PROBATE

When a person dies all or anything that they owned is known as their Estate. In most cases an estate is passed to surviving relatives and friends as detailed in the person's Will, but in other cases where someone dies without a Will the estate might be passed on according to legal rules, which are known as Intestacy.

Probate is the term used when referring to the process involved in obtaining the legal authority to deal with a person's property, money and possessions upon their death.

If the deceased made a Will and appointed Executors they have the duty to ensure the Estate is administered in accordance with the deceased's wishes. It is often the case that a Grant of Probate is required to give the Executors the ability to deal with these matters.

If there is no Will then a different form of Grant will be required known as a Letters of Administration. The appropriate person to apply for this is detailed in law and there is a prescribed order.

When someone dies there are all sorts of emotional and personal matters to deal with and thus it can be difficult to focus on the legal issues. We are happy to assist and can provide you with a bespoke service whether you wish us to deal with all Estate matters or you are able to do some and we support you with the technical side.

A recent case of Harris v. HMRC (2018) highlighted the dangers faced by executors due to the personal liability that they have. In this case the Personal Representative decided to administer the Estate personally providing beneficiaries with funds prematurely and now there is a judgement against him to the tune of £341,278.76 for Inheritance tax!

Our Charges

We charge at an hourly rate of £280.00 plus 20% vat together with 1.5% of the gross value of the estate (or 2% where we are appointed as executors in the Will) costs are very difficult to predict in probate cases but in a fairly straightforward case we generally estimate it should take between 10 to 30 hours. Therefore, between £2,800 and £8,400 plus 1.5% (or 2%) of the gross value of the estate, as the case may be, plus 20% VAT. The individual cost though will vary depending on the circumstances of the matter. For example, if there is one beneficiary and no property, costs will be at the lower end of the range. If there are a couple of beneficiaries, a property and a couple of bank accounts costs will be at the higher end.

The above includes dealing with an Estate where there is a valid Will, no more than one property, a couple of accounts (bank or building society), there is no inheritance tax to pay and a full account is not required for HMRC. Furthermore, it assumes there are no disputes between beneficiaries, no claims made against the Estate or other complex issues. If the estate has larger numbers of assets or beneficiaries, if a full Inheritance tax account is required or if there are any disputes or claims then this will increase the costs significantly.

Disbursements

Other expenses that will commonly need to be paid by us to third parties (known as disbursements) are

- Probate application fee currently £300 Plus £1.50 for each copy Grant;
- Bankruptcy searches £6 Per beneficiary

- Protect against unexpected claims- Notice in London Gazette and Notice in local Newspaper approximately £300-£500.
- HM Land Registry Search fees currently £7
- Telegraphic Transfer fees £40.00 plus VAT

Depending on how many hours it takes to complete, our fees will be calculated on the amount of time spent on the matter to that date.

We cannot anticipate the eventualities of all and every scenario. However, if we do suspect that we are reaching our estimate of costs and will exceed it, you will be notified of this and the reasons why.

Factors that would typically increase the cost of our service are:

- The Estate consists of many accounts and policies;
- There is no Will or there is a Will but Executors have predeceased and thus need to determine who can be appointed;
- The Estate has a number of shareholdings, stocks and bonds, there is likely to be additional time spent depending on how they are to be dealt with. We can give you a more accurate quote once we have more information.
- Dealing with the sale or transfer of a property in the Estate is not included in the quote.
- Considering IHT saving options and whether it is prudent to, and if so preparing, a Deed of Variation.

Stages Involved

How long will it take?

In a straightforward case as outlined above, from the time you instruct us to the distribution of the Estate, the average process can take between 6 to 18 months. It can be quicker or slower, depending on the parties involved and the time it takes to ascertain the value of the Estate, for example, if the original documentation is not obtained and searches have to be undertaken. In such a situation, additional charges may also apply.

Stages of the process

The precise stages involved in a Probate matter can vary according to the circumstances. However, below we have listed some key stages:

- Take your instructions, ID, money on account and providing you with some initial advice
- Determining the value of the Estate: contacting institutions and obtaining the Value as at the date of death
- Verifying the terms of the deceased's Will, or where there is no Will proceeding in accordance with Intestacy laws, and obtaining the necessary identification documents for beneficiaries.
- Preparing the account for Inheritance Tax to HM Revenue & Customs (HMRC) where applicable paying the tax, and submitting the correct Inheritance Tax return (required whether or not there is tax due)
- Applying to the Probate Registry for the Grant of Representation, being the document confirming the legal authority to administer the Estate
- After the Grant of Representation has been issued by the Probate Registry, liquidating (selling or calling in) the deceased's assets and settling any debts and all their liabilities.

- Paying the final Estate administration expenses and accounting to HMRC for any further Inheritance Tax, any Income Tax or Capital Gains Tax due to or from the Estate
- Preparing the Estate accounts showing all payments into and out of the Estate, and the balance left for distribution to the beneficiaries.
- Sending the Estate accounts to the Personal Representatives (such as the Executor in the Will) for approval.
- If there are no challenges or complicating factors that have arisen preventing distribution, the final phase will involve transferring any assets that the beneficiaries wish to retain, and distributing the balance of the Estate funds.

Useful Links

https://www.legalchoices.org.uk/legal-choices/got-a-legal-issue/probate/i-need-to-apply-for-probate/

https://www.gov.uk/inheritance-tax