

PERSONAL REPRESENTATIVES GUIDE

Dealing with the loss of a loved one is a difficult and emotional time. Being appointed as a Personal Representative, either as an Executor (through a Will), or an Administrator (if there was no Will) can be daunting and add another layer of stress.

We can provide expert assistance to not only ensure that you fulfil your legal obligations as a Personal Representative, but also ensure the estate is properly administered whilst delivering the service in a personal and compassionate way.

Duties and Liabilities as Personal Representative

An Executor's authority stems from the Will of the deceased and an Administrator's authority stems from the Grant of Administration. Both Executors and Administrators (together referred to as Personal Representatives) have full power to carry out the administration of the estate once the Grant of Representation has been issued.

A Personal Representative has a duty to exercise care, diligence and prudence in dealing with the estate. A Personal Representative can be personally financially liable for loss to the estate arising from a breach of their duty, even if the mistake made was a genuine error. The following are examples of the duty placed on Personal Representatives:

- You must act in the best interests of the estate and beneficiaries, rather than the best interests of yourself.
- You must ensure that the estate assets are kept separate from your own.
- Ensure that you safeguard the assets in the estate and preserve their value.
- Ensure that the statutory order for the payment of debts is adhered to.
- Not profit from your position as Personal Representative, unless authorised to do so.
- Diligently account to the beneficiaries for all monies passing into and out of the estate.

The following page sets out the main steps a Personal Representative will need to take and consider in administering the estate.

What do I need to do?

Personal Representatives are responsible for administering the estate and distributing the assets in accordance with the terms of the Will, or under the Intestacy Rules. If there is no Will, the Intestacy Rules set out exactly who will benefit from an estate.

Pre-Grant steps - Personal Representatives are usually responsible for registering the death and organising the funeral (if no member of the family is willing to do so). The person organising the funeral becomes personally liable for the funeral costs, although they will have first call for these costs to be reimbursed from the estate.

The value of the deceased's estate at the date of his/her death will need to be established, in addition to any debts or liabilities owed. This can include obtaining professional valuations of assets to ensure that an accurate calculation of the estate is made and also to confirm whether any Inheritance Tax is payable. Even if no Inheritance Tax is payable, it may still be necessary to complete an Inheritance Tax Account and submit this to HM Revenue and Customs.

The next stage is to apply for the Grant of Representation, either a Grant of Probate if there is a Will, or Letters of Administration, if there is no Will. This is the official document to confirm that the Personal Representatives are entitled to administer the estate. It also confirms that assets belonging to the deceased can be safely handed over to the Personal Representatives, as most financial institutions (depending on the value of the asset) will not encash accounts or accept instructions until this has been obtained. It is sometimes unnecessary to obtain a Grant of Representation in small estates, however this depends on whether asset holders are willing to release funds without it.

Post-Grant steps - The Personal Representatives can then begin collecting in the assets and settling and liabilities owed. They also need to transfer to the beneficiaries (those who inherit assets under the terms of the Will or Intestacy) any items specifically left to them under the terms of the Will.

Income Tax and Capital Gains Tax will also need to be considered during the course of the administration of the estate. If the deceased completed annual Tax Returns before his death, then these must be completed for the final tax year up to the date of death.

Tax may need to be paid on gross income received during the administration of the estate, irrespective of whether Tax Returns were completed before the date of death. Consideration of any taxable gains on assets on their sale/transfer during the administration of the estate are also important.

The Personal Representatives have a duty to supply accounts covering all transactions carried out during the administration of the estate (called Estate Accounts) to the ultimate beneficiaries under the Will or Intestacy Rules (called the Residuary Beneficiaries). It is usual for final distributions to only be made once the Estate Accounts have been approved.