

GRANTS OF PROBATE

When a person dies, they usually leave an estate (including money, possessions and property) and sometimes a Will. A Will should name one or more Executors who are responsible for collecting in all the money, paying any debts and distributing any legacies left to individuals or organisations. In order to access the estate, the Executor usually needs to apply to the Probate Registry for a document called a Grant of Representation or a "Grant". This process is called Probate. The Grant establishes who can legally collect money from Banks, Building Societies and other organisations which hold assets belonging to the deceased person.

The Probate Service administers applications for Grants throughout England and Wales. The Probate Service is part of HM Courts and Tribunals Service. It administers a system of Probate which gives people the legal right to handle the estate of a deceased person.

The information contained within this article refers only to the law in England and Wales. If the deceased person was permanently resident in Scotland, Northern Ireland or another country when they died then you will need to contact your nearest Probate Registry for advice.

Its purpose

A Grant of Representation establishes who can legally collect monies from Banks, Building Societies and other organisations that hold assets belonging to the deceased person. There are three types of Grant of Representation:

Probate

Probate is issued by the Probate Service to the Executors named in the deceased person's Will.

Letters of Administration (with Will)

Letters of Administration (with Will) are issued when no Executor is named in the Will or when the Executors are unable or unwilling to apply for the Grant.

Letters of Administration

Letters of Administration are issued when the deceased person has not made a Will or the Will they have made is not valid.

Always needed?

Not every estate needs a Grant. A Grant may not be needed if:

- The home is held in joint names and is passing by survivorship to the other joint owner or owners. This can be the case for married couples and those in a legal civil partnership.
- There is a joint Bank or Building Society account. In this case, the Bank may only need to see the death certificate, in order to arrange for the money to be transferred to the other joint owner. However, a Grant could still be needed to access assets held in other Bank accounts or insurance policies.
- The amount held in each account was very small. You will need to check with the organisations (Banks, Building Societies or insurance companies) involved to find out if they will release the assets without a Grant.

If none of the circumstances above apply, a Grant may be required.

You should ask anyone holding the deceased's money (such as a Bank or insurance company) whether they will release it to you without seeing a Grant. If they agree, they may attach conditions such as asking you to sign a Statutory Declaration before a Solicitor. You can decide whether it is cheaper or easier to do this than to apply for a Grant.

A Grant must be presented in order to sell or transfer a property held in the deceased's sole name or a share of a property held jointly with the deceased

person's spouse or partner or other co-owner as tenants in common. A tenancy in common is a written agreement between two people who own a joint asset (usually land or buildings). If you are not sure about this you should consult a Solicitor. You cannot complete a sale on any property owned by a deceased person until the Grant has been issued.

Who can apply for Probate?

It isn't necessary for everyone left money or property in a Will to apply for Probate - usually only one person needs to do it, normally the Executor/Executors named in the Will. However if the person entitled to the estate is under 18, two people are legally required to apply for Probate.

You can apply for Probate if you are over the age of 18 and:

- You are an Executor named in the Will.

- You are named in the Will to receive some or all of the estate (if there are no Executors, or if the Executors are unable or unwilling to apply).

- The deceased person did not make a Will and you are their next of kin in the following order of priority:-
 - Lawful husband or wife or civil partner. Please note that common law partners cannot apply for Probate.

 - Sons or daughters (excluding step children) including children adopted by the deceased. Please note that children adopted out of the family can only apply in the estates of their adoptive parents and not their biological parents.

 - Parents.

 - Brothers or sisters.

 - Grandparents.

- Uncles or aunts.

- If sons, daughters, brothers, sisters, uncles or aunts of the deceased person have died before the deceased, their children may apply for Probate.

When more than one person wants to apply for a Grant, they may make a joint application. A maximum of four applicants is allowed.

What if I do not want to apply for a Grant?

Executors may choose to give up all of their rights to Probate or they may reserve the right (called "power reserved") to apply for Probate in the future. This option is often used when the Executors live in different parts of the country. Only the Executors who apply for the Grant of Probate will be named on the Grant and only their signature will be required to release the deceased person's assets for transfer or sale.

If the person who is entitled to the Grant does not wish to apply, they may appoint someone else to be their Attorney to obtain the Grant on their behalf.

Why do I need to think about Inheritance Tax?

The tax on the estate of a person who has died is called Inheritance Tax. It is dealt with by HM Revenue & Customs (HMRC). It only applies to a small percentage of estates. If inheritance tax is due, you normally have to pay at least some of the tax before the Probate Registry will issue the Grant. The issue of the Grant does not mean that HMRC have agreed to the final Inheritance Tax liability. They will usually contact the Executors again after the Executors have received the Grant. Subject to the requirements to pay some of the tax before obtaining the Grant, Inheritance Tax is due six months after the end of the month in which the person died. HMRC will charge interest on unpaid tax from this due date whatever the reason for late payment.

How do I use the Grant?

When the Grant has been issued you will have the legal right to ask any person or organisation holding the deceased person's money or property to give you access to

these assets. These assets can then be released, sold or transferred as set out in the deceased person's Will.

Action

Legal help will usually be useful if not vital. Feel free to contact me at Busbys if you need advice. Busby also offers an online service for Probate applications. For more information visit our website at www.busbyslaw.co.uk.

Sharon Piper

Legal Executive and Trust and Estate Practitioner

Busbys Solicitors

Bude & Holsworthy