



CLARENCE TRUSTEES

WILLS, TRUSTS, & PROBATE



The Basics of Probate

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THE BASICS OF PROBATE

When someone passes away it is a legal requirement that their estate is dealt with in accordance with all the relevant laws.

A deceased person's estate is made up of everything they owned (such as their home, their savings and investments, their belongings and anything else they may have owned) minus anything they owed (see below "Valuing an Estate").

This exercise is not as easy as simply passing around their assets according to their wishes – even if they did have a will.

Instead there is an official process which must be followed – and in England and Wales this process is called "probate". In Scotland it is called "confirmation". This guide focuses only on England and Wales.

Probate involves obtaining from the Probate Office the legal right to distribute the estate and involves varying degrees of complication.

This guide seeks to outline what the process is in England and Wales for dealing with the estate of someone who dies leaving a will.

For someone who passes away without leaving a will the process is even more complicated. See our separate guide, "Why Do I need a Will?"

1. WHAT IS PROBATE ?

Probate is the generally used term to describe the exercise of dealing with the estate of someone who has passed away. It involves keeping their estate secure, finding out about all their assets and liabilities, valuing their estate, paying any inheritance tax that might be due, liquidating the assets to pay off any debts, and then distributing the proceeds according to the deceased's will.

The crucial elements that decide how complex this task will be are:

[a] *Whether you need a Grant of Representation; and*

[b] *Whether you need to complete the short Inheritance Tax forms or the full Inheritance Tax forms.*

2. GRANT OF REPRESENTATION

The “Grant of Representation” is the authorisation that the person(s) administering the estate of the deceased need from the Probate Office before they are allowed to access the deceased’s assets.

Banks and other financial institutions will ask you for (amongst other things) a copy of the Grant before they will release funds.

However, a Grant may not be needed if the estate is a Low Value Estate or if all the assets of the deceased were held jointly with another person:

LOW VALUE ESTATE:

A Low Value Estate is generally one worth less than £5,000 (some organisations may use a higher or lower figure in deciding whether or not a Grant is needed) and which does not include land, property or shares.

ASSETS JOINTLY HELD

If all of the assets of the deceased were held jointly with another person, the estate will pass to the surviving spouse/civil partner.

Jointly held assets, such as bank and savings accounts, will typically automatically transfer to the other named holder without the organisation requiring a grant of representation.

3. WHO DOES IT ?

When someone passes away leaving a will they will name an Executor or Executors in their will. The individual(s) named as Executor(s) should have been asked at the point the will was drafted if they were prepared to act as Executor(s).

The Executors are responsible for administering the will and dealing with probate.

Even if they have been named in a will as an Executor, a person may pass this task onto a professional (like Clarence Trustees) – preferring to pay a professional to do the job for them to save time and worry.

If you are an Executor, it is possible to carry out the probate process yourself. However probate is becoming increasingly more complicated and the responsibility is big. To find out more about the role of the Executor please refer to our separate guide “The role of the Executor.”

4. VALUING AN ESTATE

To value somebody’s estate it is necessary to identify all their assets. This means any bank and building society accounts, investments, properties, their belongings, car and anything else they may have owned.

It is also necessary to identify any pensions and life insurance policies and whether such life insurance policies are written in trust or not – because this could make material difference to the size of the estate and how to deal with it.

For savings and investments and other financial assets it will be necessary to write to the provider and ask for a valuation on the date of death.

Properties will also need to be valued, preferably by an estate agent or chartered surveyor, and it is also necessary to add up what everything else is worth.

The liabilities of the estate also need to be established (such as mortgages, credit cards, loans and personal debts) and their magnitude in pounds sterling ascertained.

These liabilities can be deducted against the assets of the estate in reaching the net value of the estate. The cost of reasonable funeral expenses can also be deducted as well – so it will be necessary to ascertain what the funeral costs are/were.

Having established the net value of the estate, the next step is to complete the Inheritance Tax (IHT) forms – and these need to be completed even if no IHT is going to be owed.

5. INHERITANCE TAX FORMS

Most estates in the UK do not incur inheritance tax and are known as “Excepted Estates.” However even these require the IHT forms to be completed!

So what exactly qualifies as an Excepted Estate?

DEATHS AFTER 1ST SEPTEMBER 2006

For deaths after 1 September 2006, the estate will generally be an Excepted Estate if one of the following applies:

Low Value

The estate will be excepted if it is a low value estate.

