

Probate Information Sheet

When someone dies, if they leave a Will an executor is appointed to deal with matters. If there is no Will then they are “intestate” and a nearest relative has to be appointed to act as an administrator or personal representative. The usual process can be summarised as follows:-

Step 1: Meeting you to understand how the estate is made up, what are the assets, what are the debts and checking the funeral arrangements. At this step we will explain your responsibilities as the executor or personal representative and explain the Will or Intestacy Rules to you.

Step 2: Appraise the estate by contacting the banks, building societies and other investment holders and any creditors. We obtain valuations of properties and shareholdings or advise you on how to acquire these including the details required to do this.

Step 3: Preparing the application for the Grant of Representatives/Probate, the Statement of Truth and by completing the HMRC account detailing all the assets and liabilities. At this step any Inheritance Tax which is due has to be paid. We will work with you to explain how the calculation has been reached and agree the best way for this to be paid.

Step 4: Grant of Probate or Letters of Administration is then issued by HMCTS (the Probate Court). This is the formal authority giving the executors or personal representatives access to the estate assets and allows them to start to sell any property or shares held.

[THIS IS THE POINT THAT FINALISES THE FIXED FEE SERVICE]

Step 5: Registering the Grant of Probate. The Grant has to be sent to all the asset holders to enable the estate assets to be sold or transferred and in relation to any property not being sold to complete the “Transfer” or “Assent” as required.

[THIS WORK FROM THIS STEP ONWARDS IS CHARGED ON A TIME BASIS]

Step 6: Paying the debtors. When the estate assets have been collected in, any outstanding debts and taxes are paid. At this stage any estate expenses incurred by the executors or personal representatives can be repaid following the production of receipts as appropriate.

Step 7: Paying the legacies and distribution of any specific gifts. Any specific gifts of money or items are made at this stage to the relevant individual or organisation. Property and share transfers are also completed now.

Step 8: Final Accounts. A detailed set of accounts are prepared to set out the financial history of the estate administration. Final payments are made to the residuary beneficiaries and the estate income tax is completed.

Help us to help you

Our charges are based on the amount of time we spend on the work. Our timescales are based on the time it takes to get information from you and others to process that information. You can help by:

- Collating complete lists of assets and debts and bringing to meetings documents to support valuations;
- Obtaining date of death valuations from bank accounts/building society accounts/assets and liabilities prior to our meeting with you;
- Providing full names and current addresses of all beneficiaries;
- Resolving any disagreements within the family;
- Responding promptly to requests for information and instructions from us;
- Having one point of contact for communication if more than one executor is appointed.

Making a Probate Application

In order to assist the Executors in making an Application to the Court, we will need a breakdown of all the financial information relating to the person who has died including:-

- General information regarding their life and family;
- Details of all assets held in their sole name;
- Details of all assets held in joint names; and
- Their liabilities

When we have all the personal and financial information, we can prepare an Application for Probate form and the Inland Revenue summary or account. The papers are then signed by the Executors along with a Statement of Truth and are then sent to the Probate Registry through their online portal which they will then process. The original Will and supporting papers then need to be sent by post to HMCTS Probate to complete the application.

Timescales

From all the information being gathered and the papers submitted, it takes about 15-20 working days for HMRC to issue the receipted notification to the Probate Registry following the submission of the IHT400 (the Inland Revenue Inheritance Tax form) account to them. It then currently takes about a further 8 weeks for HMCTS Probate to process the online application we submit and then issue the Grant of Probate to us.

The period from our instruction to the application for Probate being submitted varies on the complexity of the estate and the time taken to obtain all the valuations.

Where we add value and why use a professional

- We take away the administrative burden of winding up the estate and provide you with peace of mind.
- We have vast experience of the process, making it easier for you at a time when you least need the additional work and stress and can be confident you have someone to ask for advice and reassurance.
- There are a number of pitfalls and potential issues that might arise during the course of the administration of an estate and a number of potential estate planning opportunities, some of which may be apparent and some of which may not. If executors obtain professional advice to assist them with the administration of an estate, those issues and opportunities should be

spotted and taken into account at an early stage. Some examples of areas in which professional advice can produce savings and benefits for executors and the beneficiaries of estate are:

- The use of a deed of variation to redirect the distribution of the estate in a manner that is efficient for Inheritance Tax purposes;
- Advice on how to deal with properties to minimise Stamp Duty Land Tax (SDLT) liabilities for beneficiaries and to help preserve the right to First Time Buyer Relief for beneficiaries.
- Ensuring that the Capital Gains Tax (CGT) allowance available to the Executors and the beneficiaries of an estate are properly utilised to minimise CGT liabilities;
- The registration of the estate with HM Revenue & Customs Trust Registration Service to avoid penalties for late or non-registration or if a subsequent Trust is created by the Will.
- Protecting executors from potential claims from disappointed beneficiaries and ensuring that none of the beneficiaries are bankrupt (and cannot be paid);
- Making sure that Business Property Relief and Agricultural Property Relief are claimed, if appropriate to the estate, at the right time and in the right way;
- Making claims for the residence nil rate band and the downsizing relief if they are available.

