

A Personal Representatives Guide

We aim to assist you in identifying what is important in administering an estate. In what is a traumatic time, we hope to make the administration of an estate as simple as possible.

This guide is intended to:-

1. Explain the role and duties of a Personal Representative
2. Assist in taking an overview of the matter at the beginning, enabling work to be planned
3. Highlight the need for good organisation and a methodical approach to administering an estate
4. Clarify how B P Collins may assist you in the estate administration

What is a Personal Representative?

Personal Representatives (PRs) are the individuals who administer the estate of a deceased. If there is a Will appointing individuals as PRs, then they are known as the Executors. If there is no Will (i.e. the deceased died intestate) then the PRs are known as Administrators.

When someone dies his or her assets are frozen. The only people who can have access to them are the PRs. In order to administer the estate and collect in the assets the PRs have to obtain a legal document (the Grant) to show they have accepted the office. Executors prove the Will by obtaining a Grant of Probate. Administrators apply for a Grant of Letters of Administration.

Duty of a Personal Representative

It is the PRs responsibility to make the funeral arrangements. The PRs must act in the interests of the estate rather than themselves and to safeguard the estate. Their duties should be carried out "with due diligence". These may be said to fall into seven parts:

- Establishing the values of the assets and liabilities and collating them for the purposes of the HM Revenue and Customs Account. Following the Revenue's new rules on "transferable nil rate bands" for inheritance tax, it is more than ever important (even if no IHT is payable on the death of the first spouse) to maintain, record and retain records of any gifts made within the 7 years prior to the death of the first spouse and also to retain the Revenue Account records pending the surviving spouse's death.
- If the estate is liable to Inheritance Tax (IHT), calculating the tax due and obtaining funds to pay the IHT.
- Making an application to the Probate Registry for the Grant.
- Completing the documentation and registering the Grant in order to collect in the assets due to the estate.
- Payment of debts and legacies.
- Preparing the Estate Accounts, tax return and tax deduction certificates for the beneficiaries.
- Distribution of the remaining assets to those entitled to them.



Generally and Time Limits

Executors Year: PR's have at least a year from the date of death before they have to distribute any part of the estate (this also applies to Administrators), although in practice it is only complex estates which are likely to take as long, or sometimes longer. We encourage PRs to distribute assets as soon as possible especially as complications should not arise very often. However, beneficiaries should be warned that the formalities do take time and they should not make any financial commitments based on the anticipated inheritance.

Distribution: PRs should ensure that they have protected themselves against the following risks when they make a distribution:

- Tax liabilities - there should be a sufficient reserve (with a generous margin) to cover all outstanding Inheritance Tax, Capital Gains Tax, Income Tax and any other liabilities pending settlement and clearance certificates for the sums due from HM Revenue and Customs.
- Outstanding Debts - In order to assure they have allowed for all debts (including funeral expenses) statutory advertisements to creditors should be inserted in relevant newspapers.
- Unknown beneficiaries - If beneficiaries are a class (for example my grandchildren) then the PRs need to ensure by all proper enquiries that they know the full size of the class before making any distribution.
- Family Provision Claims - If the PRs distribute within six months of the Grant they may be held personally liable if they have not properly taken into account the possibility of a claim by a relative who believes he or she should have benefited from the estate.
- Assets - A PR has no claim against an overpaid beneficiary and therefore full distribution of assets should only occur when all debts and taxes have been paid.

Beneficiaries

Whilst the estate is still being administered the entire ownership of the deceased's un-administered assets lies in the hands of the PRs for the purpose of the administration. No beneficiary has any proprietary interest in any particular assets comprised in the un-administered estate - purely a right to require the deceased's estate to be duly administered.

Inheritance Tax

Inheritance Tax on death (other than certain types of property known as instalment option property, for example land) must be paid when the Grant is applied for. Any tax outstanding or found to be outstanding six months after the end of the month of death will bear interest at the prescribed rate whether or not the outstanding liability has been agreed with the Revenue.

PRs may elect to pay the tax on instalment option property by 10 equal yearly instalments. The first instalment is due six months after the end of the month in which the death occurred and thereafter for each anniversary of that date until all instalments have been paid. If the property is sold then all the outstanding tax and interest must be paid at that stage.

The HM Revenue and Customs Account must be submitted to the Revenue within one year of the death, otherwise penalties will be incurred. Where the transferrable nil rate band is claimed on the death of the second spouse a formal election is required.



Clearance Certificate

Once PRs are satisfied that no further adjustment to the estate is necessary and all outstanding IHT has been paid, a clearance discharge may be obtained. Provided all the tax for which the PRs are liable has been paid, a letter will be issued by the Revenue certifying that (in the absence of flawed or non-disclosure of any material facts) PRs are discharged from any claim or further claim for IHT on the property concerned.

Potential Causes of Delay

- The time limits referred to previously.
- Valuation agreements with the District Valuer and the Capital Taxes Office.
- Income Tax and Capital Gains Tax assessments for the administration period.
- Collecting in the assets, especially when property forms part of the estate and the beneficiaries wish to sell it.

How B P Collins may assist you in the Estate Administration

Following an initial meeting with the PRs and having been provided with the information and documents requested in our Probate Questionnaire:

- Write to all asset holders to exhibit the death certificate and enquire the values and confirmation of holdings/ accounts/ policies/ properties etc in the sole and joint names of the deceased.
- Liaise with agents and valuers to arrange for valuations of properties and personal effects and disposal if required.
- Liaise if required with overseas agents and Lawyers in relation to any foreign assets.
- Make enquiries to ascertain details of any lifetime gifts if required.
- Contacting (sometimes tracing) beneficiaries to the estate to advise them of a bequest or inheritance.
- Ascertain all debts of the deceased including the Funeral account and if sufficient funds are available pay this from a Bank account or Building Society account.
- Collate the information received and prepare a Statement of assets and liabilities and the Inland Revenue Account in respect of Inheritance Tax, for PRs to sign.
- Liaise with other agents Independent Financial Advisers, Accountants (etc) to obtain information relevant to the estate (ie completion of Tax Returns to date of death).
- Prepare for completion by the PRs Probate application - PRs Oath.
- Arrange if necessary funds to pay Inheritance Tax required for Probate application.
- Arrange for Probate application papers to be completed by the PRs and lodged with the Probate Registry.



A Personal Representatives Guide *cont.*

- Checking Grant of Probate on its issue and advising PRs.
- Preparing authorities for completion by the PRs to close Bank accounts and collect any other cash assets.
- Liaise with PRs about the transfer or realisation of other investments or assets of the estate - attend to completion of appropriate documents (including any overseas requirements).
- Attend to notification and payment of utility bills in relation to the sale of any property.
- Pay estate debts, administration expenses and legacies when sufficient funds become available from collection of assets held in client account.
- Agree any Inheritance Tax calculations with the H M Revenue & Customs including discussions or meetings with the District Valuer, if appropriate, and receive a letter of clearance.
- Make interim distribution payments of residue to beneficiaries.
- Prepare interim Summary Estate Accounts and update during the course of the administration period.
- Attend if necessary to Administration Period Tax Returns for Income and Capital Gains Tax. Agree the liabilities and arrange payment from the Estate or obtain the repayment due.
- Make final distributions having prepared and agreed Estate Accounts with the PRs.
- Liaise with Trust Department as to documentation required to set up or terminate any trust provision of a Will.

Note: Probate procedure is different if you make a personal application direct to the Probate Court.

The content of this Briefing is written in general terms only and should not be relied upon in individual cases, where specific professional advice will be required.

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