

GUIDE TO ESTATE ADMINISTRATION

A guide for personal representatives and beneficiaries

The following is a brief summary of the procedure for the administration of a deceased person's estate, and the duties of personal representatives.

Who are the personal representatives?

The personal representatives of an estate are either

- those named in the Will as "executors"; or
- where there is no Will, the next of kin of the deceased who will usually be entitled to apply to become "administrators" of the estate

A personal representative can also be a beneficiary of the estate

Responsibilities of personal representatives

Personal representatives are responsible for making sure that the estate is administered correctly. If there is a Will, the personal representative must make sure that the wishes of the person who has died, as set out in their Will, are followed. If there is no Will, you must follow the rules of intestacy which we can explain to you.

Administering the estate

A grant of representation is not always needed, for example, if the person who has died has left less than £5,000 in total or owned everything jointly with someone else.

In other cases, some financial organisations, such as banks, may agree to pay funds to a personal representative without a grant of representation.

Usually, a grant of representation will be needed when the person who has died left more than £5,000, stocks or shares, a house or land or certain insurance policies. The following steps will usually be involved:

Valuation

Enquiries will have to be made to find out the value of the deceased assets and any unpaid liabilities (including those relating to businesses or trusts in which the deceased had an interest and also those which are jointly owned)

Lifetime gifts

Enquiries will have to be made to find out if the deceased had made any gifts during their lifetime which must be declared to H M Revenue & Customs. Gifts made at any time since 1986 may be relevant

Inheritance Tax

In some cases an account must be submitted to H M Revenue & Customs for inheritance tax purposes, and inheritance tax may have to be paid before the grant of representation can be issued. Such payments can often be funded from cash assets held by the deceased but sometimes bank borrowing may be required.

Once all this information is obtained and reported (where necessary) the grant of representation can be applied for. Once this is received, cash assets can be realised and any outstanding liabilities can be settled. Any property or shares and investments will also need to be dealt with and advice may be needed about the sale of such assets or the transfer of such assets to all or some of the beneficiaries of the estate

Taxation matters

Various taxation matters may need to be finalised at this stage, including inheritance tax, the deceased's income tax affairs to the date of death and income tax or capital gains tax for the estate itself.

Final distribution

Estate Accounts will usually be needed before a final distribution can be made to the beneficiaries and the administration of the estate finalised.

Likely timescales

Dealing with the affairs of someone who has died can take a long time. It is not unusual for it to take up to a year, perhaps longer if things are not straightforward.

A straightforward estate would be three or four bank or building society accounts and a modest house where there is no inheritance tax to pay. A grant of representation could usually be obtained within three to four weeks.

However, in more complex estates with more assets and where there is inheritance tax to pay, it may take two to three months (or longer) to obtain the information required to apply for the grant of representation. It can take several more months, even up to one or two years to finalise such estates (usually because of the need to finalise income tax matters), although it is usually possible to make interim distributions in the meantime.

Disagreements between family members, beneficiaries or personal representatives can also delay matters. Any disputes must be sorted out before the affairs of the deceased can be settled.

Duties and liabilities of personal representatives

Personal representatives are expected to act in the best interests of the estate and ultimately the beneficiaries and must account to the beneficiaries for all money they deal with on behalf of the estate. They must act responsibly and prudently – any personal representative found to be in breach of his or her duties may have to compensate the beneficiaries for his or her personal funds.

Statutory advertisements*

Personal representatives are liable for the deceased's outstanding liabilities. These advertisements can be placed in a local paper and a London legal journal and are used to protect the personal representatives from claims by unknown creditors

Inheritance Act claims*

There are various categories of persons who may make a claim against an estate, including spouses/civil partners, former spouses/civil partners, cohabitees, dependants and children (including illegitimate children). Such people can claim to be provided for from the estate within six months from the date of the grant of representation. It is therefore sensible to delay distribution to the residuary beneficiaries for at least six months.

Unknown assets*

There are agencies which will carry out searches to ascertain whether there are any such assets held in the deceased's name, usually for a minimal fee. If assets are traced, however, additional fees are usually payable.

* We will not take any specific action in respect of these matters unless you instruct us to do so. If you have any doubts about the relevance of these matters please let us know.

Deeds of variation

A beneficiary who wishes to make a gift to a third party may be able to pass some or all of his or her entitlement from an estate without adversely affecting her or her personal inheritance tax or capital gains tax position by using a deed of variation or disclaimer. However, these are determined by strict time limits and will incur a further charge. If you would like further information in this respect, please let us know.

Original documents

The original grant of representation will be held on our files. However, please be aware that at some time in the future these files will be destroyed along with such original documentation. If, at the end of the period of administration, you wish to hold these original documents yourselves, please let us know.

11 New Conduit Street King's Lynn PE30 1DG
www.kennethbush.com

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