What it costs

- If a fixed fee charge is not applicable then our charges are calculated by our best estimate of the amount of work required and depending on the qualifications and experience of the person dealing with your matter. Whoever does the work, it is all supervised and reviewed where necessary by a Partner in the team. We find that this produces a competitive price without in any way compromising the quality of our work.
- The amount of work is usually dependant on the number of assets and the number of beneficiaries and debtors and the level of paperwork that we have to assess. This is where the executors can reduce costs by pre-sorting all the deceased's papers to reduce the quantity of paperwork we have to deal with hence saving time and money.
- We are able to work on the basis of completing all the estate administration or taking it to the steps of applying for and obtaining the Grant of Probate or Letters of Administration and leaving it to you to take on the remaining steps. We are then able to provide advice and assistance to the executors to support them.
- We advise that
- These figures **do not** include the cost of:
 - Variations of the Will terms for tax planning or other reasons;
 - Disputes about the estate or specific assets;
 - Share transfers;
 - Assents and Property sales/transfers;
 - Ongoing administration of trusts set up in the Will;
 - Completion of tax returns to date of death or for the administration period.
 - There are a number of expenses that have to be paid in addition to our charges. There is a Probate application fee payable to the Probate Court, currently £273 and £1.50 per copy of the Grant.

- Professionals that we use to value assets such as properties and shareholdings charge their own fees, which depend on the value of the asset.
- Professionals to mitigate debts or claims on the estate. You will need to engage the services Estate Search be used to conduct the following
 - Asset Standard search Due Diligence for Executors £155 + VAT
 - Asset Premium search Due Diligence for Executors £185 + VAT

Other services to consider

- Will search on The National Will Register £38 + VAT
- Enhanced Certainty Will search (if no Will is found) £105 + VAT - Estate Search
- Vacant Property Insurance - Estate Search
- Property Valuation – Property Ladder Group £150 + VAT
- IHT Funding Loan – Tower Street Finance

Factors that could cause the administration to become more expensive

- Unclear terms or ambiguities in the Will (especially in homemade Wills);
- Family disagreements about the assets, their value, funeral arrangements or whether the Will is fair;
- High value estates with large portfolios of properties and shareholdings;
- Estates involving family companies;
- Asset valuations that are disputed by HMRC;
- Where there are or have been family trusts in place;
- Where there have been substantial pre-death gifts that affect the tax liability payable on the death;
- Large numbers of beneficiaries have been included, or an exercise of tracing distant relatives is required in an intestacy.

Important information you must read

When providing legal advice, based on the information you provide, if you fail to disclose material facts to us that may affect the Probate application / distribution, we cannot accept responsibility for any claims or debts that may arise on the estate subsequently. It is therefore vital that you ensure that we are in possession of the full facts of the circumstances and the details of your estate.

By signing the client agreement, you agree that you will provide us with full details of the nature and extent of the estate and identify all assets, all financial details, and provide the identity of the persons, organisations or charities which may receive a legacy or be identified as a beneficiary to the estate. It is your responsibility to ensure the information you provide to us is accurate and up-to-date.

--o000o--

For further information or to arrange an appointment to discuss your case please contact East Devon Law at: see overleaf

**East Devon Law
Barton Chambers
The Old Dairy
Cadhay
Ottery St Mary
Devon EX11 1QT**

01404 515427

advice@eastdevonlaw.co.uk

**East Devon Law
Barton Chambers
2 Bartlett Close
Wallingford
Oxfordshire
OX10 9EW**

01865 595537

anna.garland@eastdevonlaw.co.uk

We believe the information contained herein to be correct as at 28 September 2022. Whilst all possible care is taken in the compilation and presentation of this fact sheet, no responsibility for loss, occasioned by any person acting or refraining from acting as a result of the material in the fact sheet, can be accepted by East Devon Law or the author.

East Devon Law is the trading name of East Devon Law LLP which is a limited liability partnership registered in England and Wales under number OC423017.

East Devon Law has offices in East Devon and Oxfordshire. Our registered office is Barton Chambers, The Old Dairy, Cadhay, Ottery St Mary, Devon, EX11 1QT. The term partner is used to refer to a member of the LLP. A list of members of the LLP is available in our offices. East Devon Law LLP is authorised and regulated by the Solicitors Regulation Authority under number 8001300. Accredited staff are members of Solicitors for the Elderly and The Society of Trust and Estate Practitioners.

©Ian D Hunt 2022

All rights reserved. No part of this fact sheet may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording and/or otherwise, without the prior written permission of the author