

The Facts: Probate

What is Probate?

Probate is the process required to transfer ownership of property or assets from a deceased to their beneficiaries. When a person dies it is necessary to deal with their estate (money, property and belongings).

Dealing with these matters can be a complicated and drawn out process so it is important to seek legal advice to avoid any unexpected difficulties.

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How to organise financial matters after a death

- Find out if there is a Will. You may need legal advice to check if it is valid. The estate must be dealt with as set out in the Will by one or more of the executors named in it.
- If there is no valid Will the person is said to have died intestate and the estate must be dealt with in line with the intestacy rules by an administrator, usually someone entitled to inherit.
- The executor/administrator may have to apply for authority from the Probate Registry to manage and distribute the estate. This authority is called a 'grant of representation' or 'grant of probate'.
- If inheritance tax is payable it is due six months from the end of the month in which the death occurred with interest charged on any outstanding balance from that date.
- A date of death valuation is required on all assets and liabilities of the estate. Different assets may need to be valued in different ways. Professional valuations are often recommended.
- The executors/administrators should ensure that they pay any debts and taxes before distributing the estate. A statutory advertisement gives creditors two months to come forward and then protects the executor/administrator from claims which may be made after the person's estate has been shared out.
- Distribution must be in accordance with the terms of the Will/intestacy but if all the beneficiaries agree then the terms of a Will/intestacy can be varied within two years of the date of death.

People we have advised

- Three children whose father had passed away, leaving a £6million estate. The father was an accountant who ran his own business. We liaised with an accountant to obtain valuations of the business and ensured that a claim for business property relief was made so that Inheritance tax was not payable on it.
- Three children were appointed executors in their mother's Will. Following a family dispute one of the children refused to act as executor. She moved into the mother's property, refused to leave and began selling contents. Acting for the two other siblings we applied to the Court for Probate appointing them as executors and ensured the estate was administered in accordance with the Will.

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