

Administration of Estates

Administration – who does what?

The person who has legal authority to deal with the estate of a person who has died is his/her personal representative (PR).

A PR can be an executor (named in the Will) or an administrator who will be appointed if there is no Will or if the person named in the Will does not act. There may be up to 4 PRs.

The Duties of a PR

Briefly, the duty of a PR, whether executor or administrator, is to:

- establish the extent of the deceased's property and possessions (the estate)
- discharge any debts, tax, funeral and administration expenses and legacies
- distribute the residue of the estate to those entitled under the terms of the Will

A PR is expected to treat the interests of the estate and the beneficiaries as paramount. PR's must not make a profit from their position and must account precisely to the beneficiaries for all the funds that they deal with.

If PR's do not deal with the estate property correctly they may be required to compensate beneficiaries from their own money.

A broad outline of some of the key steps to be taken is detailed below.

Each step, and in some circumstances additional steps, can be more or less complicated depending on the nature and complexity of an estate.

Establish the extent of the estate

This can be very straightforward or extremely complex and quite often requires an element of detective work. If there is any evidence of an asset the organisation in question should be contacted to clarify if the asset has any value. This can be complicated by mergers/takeovers of companies/building societies and, in the case of the latter, may involve a potential claim for windfall shares.

We will then obtain the values of all the assets as at the date of death. This information is required in order to make an application for a grant of representation. This is the document required to show the PR's entitlement to deal with the assets owned by the deceased.

The Income Tax position needs to be finalised to ascertain whether there is a debt owing to the Inland Revenue of a repayment due to the estate.

The initial Inheritance Tax (IHT) position

Further information can be found on factsheet “tax – briefly!”

The IHT has to be calculated and the initial tax paid before the PR can make an application for a grant of representation.

Applying for a grant of representation

Once the above steps have been taken Hart Brown will draft the necessary documents in order to make the application for the grant of representation. One of the documents required is an oath. This document needs to be sworn by each PR in front of an independent Solicitor (i.e. not from the firm that drafted the document). The PR’s will be swearing as to the accuracy of the facts contained in the oath and it should be read carefully prior to the swearing.

The Solicitor administering the oath will guide the PR’s through the procedure. Once the documents have been dealt with an application for a grant of representation can then be made.

There is a fee payable to the Probate Registry for the application and for additional “sealed” copies of the grant which are required to give to banks, building societies etc. This will allow for the original to be retained.

After the grant has been obtained

Hart Brown will agree with the PR’s as to which assets are to be cashed in and which are to be transferred to beneficiaries. Where there are a number of residuary beneficiaries, it may be simplest and most cost effective to cash in all assets.

The effects of Capital Gains Tax (CGT), if any, should be considered before liquidating any assets of the estate. Hart Brown can advise on this – and on ways to mitigate it - at the relevant time.

The money arising is normally held on our client account. It may then be used to pay the liabilities and expenses of the estate. Under Law Society rules, interest is generally payable on any worthwhile sum held on our client account for any length of time.

The above is not an exhaustive list. However, once these points have been dealt with and we have received inheritance tax clearance from the Inheritance Tax Office, as well as confirmation that the income tax position has been finalised, we will draw up an account showing all the financial transactions in the estate. When approved by the PR’s, we would seek similar approval from all of the residuary beneficiaries. Once received, we would distribute the money and assets to those entitled.

In some circumstances it is possible to make interim distributions to residuary beneficiaries and pay the legacies during the course of the administration.