A low value estate is one that is valued at less than the IHT Nil Rate Band (NRB), which at the time of writing (Feb 2017) is £325,000.

Exempt Estate

The estate will be exempt if the deceased left everything (or everything over and above the NRB) to either:

- *a spouse or civil partner living in the UK; or*
- *to a 'qualifying' charity*

...and the estate is valued at under £1 million.

If the estate is valued at over £1 million then it cannot be exempt.

Foreign

The estate will be excepted if the deceased was a 'foreign domiciliary' i.e. they lived permanently abroad and died abroad and the value of their UK assets was under £150,000 on their death.

DEATHS ON OR AFTER 6TH APRIL 2010

For deaths on or after 6 April 2010 an estate will be an Excepted Estate if both of the following apply:

- *The value of the estate is less than twice the NRB (i.e. $2 \times £325,000 = £650,000$ as at the time of writing); and*
- *100% of the unused NRB from a late spouse or civil partner can be transferred to the deceased.*

IHT FORMS FOR EXCEPTED ESTATES

Excepted Estates only require the “Return of Estate Information” form to be completed and sent to HMRC. This is shorter and less complicated than the full IHT forms – but still not exactly straight forward! The relevant form is “IHT205”.

The IHT205 cannot be used where:

- *The estate is worth more than £1 million.*
- *The deceased’s spouse/civil partner used some of their NRB, so it is not possible to transfer 100% of it.*

IHT FORMS FOR OTHER ESTATES

If the estate has an IHT liability or it is not an Excepted Estate, then the full IHT forms must be completed – even if the estate is being passed between spouses or civil partners and there is no IHT to pay.

The full IHT forms are much more complicated than the short forms and have extra schedules to be filled in which involve detailing all the deceased’s assets and debts.

The relevant form is the IHT400.

6. WHAT NEXT ?

What happens next depends on whether the IHT205 or the IHT400 has been completed.

IHT 205:

As there is no IHT to pay, the IHT205 may be sent directly to the Probate Office with all the other papers required by the Probate Office and on receipt the Probate Office will send the IHT 205 onwards to HMRC.

IHT400:

Before sending any papers to the Probate Registry, the IHT400 must be submitted to HMRC. It must be submitted to HMRC within 12 months of the date of death.

However, the IHT on the estate must be paid by the executors to HMRC 6 months after the date of death. Given that this is the case, the IHT400 might as well be filed within this timeframe as well since it is on the IHT400 that the IHT is calculated!

When the IHT has been paid by the Executors, HMRC will send the Executors a piece of paper called an IHT402 – which is basically a receipt for the settlement of the IHT.

Once the IHT402 has been received from HMRC, the probate forms and associated papers can be sent to the Probate Office and the IHT402 must be sent with them.

THE OATH

The Executor(s) must attend in person at a Probate venue (or at the office of any commissioner for oaths such as a solicitor's office) to swear the oath.

THE GRANT

The Grant of Representation will then be sent in the post. It is the Grant that will need to be shown to banks and other institutions to release assets. Any debts owed by the deceased must then be settled and the estate can be distributed according to the deceased's wishes.

DISTRIBUTING THE ESTATE

Despite there being a will, it still may not be an easy job distributing the assets of the estate. Sometimes items bequeathed in the will are no longer in the estate, and sometimes beneficiaries may have passed away. There are all sorts of other complications that regularly crop up.

There are rules to follow for all these complications and it is very unlikely that a lay Executor will know what to do. The best advice is to ask a professional to carry out the probate process.

Taking into account everything that needs to be done (including, for example selling property), the probate process can often take some considerable time.

7. HOW WE CAN HELP

Probate is, even in the case of fairly small estates, still a complicated process. There is a significant burden of responsibility on the Executors (see our separate guide "The Role of

The Executor”) who are unlikely to understand the seriousness of the job they have to do and the consequences of getting it wrong. This may be especially the case if the will involves trusts.

Clarence Trustees provides a fast, efficient and modern probate service.

We quote a fixed fee in advance so that you will know exactly where you stand. Further, our fees are not calculated as a percentage of the estate (which is the way most solicitors and banks calculate them). Rather our fees are based on the amount of work that needs doing.

By using Clarence Trustees for probate you can be confident that the fee your loved one’s estate will pay will be fair and proportionate – and fixed in advance.

Please contact us now about our probate service.



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