

The purpose of this fact sheet is to give a brief overview of the process involved in dealing with the Estate of someone who has died.

Who can deal with the Estate?

If the deceased left a Will, the Executors named in the Will are the people who should deal with the Estate. If there is no Will or the Executors are unable to act, the appropriate person is determined by law. The people dealing with the Estate are known as the Personal Representatives.

What is a Grant of Probate?

Probate is proof to the outside world that the correct person is dealing with the Estate. There are different types of Grant for different situations.

Is a Grant always needed?

No. If all assets are jointly owned, e.g. house and/or bank accounts, then the asset will pass to the surviving joint owner by a process known as survivorship. There may be forms to complete for some types of asset, in particular property and bank accounts. A death certificate will also need to be supplied.

How is a Grant obtained?

1. The size of the Estate must be precisely ascertained by gathering information from all asset holders and identifying any debts of the deceased. This will determine whether or not there is Inheritance Tax (IHT) to pay. The current allowance (April 2010-April 2011) before tax is due, for a single person, is £325,000.
2. HM Revenue and Customs (HMRC) forms must be completed. The forms differ depending on the size of the Estate and whether or not there is IHT to pay. If tax is payable it must be paid before the Grant is applied for.
3. Tax can be paid either from the deceased's accounts or by obtaining a loan. Tax on certain assets such as property can be paid in instalments.
4. Application for the Grant can be made in person at the Probate Registry or through a solicitor.
5. You must swear an Oath stating your right to deal with the Estate and confirming the accuracy of the HMRC forms. These documents, together with any Will, are then checked by the Registrar, and if everything is in order, a Grant will be issued.

What happens next?

Once the Grant is obtained, the Executors have a series of duties to perform:

1. Collect in all assets
2. Pay all debts including those arising after death
3. Finalise the deceased's tax affairs – this may involve the completion of a tax return and/or a claim for repayment of tax
4. Pay any legacies (only applicable where there is a Will)
5. Prepare full accounts detailing all income received and payments made
6. Distribute the residue (everything left after paying all debts and legacies) in accordance with the Will or under the Rules of Intestacy

Do I need a solicitor?

You may feel that the process is too daunting for you to take on, particularly when you are grieving over the loss of a loved one. In this case you can instruct solicitors to act on your behalf. Here at Goughs we have an experienced team of efficient, approachable and supportive staff who can help you with as much or as little of the process as you wish.

Our costs are based purely on the time we spend working for you. We do not take a percentage of the Estate as is the case with some firms.

How long does it take?

Generally, you are allowed to take as long as you need to do your job properly. This may be a few months or, in some rare cases, it can take years to complete. However, there are key time limits which you need to be aware of:

1. If IHT is not paid within six months of the end of the month in which death occurred, interest is payable on any unpaid tax at a statutory rate, currently 0%
2. If cash legacies are not paid within 12 months of the date of death, interest is payable on the legacies from that date at the statutory rate, currently 2%
3. If a statutory notice for creditors is posted, you must give creditors at least two months to come forward. You should not distribute the Estate in this time.
4. A claim for provision from the Estate under the Inheritance (Provision for Family and Dependants) Act 1975 can be made within six months of the date of the Grant.
5. If a Trust applies to the Estate, you should be very careful about making distributions from it within three months of the death as there may be adverse tax consequences. Expert advice should be sought on this matter.
6. Any post-death variation in the distribution of a person's Estate must be made within two years of the death if the relevant IHT and Capital Gains Tax exemptions are to apply.
7. If stocks and shares are sold within 12 months of the death at an overall loss against the value at the date of death, you can claim the lower value for IHT purposes.
8. If land and buildings are sold within four years of death at a loss against the value at the date of death, you can claim the lower value for IHT purposes.
9. Penalties can be charged by HMRC if any IHT returns are not submitted within 12 months of death, and if there are delays in submitting tax returns.

For more information contact our Wills, Trusts & Probate team today, email wtp@goughs.co.uk or visit our website www.goughs.co.uk



Dawn Moir
Partner & Head of
Department
Trowbridge
T: 01225 762683



Stephen Cave
Partner
Calne
T: 01249 812086



Rachel Bennett
Solicitor
Chippenham
T: 01249 444499



Emma Rubython
Solicitor
Devizes
T: 01380 726913



Yvonne Gray
Paralegal
Corsham
T: 01249 712193



Maxine Coles
Paralegal
Trowbridge
T: 01225 762683