

June 2019



Probate

A brief guide



Help when you need it the most

The death of a loved one invariably means a great deal of emotional stress, on top of which there's the strain of dealing with the associated legal, tax and administrative processes. Sorting out someone's affairs when they die can take months and involves getting to grips with what can appear confusing and complicated steps – even to those who have experienced bereavement before.

KWW can call on years of experience, and our solicitors are ready to take the stress out of this difficult and upsetting time, providing solid and sympathetic advice on how to deal with the estate of your loved one or, more usually, carrying out the legal process on your behalf.

Here, we've taken the most commonly asked questions connected to the process of probate and provided you with some answers to put you in a better position to move ahead. At such a difficult and disorienting time, it should be reassuring to know that expertise is close at hand and that you don't have to face this task alone.

Q. What is Probate?

A Grant of Probate is an order of the Court giving one or more people the legal authority to administer the estate of the deceased in order to distribute it correctly to the beneficiaries. The people who have the right to apply for a Grant of Probate are the Personal Representatives of the estate. PRs are either the Executors named in the Will or the next of kin under the Rules of Intestacy if there is no Will.

There are different types of Grant depending on the circumstances and who is to deal with the estate. The two main types of Grant of Representation are the Grant of Probate (where there is a Will) and Letters of Administration (where there is no Will).

The people named in the Grant of Representation are legally responsible and ultimately liable for the administration of the estate of the deceased. It is important their duties are exercised correctly, and this is where KWW Solicitors can assist.

Q. What is the role of a Personal Representative (PR)?

Being a PR brings with it tremendous responsibilities, and you should be prepared for the process to be challenging and lengthy. The PR is legally responsible for administering the estate according to the provisions expressed in the Will or Rules of Intestacy.

Q. What is Intestacy?

When someone dies without leaving a valid Will they are said to have died Intestate. In these circumstances the Rules of Intestacy apply and these determine who will administer as PR and who will benefit from the deceased's estate. The law sets down an established order of entitlement for PRs to take out a Grant of Probate or Letters of Administration. The order is basically the next of kin, ie: (i) spouse or civil partner; (ii) issue (children or remoter lineal descendents); (iii) parents; (iv) brothers and sisters. When identifying PRs and beneficiaries, extreme care and diligence is required. KWW can:

- Help you understand who the PRs are in your particular case
- Explain in detail the role, responsibility and ultimate liability of a PR
- Explain the benefits of appointing us on your behalf to take on the legal responsibilities.

Q. Who will benefit from a deceased's estate?

If the deceased dies testate (with a Will), the beneficiaries will be those named in the Will. On an intestacy, the beneficial entitlement follows to a large degree the entitlement to take out Letters of Administration as PRs, but again, this is something we can advise upon.

Q. What about Inheritance Tax (IHT)?

Before the Grant of Representation (Probate or Letters of Administration) is obtained it is necessary to value the estate of the deceased and to calculate any IHT due. The relevant IHT forms must be completed and submitted to HM Revenue & Customs with any tax due. No IHT is payable for gifts to spouses or civil partners, charities or political parties. Otherwise, every person has an IHT-free allowance on death, currently amounting to £325,000. This is called the Nil-Rate Band (NRB), and any unused portion can be transferred between spouses.

Q. Are there any reliefs against IHT?

Since April 2017 there is a new allowance called the Residence Nil Rate Band (RNRB). The RNRB is fairly complicated but where the deceased owns or, in some circumstances, owned a home and is passing the same to children, a further £150,000 may be available, rising to £175,000 in April 2020 and this is also transferrable between spouses, as with the NRB. By April 2020 a surviving spouse may be able to transfer to the children up to £1million tax-free subject to fulfilling certain criteria.

It is too complicated to set out all the rules here but we will be very happy to explain the same to you when either you are applying for probate or, perhaps more importantly, updating your Will. These allowances must be claimed, and we will ensure you benefit from all possible allowances.

Q. When must IHT be paid?

Unfortunately, if IHT is payable, it must be paid before the Court will issue the Grant of Probate or Letter of Administration. The tax that is applicable to property can be paid in instalments over 10 years, although interest will be applied.

Q. Looking at my own situation, is it time I made a Will?

Yes, absolutely. You can decide who to leave your money to and who will manage your affairs after your death. If you have already made a Will, we would happily review it to ensure it continues to reflect your wishes. There may have been many changes in your family circumstances, and there will certainly have been changes in the law and IHT. KWW Solicitors can ensure your wishes are catered for and the Will is tax-efficient to be able to claim all IHT allowances applicable.

