on intestacy? Although it may be a sensitive subject, you need to consider if there is anyone who might bring a claim against the estate because of their relationship with the deceased person. You also need to consider if there are any debts that are not obvious from the papers.

It is possible for PRs to protect themselves against liability for claims made by creditors after the estate has been distributed by advertising in certain publications and local press in accordance with section 27 of the Trustee Act 1925 and waiting for the specified deadline to pass before distributing the estate. In order to protect against claims for financial provision from the estate under the Inheritance (Provision for Family and Dependents) Act 1975, it is usual to wait for at least six months from the date of the grant before distributing the estate. Your probate practitioner can advise on the options for insurance and appropriate indemnities.

FINAL DISTRIBUTIONS

Once HMRC has confirmed the IHT position, all tax and other liabilities have been paid and all assets distributed or sold, the final distributions can take place and the estate administration can be completed. This will include constituting any trusts set up by the deceased person's Will or on intestacy. Often this can be a year or more after the death. Each estate is different with different complexities and time limits. Your probate practitioner will be able

to advise on the formalities in relation to any ongoing trusts. In relation to the estate administration, they will be able to keep you updated so that you know where you are in the process at any one time. They will also be able to tell you if circumstances change which affect the time that it takes to finalise the estate.

As PR, you need to be able to account to the Probate Registry for the estate administration should they require it (usually at the instigation of a beneficiary). Therefore, it is important to keep careful records of the assets which have been collected in, sold or transferred direct to beneficiaries, liabilities that have been paid and all interim and final distributions. Your probate practitioner will be able to advise you on the need for simple or formal estate accounts and arrange for these to be prepared.

NEED TO KNOW MORE? AI LAW CAN HELP

Our estate planning team deals with the matters raised in this snippet. If you need advice, contact us today and we can review your matter and let you know your prospects and next steps to take.

OUR DETAILS

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