

Dealing with someone's estate

This fact sheet explains some of the issues which can arise during the administration of an estate and how our Trusts and Probate Team can assist.

Administration of an estate

When a person dies a personal representative is needed to administer the estate.

What is a personal representative?

The person who deals with a person's estate is called a personal representative. Who this person is to be is usually fairly straightforward, but on occasions difficulties can arise in identifying this person.

The personal representative will follow certain legal procedures and will collect in the deceased's assets, pay their debts and distribute the estate in accordance with the terms of the Will, or if no Will exists, in accordance with the Intestacy Rules.

Domicile

The personal representative will need to ascertain where the deceased person was domiciled for Inheritance Tax purposes and this may be complex and require some detailed investigation.

In cases of any doubt whatsoever legal advice should be sought. The general rule is that if the deceased person is domiciled in England and Wales then the whole of their worldwide estate will fall into account for Inheritance Tax purposes.

Is there a Will? Is it valid?

These are questions which will need to be considered and resolved by the proposed personal representative.

What is a Grant of Representation?

The personal representative usually needs a formal legal document from the High Court to confirm that they have the legal authority to deal with the estate of the deceased person.

Grant of Probate - issued to the Executors of a Will

Grant of Letters of Administration - issued to the Administrators entitled under the Intestacy Rules



Is inheritance tax payable?

Inheritance Tax (IHT) will be payable on estates where the net value exceeds the Nil Rate Band threshold of that financial year, unless the estate passes to a surviving spouse or registered civil partner or a charity or a political party and there is less than the Nil Rate Band amount passing to other people or the estate comprises certain specified property such as agricultural property qualifying for relief, business property qualifying for relief or certain other limited classes of property. Certain lifetime gifts will also need to be taken into account to calculate the tax liability.

Is inheritance tax payable? (cont...)

Subject to that, any amount over the threshold will be taxed at 40%.

The tax must be paid before probate/administration is granted on everything except land (including residential property), farms, farmland, business premises, timber and woodland and certain partnership and private company share interests where the tax may be paid by instalments, if an election is made by the personal representative.

Generally this is a complex area and it is advisable for any personal representative to seek legal advice.

How long will it take to finalise an estate?

The time taken to wind up a person's affairs after their death can vary.

Straightforward estates are often wound up within a year of death but on an estate which is complex it can take longer than this.

What does intestacy mean?

Where a person dies without making a valid Will, it is said that they have died intestate and their estate is distributed according to rules laid down in the Administration of Estates Act 1925.

Where a personal representative is acting in an estate where there is no Will then the advice of a solicitor should be sought as to the rules applicable in the specific case.

How much will it cost if I instruct a Solicitor to help me in my role as a personal representative?

All solicitors should give clear and unambiguous upfront information concerning costs to the personal representative and/or to certain beneficiaries and this information should be given and the basis agreed before the work is started.

Accounts

All the beneficiaries and personal representatives of an estate have the right to check and approve the accounts of assets and liabilities of an estate before the estate administration is concluded.

Distribution

Once all taxes and debts have been paid the estate will be distributed either according to the terms of the Will or the Intestacy Rules.

If you would like more information, please contact:

Mark Dunkley
Partner
Head of Trusts & Probate
DD: 0116 257 4402
E: mark.dunkley@harveyingram.com

Harvey Ingram LLP
20 New Walk
Leicester
LE1 6TX

T: 0116 254 5454
F: 0116 255 4559

W: www.harveyingram.com

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