



Estate Administration

What is the 'administration of an estate'?

When someone dies, their money, investments, property, etc. (the assets) less their debts (the liabilities), make up what is called their 'estate'.

If the estate is small or all the assets were held jointly in the name of the person who has died and a surviving owner, then administration may not be needed.

However, often the assets and liabilities must be sorted out formally in order to wind up the person's affairs. This is what is known in legal terms as 'administration'.

Who administers the estate?

If the person died leaving a will, the person or people named as executors in the will have the responsibility of administering the estate, which means distributing the net assets in accordance with the will.

If there was no will, the intestacy rules apply. These rules determine both who is entitled to apply to administer the estate (the administrators) and who is entitled to receive the net assets once they have been administered.

'Personal representatives' is the collective term used to mean both executors and administrators.

What is the Grant?

When someone dies, assets they solely own are 'frozen' by the State: the Grant is the document which will be issued by the State when whoever is entitled to take control of those assets and administer them (the personal representative) applies for it in the correct form.

When there's a will, the grant is known as a Grant of Probate. When there is no will, it is known as a Grant of Administration. There is little practical difference between the two types of grant.

How does the process work?

You can think of the administration of an estate as a three-stage process:

- valuing the estate
- obtaining the grant
- distributing and winding up the estate

What happens when the estate is valued?

In order to apply for a grant, the personal representatives must value the estate.

The estate has to be valued both for:

- probate purposes - in order to complete the application form (which is a sworn document, and so is known as 'the oath') which enables the probate registry to issue the grant
- tax purposes - in order to work out if there is any inheritance tax to pay and if there is, to calculate the tax liability

These valuations may differ. If there is a joint asset, then the deceased's share of it counts for tax purposes but does not count for probate purposes, as control of the asset passes to the surviving owner (rather than to the personal representatives).

How do you apply for the Grant?

In order to get the Grant, the personal representatives have to swear an oath (see above). This is a written statement in which they confirm: the details of the person who has died; their own details; the reason they claim entitlement to the Grant; and the financial position of the person who has died. It must be sworn in front of a solicitor or a commissioner for oaths.

The Oath is then sent to the probate registry which will issue the Grant once it is satisfied that either (a) there is no inheritance tax to pay, or if there is some tax that (b) it has been or will be paid.

How long does it usually take to get a Grant?

Generally, it takes between 2 and 4 months from the time we first receive details of the assets and liabilities in the estate. However, the timescale will depend on individual circumstances and how quickly all the information can be gathered together.

The estate must be valued and any inheritance tax issues that arise must be addressed. This means writing to all the institutions that have an interest in the person's assets or liabilities to obtain valuations of the investments, house(s), cars, personal belongings, debts, etc. We are therefore only able to complete the valuation process once the slowest of the people we have to correspond with have completed their job.

We can then draft the inheritance tax papers and the oath and send these to you for approval. Once they have been signed, and any tax due has been paid, we can then send the Grant application to the probate registry.

What happens once the Grant has been obtained?

When it is safe to do so, the personal representatives use the Grant to distribute any specific items of property detailed in the will to the named beneficiaries and then sell whatever assets they need to raise the cash to pay any gifts of money or settle any debts.

The personal representatives are also responsible for finalising all the deceased person's tax affairs - which includes income tax and Inheritance Tax, and where relevant, Capital Gains Tax.

The personal representatives must also obtain a signed receipt from the beneficiaries so they are released from any further legal obligation to them.

When all this has been done, what's left over (called the 'residue') is either divided up between the residuary

beneficiaries named in the will or the persons entitled to inherit under the intestacy rules.

A set of estate accounts is also drawn up, detailing the assets received and the liabilities paid. The residuary beneficiaries are entitled to a copy of these accounts.

When all this has been done, the administration is complete.

Possible pitfalls

Personal representatives must proceed carefully. They should not distribute estate assets until it is safe to do so, and they risk personal liability if they distribute to the wrong people.

Wills may be challenged, for various reasons – including lack of capacity on the part of the person writing the will, or undue influence being exercised over them.

Also, anyone who was financially dependent upon someone who dies may claim from their estate if reasonable financial provision is not made for them by the will or intestacy.

The time limit for dependency claims to be made is six months from the date the Grant issues, and a claimant has a further four months from the date of issue of their claim within which to serve it. Executors will often wait for 10 months from the date of the grant before being able to distribute estate assets safely.

Assets should only be released if there is no prior call upon them. All debts and tax due should be verified and paid before assets are released.

It is always worth considering advertising in the press for creditors: if this is done, then once 2 months have gone by from the advertisement it is safe for Executors to distribute the estate, on the basis that anyone claiming to be entitled to something from the estate must give notice to the Executors within this period, or lose entitlement to pursue the Executors for their money, although they may still sue beneficiaries.

This information is for general use only and is not case specific. You are recommended to seek legal advice regarding your particular case.