

WHAT IS PROBATE?

It is very difficult to cope with the financial and business side of things when you are grieving the loss of a relative or friend. However, seeing a Solicitor can help.

Wills

On the death of a loved one, the first thing you must establish is whether he or she left a Will. If there is a Will, it should guide you as to who the deceased wanted to act in dealing with his affairs, *i.e.* the Will should appoint an executor. It is possible to appoint more than one executor and up to four can take out the Grant of Probate.

A Will can also sometimes provide guidance on funeral wishes.

Executors / Administrators

If one appointed executor does not want to act, then he can renounce, as long as he has not intermeddled and been involved with the estate administration in any way. Alternatively, he can have "*power reserved to him*", which means that if the appointed executor taking out the Grant of Probate does not complete the administration (because he is taken ill, etc.), then the executor to whom power is reserved can step in and continue the administration.

It is the executors duty to administer the estate in accordance with the deceased's wishes in his Will. He must act in the best interests of the beneficiaries. If there are assets held in the deceased's name, which are over £15,000 in value, then a Grant of Probate will be needed. Sometimes a Grant is not necessary, *e.g.* if all the assets are joint and pass to a surviving spouse. However, if the deceased made any gifts of over £3,000 in value in any particular year, then HM Revenue and Customs may still require details

Grant of Representation

The Grant of Probate is the official authority that banks and financial institutions will need to pay out the deceased's assets to the executors, for distribution by them to the beneficiaries named in the Will.

Valuing Assets

In order to obtain the Grant all the assets in the estate, as well as the liabilities, will need to be valued as at date of death. An account will need to be prepared for HM Revenue and Customs for Inheritance Tax purposes.

The assets will include property, contents, bank and building society account balances, PEP's, ISA's, stocks and shares, life policies, National Savings investments including Premium Bonds, etc.

Liabilities

These will include the funeral account and associated expenses, e.g. death certificates, funeral buffet, etc., as well as any debts like household bills, credit cards.

The liabilities will be paid from any funds owned by the deceased as at date of death. These will be settled before any bequests mentioned in the Will are paid.

Inheritance Tax

The amount which can pass without incurring Inheritance Tax, for deaths after 5th April 2009, is £325,000 (possibly more if the deceased was a widow or widower). However, if assets are passing from one spouse to another, there will be a spouse exemption and no Inheritance Tax will be incurred.

If Inheritance Tax is due to be paid, then a proportion of it may need to be paid before you can apply for the Grant of Probate (depending on the nature of the assets).

Inheritance Tax Planning

A Solicitor may be able to advise on some possible steps that the family could take to mitigate Inheritance Tax. Sometimes, with careful planning, the Inheritance Tax can be eliminated completely, depending on the value of the estate. Also, sometimes post-death Inheritance Tax planning may be possible by redirecting some of the deceased's assets – depending on his Will and the value of the estate.

If there are assets like private company shares, a Solicitor may also be able to assist you further with some Inheritance Planning involving the same.

Lifetime Gifts

HM Revenue & Customs will also require details of any gifts of over £3,000 in value made per annum by the deceased in the last 7 years before the date of death.

Realising Assets

Once the Grant has been issued, then the assets can be realised. Some of the assets may be very straightforward to cash, e.g. closing a bank or building society account. Others may be a little more complex, e.g. arranging transfer of assets, such as freehold or leasehold property, or stocks or shares. Once assets have been transferred and cashed, all estate liabilities must be paid from the proceeds before the estate can be distributed. This includes settling any Inheritance Tax liability.

Will Bequests

Once all of the estate's liabilities have been discharged, then any gifts mentioned in the Will can be paid and items distributed. Gifts of money made in a Will are called "*pecuniary legacies*" and gifts of items like jewellery, car, etc. are called "*specific legacies*".

Obtaining Probate can be very straightforward. It can also be quite difficult if the nature of the assets are complicated, if there are many beneficiaries, if there is a defective Will, or if Inheritance Tax planning may be required. A Solicitor can assist with these matters and highlight key issues for you. When seeking the advice of a Solicitor it would be useful to take to him or her a list of addresses for all parties mentioned in the Will, copies of death certificates for any persons named in the Will who have passed away before the testator, details of all assets and liabilities in the estate – even if you are unsure if they are valid.

Any reference made to spouse includes civil partner.

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For details of who to contact for more information or to arrange a meeting:

Charles Lucas & Marshall
28 Bartholomew Street
Newbury
Berkshire RG14 5EU Telephone (01635) 521212

Richard Mead richard.mead@clmlaw.co.uk
Marie Verney marie.verney@clmlaw.co.uk
Simon Mee simon.mee@clmlaw.co.uk

Charles Lucas & Marshall
28 High Street
Hungerford
Berkshire RG17 0NF Telephone (01488) 682506

Ceri Davies ceri.davies@clmlaw.co.uk

Charles Lucas & Marshall
Brooklands
48 Newbury Street Wantage
Oxfordshire
OX12 8DF Telephone (01235) 771234

Michael Overend michael.overend@clmlaw.co.uk
Michelle Thomas michelle.thomas@clmlaw.co.uk

Charles Lucas & Marshall
Eastcott House
4 High Street
Swindon
Wiltshire
SN1 3EP Telephone (01793) 511055

Michael Overend michael.overend@clmlaw.co.uk