

PROBATE

a guide for Executors

Being appointed as an Executor of a Will can be a huge responsibility and a daunting task. Executors can be held personally financially liable if mistakes are made in dealing with the administration of an estate, so it is important to take legal advice at the outset.

Berensens Solicitors are on hand to provide you with the requisite advice and guide you through the process. We can tailor our service to provide you with the expertise you need. Whether this is holding your hand as a trusted adviser throughout the administration, or taking on the responsibility to deal with every aspect of the estate.

We have set out below a brief guide, summarising some of the main points to consider as an Executor:

Initial Steps

When someone passes away it can be difficult to know where to turn or what to do first. To provide some guidance, here are four initial steps we would suggest at the outset:

1. Register the death. This must be done within five days of the date of death.
2. Locate the Will. The Executors must ensure they are acting under the last valid Will.
3. Arrange the funeral. Occasionally funeral wishes are located with the Will, or there may be a funeral plan in place.
4. Ensure any house insurance policy is updated following the change of circumstances.

Probate

Although the Will may appoint you as Executor, the Grant of Probate is the legal document giving the Executors the authority to deal with the deceased's finances and other assets. It is often the key to closing bank accounts, encashing investments, transferring assets and selling property.

The process to obtaining Probate depends upon the makeup of the deceased's estate, and the terms of the Will. However, in essence there are a few stages:

1. The Executors must ascertain the assets and liabilities in the estate at the time of their death, together with gifts made by the deceased.
2. The Executors must account to HM Revenue & Customs for the Inheritance Tax.
3. The Executors can then apply to the Probate Registry for the Grant of Probate.

Probate is not always necessary, as it can depend upon the assets available. However, there are often other reasons to consider obtaining a Grant of Probate, which is why we suggest taking advice at the outset.

Administering the Estate

Once the Grant of Probate is received, the process for most Executors will be as follows:

1. Encash, sell or transfer the assets of the estate.
2. Ensure that all Inheritance Tax has been settled.
3. Discharge all liabilities of the estate.
4. Account to HMRC for any Income Tax or Capital Gains Tax which may be due.
5. Distribute specific bequests and legacies under the Will. If legacies are not distributed within 12 months of the date of death they will attract interest.
6. Prepare Estate Accounts to detail the assets and liabilities of the estate, and how these have changed throughout the administration. The residuary beneficiaries will be entitled to a breakdown of how their inheritance has been determined.
7. Pay the remainder of the estate to the residuary beneficiaries.

Contentious Estates

Contested Wills and claims against estates are becoming increasingly common. This is particularly true if the deceased did not make provision for close family or financial dependents. We strongly recommend taking legal advice before making any distributions from the estate.

How We Can Help You

In summary, the Executors have a duty to:

- Understand the terms of the Will.
- Identify the assets of the estate.
- Settle the liabilities.
- Consider any claims against the estate.
- Settle all Inheritance Tax, Income Tax and Capital Gains Tax.
- Hold estate funds separate from their own.
- Prepare detailed accounts.
- Administer the estate in a timely manner, and in accordance with the terms of the Will.

It can be a stressful and complex process, and if mistakes are made the Executors could be held personally financially liable.

Berensens Solicitors are here to provide you with the right advice and take on this responsibility, to help ensure that you are protected as Executor, and the Beneficiaries receive their inheritance efficiently.