



## Probate & Succession Information

---

### 1. What is a Grant of Representation?

A Grant of Representation is a general term for a Grant issued by the Probate Registry. There are two main types of Grant:

- Grant of Probate:** a document issued by the Probate Registry where the deceased left a Will. The Grant is issued to the Executors and enables them to administer the estate in accordance with the Will
- Grant of Letters of Administration:** a document issued by the Probate Registry where the deceased did not leave a Will. The Grant is issued to the Administrators and enables them to administer the estate in accordance with the rules of intestacy

### 2. Why do you need a Grant?

Unless the deceased's estate is very small, the Executors/Administrators (often known as Personal Representatives) will require a Grant in order to take control of the deceased's assets. The Grant is legal confirmation that the person named as the Personal Representative is the person entitled to administer the estate

### 3. What is needed to obtain a Grant of Representation?

The requirements of the Probate Registry will differ slightly depending on whether the deceased left a Will:

- With a Will:** the original Will must be lodged with the Probate Registry who will retain this in their archives. Accompanying the Will is a document referred to as an Oath – in this the Personal Representatives confirm their appointment, the deceased's personal information and the value of the estate
- No Will:** The Personal Representatives complete an Oath in which they state their relationship to the deceased and why they are entitled to apply for the Grant as well as confirming the deceased's personal information and the value of the estate

As well as the above, the Personal Representatives are required to make a return to HM Revenue and Customs documenting the value of the deceased's assets and liabilities for the purposes of Inheritance Tax (even in cases where no tax is payable)

### 4. How is a Grant of Representation obtained?

An application for a Grant of Representation can be made to the Probate Registry by the Personal Representatives without any legal assistance. However, it would be our recommendation that professional advice always be sought. Please see our factsheet '*Perils of the Personal Application*' for further information

### 5. How long will this take?

Once the Probate Registry receives the application, it will take approximately two working weeks for the Grant to be issued<sup>1</sup>. If an estate is liable to Inheritance Tax, matters will first need to be reviewed by HM Revenue & Customs and this can add a further two to four weeks to the process.

### 6. Can a Will be contested?

Wills are confidential documents while someone is alive, so often relatives and friends can be surprised when they eventually discover the contents. That can lead them to taking legal advice on trying to challenge the Will. There are three main ways to try to do this:





1. It has not been properly prepared and signed
2. The person who made the Will was not of sound mind or was put under pressure to sign it
3. Using the provisions of the Inheritance Act

Using a properly qualified person to advise upon and prepare the Will should avoid the risk of either of the first two challenges being successful.

The third challenge relies upon the Inheritance (Provision for Family and Dependants) Act 1975, to give it its full name. This provides that certain categories of people can ask the court to change the terms of the Will. The persons allowed to attempt such challenges include spouses, children and people who were financially supported in some way by the deceased in the period leading up to their death.

The rules surrounding these challenges are very technical but in summary, to bring a successful challenge to a Will under the Inheritance Act, the Court must be satisfied that the person challenging did not get reasonable provision under the Will and that their financial situation is such that they deserve increased provision

Should a challenge to a Will arise, Mark Heath a partner at QualitySolicitors Parkinson Wright can provide advice. Mark is a Registered Contentious Trust and Probate Specialist and a member of the Association of Contentious Trust and Probate Specialists. (C.T.A.P.S.)

## **7. The final winding-up**

Before distributing the estate, the Personal Representatives may wish to consider advertising in accordance with the Trustee Act to protect against unknown claims. They may also wish to consider the possibility of claims under the Inheritance (Provision for Family and Dependants) Act.

Once the executors or administrators have gained control of the assets they must pay the liabilities and may then consider distributing to the beneficiaries. They will first need to assess what reserve to make to cover the remaining outgoings, such as any taxes and the expenses and costs of dealing with the estate. It is usual to discharge the cash legacies and the specific items before making payments to the residuary beneficiaries as the former have a higher priority.

The deceased's Income Tax affairs have to be completed and this is a matter that should be initiated at an early stage. If an accountant or other advisor had been employed by the deceased, it is usually practical to arrange for them to complete this.

Assets abroad can often involve legal formalities in the country concerned, including tax. It is usually necessary to appoint lawyers or other agents there to deal with such aspects and this can lead to considerable delay in finalising the estate.

Once all the assets and liabilities have been established and the Income Tax position finalised, a final return can be made to the Inheritance Tax authorities, who in the meantime may well have raised queries on what was previously submitted. Once paid, a formal letter or certificate of clearance will be issued. The distribution of the estate can then be finalised including the estate's own Income Tax Return and payment made to the residuary beneficiaries. The Personal Representatives should then prepare a full statement of account showing how they have dealt with the estate. The residuary beneficiaries are entitled to a copy of this.

If the estate is not to be distributed because some or all of it is to be held in trust under the terms of the will or Intestacy Rules or because there are minor beneficiaries, then it is at this stage that the duties of the trustees commence. The trustees will usually be one and the same as the executors or administrators.

<sup>1</sup> Based on our experience of Birmingham District Probate Registry November 2015 and not in respect of a personal application

