

* Guide on Pitfalls for Personal Representatives

Information to help personal representatives during the administration of an estate

Dealing with the estate of a loved one can be a daunting task. Personal Representatives ('PRs') whether appointed by the Will (executors) or entitled to act because they are a beneficiary or for other reasons (administrators) are under certain legal duties and obligations and there are strict timescales that must be met.

This guide sets out information that should be helpful to PRs handling aspects of the estate administration personally and highlights where further advice could be beneficial.

Timescale?

Once a PR has accepted their role they cannot retire. As dealing with the estate of a deceased can be a very time consuming process it is important that you carefully consider whether or not to accept an appointment as a PR before undertaking any work in relation to the estate.

Establishing the correct PRs

If there is no Will then there are no named executors and statute outlines who will be entitled to act as an administrator. More detail can be found in our Intestacy leaflet.

However, where there is a Will, PRs should take reasonable steps to ensure that the Will they hold is the latest Will made by the deceased. Enquiries should be made of the deceased's bank, accountant, solicitors and financial advisers and a thorough search of their papers should be carried out.

Establishing the correct beneficiaries

If the PRs distribute the estate to beneficiaries of an earlier Will and a later Will is found they could be personally liable to the beneficiaries of the later Will.

PRs may wish to consider instructing a search agent to check for other Wills in the early stages and to take out Missing Will Insurance prior to distributing the estate.

Where there is no Will, the PRs should ensure that they have a complete family tree of those entitled to the estate on the intestacy (including themselves). If there is any doubt about the extent of the family tree they should consider instructing a genealogist in the early stages and taking out Missing Beneficiary Insurance prior to a distribution. They should take care if considering advertising for beneficiaries as such advertisements can affect the availability of insurance. On an intestacy, illegitimate beneficiaries of the same relationship class will rank equally with legitimate beneficiaries. Step-relatives will not qualify under the intestacy rules. As complicated family relationships are now common, PRs should insist on evidence to prove entitlements and consider taking further advice or engaging a genealogist.

Initial responsibilities

The PRs are responsible for registering the death of the deceased and, depending on the deceased's family situation, they are potentially responsible for organising the funeral.

The PRs must then obtain details of the deceased's assets, including balances in the deceased's bank and building society accounts as at the date of death and probate valuations of any stocks and shares, properties and personal effects owned by deceased. It is important to ensure that cash balances include any accrued interest to the date of death and share valuations are carried out on the correct basis and include dividends declared before death but not yet paid. A careful search should be made to ensure that all assets are accounted for as if assets are not included within the initial return to HMRC then penalties may be imposed (see further on this below).

Properties should be valued by a Chartered Surveyor on an open market basis, Relying on estate agent valuations could lead to penalties being imposed if the property is later sold for significantly more or is otherwise determined by the District Valuer, acting for HMRC, to be of a higher value.

The PRs must also calculate any liabilities of the deceased, such as pension overpayments, the funeral account, any credit or store card balances and any unpaid utility bills. The cost of a wake, if it is reasonable, is deductible for tax purposes.

The PRs may wish to consider advertising for creditors and carrying out a Financial Asset Search through a search agent to check for unknown assets. Please see our separate information sheets on these issues.

If it becomes apparent that the estate is insolvent PRs may wish to consider not acting in the administration and letting the creditors take on the estate.

Tax and the PRs

The PRs are responsible for organising the preparation and submission of income tax and capital gains tax returns covering both the period up to the death and the period when the PR is administering the deceased's estate.

The PRs must also arrange for an inheritance tax return to be completed. Any inheritance tax (IHT) due on the estate falls due six months after the end of the month in which death occurs after which interest becomes payable. The IHT relating to certain property has to be paid before a Grant of Probate to the estate can be obtained but other assets qualify for payment by instalments, including land, houses and business property. The IHT can then be paid by instalments over ten years with interest payable on the unpaid instalments.

It is important that all assets are disclosed in the IHT account as if the IHT later increases because of undisclosed assets, undeclared gifts or incorrect valuations then HMRC will impose a penalty on the PRs of up to 100% of the extra IHT due if HMRC take the view that the PRs have not acted carefully and reasonably. Please see our separate Information Sheet on Inheritance tax and penalties for more information on this subject.

PRs should take reasonable steps to ascertain whether the deceased made any gifts that need to be brought into account for IHT by carefully reviewing bank statements for the 7 years prior to death and seeking confirmation of any gifts received by family and other beneficiaries.

