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*Estate administration*

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## How does the process work and what is required?

When a person dies someone has to deal with their affairs – this is known as administering their estate. The estate concerned may be complex or straightforward. There may be professionals involved or you may be administering the estate yourself. Either way it is worth having a broad understanding of how estate administration works.

### Initial steps

The death must be registered at the deceased's local Register Office within 5 days of their death. You must then locate the deceased's Will, if there is one. Often the original Will can be found in their solicitor's office or at their bank but the deceased should have a copy. You must also organise the deceased's funeral. Their wishes may be detailed in their Will or other written instructions but if there are no clear wishes it is generally up to the executors or nearest relatives to decide how to proceed.

### Administration of the estate

The deceased's estate is administered by their personal representatives (PRs). If the deceased left a Will the PRs are the named executors. If the deceased died intestate (without a Will) the PRs are dictated by law. The PR's have to ascertain the extent and the value of the deceased's estate, pay any debts and taxes that are due (which may involve selling some items to raise cash) and distribute the remaining estate in accordance with the terms of the Will or the rules of intestacy.

### The responsibilities of the PRs

PRs are obliged to consult with each other where more than one PR is appointed and be careful to avoid a conflict of interest between themselves and the estate. PRs should keep accounts of the estate dealings and not make any profit from their position and they should take care of the assets of the deceased as carefully as if they were their own assets.

PRs are not obliged to take up their position. They can renounce their appointment or have their powers reserved to them. However once a PR has accepted their role they cannot cease acting unless there is a very good reason, such as their ill health, which would have to be agreed by the Court.

### Inheritance tax

Irrespective of whether inheritance tax is due on the estate an inheritance tax return needs to be submitted either to the District Probate Registry for straightforward estates where no tax is due or to HM Revenue and Customs (HMRC) if tax is due or if the estate is more complex. Generally the inheritance tax due in respect of assets other than property must be paid before the application for the Grant of Representation (see below) is made and before the estate can be distributed.

### Income tax and capital gains tax

The PRs have an obligation to ascertain the deceased's income tax and capital gains tax position to the date of death which may include completing and submitting a final income and capital gains tax return. This may result in a debt owed to HMRC or in HMRC owing a repayment to the estate. In

addition the PRs have to deal with any income received and capital gains realised during the administration of the estate. Any resulting tax liability needs to be paid before the estate can be distributed.

### Application for the Grant of Representation

The type of Grant of Representation issued will depend on whether the deceased left a Will, in which case it will be a Grant of Probate, or whether the deceased died intestate, in which case it will be a Grant of Letters of Administration. To apply for the Grant the PRs must be able to certify that either no inheritance tax is due on the estate or that any inheritance tax due has already been paid. The PRs must then make a formal application to the Probate Registry, which includes swearing an oath before a solicitor, barrister or notary and submitting the original Will (if there is one). If the PRs are obtaining the Grant without a solicitor acting they will need to attend an interview at the Probate Registry.

Once the PRs have received the Grant of Representation they must gather in the deceased's assets, which can include, for example, closing bank accounts and the sale of a property and then pay any outstanding liabilities. Once that has been done they can distribute the deceased's estate in accordance with the terms of the Will or the rules of intestacy.

### Timing

Dealing with the affairs of someone who has died can take quite a long time. A straightforward estate will typically take between 3 and 6 months to conclude but if the deceased left complex or valuable assets (perhaps including foreign assets or an interest in a business), if the tax position is complex or if there is a dispute between beneficiaries, then it is not unusual for the process to last a year or longer.

### How can Clarke Willmott help you?

Clarke Willmott can be involved in the administration of the estate to the extent requested by the PRs. For example, some PRs want assistance with the entire process whereas other PRs may wish to do some of the work themselves asking for assistance with the preparation of the application for the Grant of Representation. We are also able to advise on any tax planning or asset protection opportunities that may be available as part of the estate administration process. For example the preparation of a deed of variation to amend the terms of the deceased's Will or the rigid rules of intestacy.

### Further information

For further information on this or on any other Private Capital matter you may have, please contact us via:

[See key contacts](#)

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