

# Probate

When a person passes away, the subsequent actions which must be taken in order to deal with their estate is known as probate. This includes applying to act as the deceased's Personal Representative; paying any necessary inheritance tax and distributing the estate according to the deceased's will or intestacy rules.

## **What is a Personal Representative?**

The term 'Personal Representative' (or 'PR'), refers to the person or people who are responsible for administering the deceased's estate. A person can be given the power to apply to act as a PR through a person's will, or through the laws of intestacy. That person then applies for a 'Grant of Representation'.

A person can request in their will that one or more named people act as 'Executor' of the will. This means that those named have the power to apply to act as PRs. The named Executors can refuse to act and only one person needs to act as PR (although more can act jointly). If all named executors refuse to act, a person must apply to act as an 'Administrator' under intestacy rules. It is common for the solicitors who drew up the will to be named as Executors if the deceased wished them to handle the probate on their estate. Additional or alternative Executors are most likely to be close family or friends of the deceased.

## **What is an Administrator?**

Administrators are PRs whose powers do not stem from the deceased's will. This can occur when there is no will, when the will does not name executors or when the named executors are unable or unwilling to act.

The power to apply to act as Administrator depends on a person's relationship with the deceased. The strongest power belongs to the deceased's spouse or civil partner. If there is no person who fits into this category who is willing to act as Administrator, the next category will be looked at. The full list of people who are able to apply, from strongest to weakest, is as follows:

- Spouse or civil partner
- Children of the deceased (or, if the child has previously passed away, their own child)
- Mother or father
- Full brothers or sisters (or, if the brother or sister has previously passed away, their child)
- Half brothers or sisters (or, if the half brother or sister has previously passed away, their child)
- Grandparents
- Full uncles or aunts (or, if the uncle or aunt has previously passed away, their child)
- Half uncles or aunts (or, if the half uncle or aunt has previously passed away, their child)

## **What is a Grant of Representation?**

A Grant of Representation is a legal document which confirms that a PR is able to deal with the deceased's estate. If named as an executor in a will, a person will apply for a grant called a 'Grant of Probate'. Executors have power to act as soon as the deceased dies, and this grant acts as confirmation only.

If the deceased's will does not name executors, a 'Grant of Letters of Administration with Will Annexed' must be applied for. If there is no will whatsoever, the grant applied for is known as a 'Grant of Letters of Administration'. Administrators do not have the power to distribute the deceased's estate until such an application is granted.

### **Is a Grant of Representation always necessary?**

Some assets may be passed to PRs without the need for a Grant. These include most items of personal property such as clothing and furniture, and cash which has not been deposited in a bank account. Money up to £5,000 which is held in a building society account or certain National Savings investments can be released to PRs without the need for a Grant of Representation at the manager's discretion.

Jointly owned property held as joint tenants (for instance the home of the deceased if jointly owned with their spouse) will pass automatically to the other owners under the rules of survivorship. This means that the PRs have no involvement with this property and no Grant is necessary to transfer such property.

If the deceased's assets all fall into the above categories, it may be that no Grant of Representation is needed. Your legal advisor would be able to advise you further once they are aware of the details of the deceased's estate.

### **When is Inheritance Tax payable?**

Inheritance Tax must be paid before a Grant of Representation will be granted. The tax cannot be paid automatically out of the deceased's estate, as these assets are frozen until they are able to be distributed by PRs. There are many options available to PRs in terms of gathering funds to pay Inheritance Tax, which your legal advisor will be able to discuss with you.

For further information about the tax payable on death, please see our 'Inheritance Tax' publication.