There are a number of IHT reliefs that can reduce the tax payable including Business Relief, Agricultural Relief and Spouse Relief including the transferable nil rate band. These can be complicated areas and care should be taken to maximise reliefs. However, it is also necessary to ensure that any such claim can be substantiated to avoid the imposition of a penalty if HMRC take the view that the claim was spurious and refuse it.

HMRC can raise enquiries into IHT accounts many months or sometimes a year or more after the account was submitted and PRs should obtain clearance that the IHT position is settled before distributing the estate.

Grant of Representation

Generally, depending on the size and assets of the deceased's estate and the beneficiaries named in any Will, the PRs will need to make an application for a Grant of Representation. For executors this is a Grant of Probate and for administrators this is a Grant of Letters of Administration. The Grant of Representation is proof of the PRs' entitlement to administer the estate and will be required to deal with any of the assets. Before the application for the Grant can be made the PRs must swear an Oath setting out certain information about the deceased and his or her Will or intestacy and the extent of their estate and deal with the IHT Return and payment of IHT as set out above.

Collection in and distribution of assets

The Grant of Representation allows the PRs to collect in the assets comprised in the estate of the deceased and distribute those assets in line with the terms of the Will. As a general rule it takes between 6 months and 2 years to deal fully with the distribution of an estate. The timescale again depends on the size and nature of the deceased's estate and the beneficiaries entitled.

Before the estate can be distributed the PRs may have to deal with the sale of stocks and shares or property or, alternatively, the PRs may choose to keep those assets and pass them out to certain beneficiaries. Where necessary, the executors will need to retain funds to cover future instalments of inheritance tax and future bills etc. It is essential to ensure that all debts and liabilities are paid before distributing the estate and this may involve the PRs ensuring that they are protected from liability by advertising for creditors in a manner set out by statute. The PRs also need to ensure that all income tax liabilities have been settled and that there is no prospect of a claim arising from overpayment of State benefits during the deceased's lifetime.

PRs should take steps to check the identity and bankruptcy status of beneficiaries. The bankruptcy status should be checked both at the outset and prior to each distribution. If the PRs distribute funds to a bankrupt beneficiary they could be personally liable to the trustee in bankruptcy.

PRs should avoid distributing funds to accounts not held in the name of the beneficiary as by doing so they could be inadvertently participating in financial or benefit fraud or money laundering.

Regardless of the status of the beneficiaries identified through the Will or Intestacy the PRs should be mindful of the potential for others to claim against the estate as a dependant. Such individuals have 6 months from the date of the Grant of Representation to make such a claim and then a further 4 months for the claim to be issued. This 10-month window should be carefully observed by PRs. Early distribution insurance can be obtained to protect the PRs and known beneficiaries from claims if the estate is distributed within this timescale.

More complicated estates and ways to save tax

An estate will be more complex for the PRs to deal with if it contains assets such as foreign property or business or agricultural assets. In addition, if the Will creates ongoing trusts the PRs will either need to link in with the trustees of those trusts or, if the executors are also the named trustees, the executors will need to ensure that they are acting both in the best interests of the estate and also in the best interests of the beneficiaries of the trust.

There may be opportunities to reduce the tax payable on an estate perhaps through claiming reliefs or by varying the terms of the deceased's Will or Intestacy within two years of the death. If a property or shares are sold at a lower value than their value at the time of the deceased's death it may be advantageous, for example, to claim a relief that will substitute the lower sale value for the date of death value, provided certain conditions are met.

The PRs and beneficiaries should take professional advice on these issues.

Delegation of responsibility

Although once a PR has accepted their role they cannot retire without a court order, a PR can choose to delegate some or most of their responsibilities to a third party, for example a solicitor.

Here at Clarke Willmott we have the expertise to assist PRs with as much or as little as is felt necessary. For example, we could deal with all the day-to-day administration and distribution of the estate or, alternatively, the PRs may feel that they would like to be involved in the initial stages of the process before asking us to assist with the application for the Grant of Representation or advise on tax planning measures.

In either case we will provide the executor with a fee estimate so that he or she is aware at the outset of the fees which will be payable by the estate and deducted before distribution to the beneficiaries.

Further information

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

[See key contacts](#)

Disclaimer: This briefing is intended to highlight issues only for the purposes of general interest and is not intended to be a comprehensive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content. Last updated: December 2015. Ref: 31688-4

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