

## **COHEN BOR SERVICES LTD**

### **The Probate Process Explained**

The probate process often involves complicated legal, tax and financial work. We are providing a summary of that process and other explanations which we hope you will find useful.

#### **Probate Phase 1**

Identifying all of the deceased's assets ( property, investments and possessions ) and all of their liabilities ( debts including mortgages, loans, utility bills ) to determine the value of the Estate.

Obtaining valuations of each of the Assets and determining the liabilities all as at the date of death.

At the same time, verifying who is entitled to inherit what from the Estate, whether it be under the terms of the Will, or in accordance with the rules of intestacy if there isn't a Will and obtaining the necessary identification documents for those beneficiaries, and undertaking the required Anti-Money Laundering checks.

#### **Probate Phase 2**

Calculating and advising the Representatives/Executors of the Inheritance Tax liability on the Estate and the amount payable to HM Revenue & Customs ( HMRC ) where applicable and then submitting the appropriate Inheritance Tax Return.

Application is then made to the Probate Registry for the Grant of Representation or the Grant of Probate.

- **Grant of Letters of Representation ( no Will )**

If a person dies without leaving a valid Will their next of kin would typically apply for a Grant of Letters of Administration instead of a Grant of Probate.

The next of kin can ask someone such as ourselves to undertake that work.

With there being no Will, the law of intestacy would determine who receives the deceased's Estate and their share of the entitlement.

- **Grant of Probate ( Will )**

If the person who died with a valid Will in place, the Executors named in the Will would usually be responsible for applying for the Grant of Probate.

The Executors can ask someone else in their place who is experienced in this field to deal with the application for the Grant of Probate and all the necessary work.

The Will of the deceased person will describe how their Estate should be distributed and the Grant of Probate will allow the Executors or the person acting on behalf of the Executors, to administer the Estate accordingly.

For a Will to be valid in support of an application for a Grant of Probate, a list of certain conditions must be met such as ensuring the Will has been signed and witnessed correctly and ensuring the person who had signed the Will had the mental capacity to understand the implications of their Will at that time.

In the unlikely event that the deceased person died with a Will, but it was not valid in the eyes of the law, the deceased's Estate would be administered as if the person died without a Will in place and a different set of rules would apply ( see above ).

To explain, the definition of a Probate is a word normally used to describe the legal and financial processes involved in dealing with the property, money and possessions ( called the assets ) of a person who has died.

The etymology of the word 'Probate' comes from the Latin 'probare' which means to test or to prove.

Probate therefore is the process of proving that a Will is valid if there is one, and confirming who has authority to administer the Estate of the person who has died.

Before the next of kin or Executor named in the Will can claim, transfer, sell or distribute any of the deceased's assets, they will have to apply for a Grant of Probate – in some occasions for small Estates it may be possible to bypass that procedure thereby reducing costs.

### **Probate Phase 3**

After the Grant of Representation/Grant of Probate has been issued by the Probate Office, then the Personal Representatives/Executors or person acting in their stead is responsible for liquidating/selling/encashing the deceased's assets, settling the deceased's liabilities, paying the Final Estate Administration expenses and accounting to HMRC for any taxes due on the Estate or prior to death.

The Grant of Representation/Grant of Probate has to be submitted to all banks, institutions, life insurance companies etc before those institutions will pay monies out into the Estate bank account.

The Personal Representatives/Executors or the person acting in their stead will be responsible of opening a bank account to receive those monies and also to pay out any liabilities on the Estate from those funds.

### **Processing the Grant of Representation/Grant of Probate**

A fee has to be paid to apply for a Grant of Probate. The time for the whole process to be completed will vary from Estate to Estate dependent upon the assets, the length of time it takes to obtain valuations, there could be income or capital gains tax affairs to resolve, could be Inheritance Tax matters to deal with, there could be some complexity in terms of the Will, there could be properties that have to be sold etc. Sometimes there are complications regarding the personal representatives or beneficiaries of the Estate.

Added to the time is dependent upon how quickly the Probate Office process matters and whether there are any particular queries etc in relation to the forms, the Will or any other matters and how pedantic the Probate Office may be ; and how quickly the 3<sup>rd</sup> parties, such as banks, financial institutions, HMRC etc respond to requests.

## **Grant of Probate**

The Probate Registry seems to regularly experience delays therefore the Grant of Representation may take 6 months to be issued.

When discussing the Will with you at the outset we could give an approximation as to how long it will take to complete the process.

We will have to be in close contact with all sorts of organisations such as insurance companies, HM Revenue & Customs, maybe HM Courts service, the Department for Work and Pensions, banks, possibly Estate Agents during the Estate Administration. Not only will we have to obtain valuations to complete the Probate form we will then have to prepare the necessary forms from the particular institution to extract the funds.

If the person died intestate ie there was no Will - then the time factor in obtaining the Grant of Representation is probably not dissimilar to the above.

## **How soon do I have to apply for Probate?**

In England and Wales there are no time limits when applying for Probate of settling an Estate. There's also no definitive time when the Probate process must be started after death. There is a timescale although for any Inheritance Tax to be paid so it's as well to proceed with the Probate process as soon as possible if it is felt that the Estate might be subject to Inheritance Tax.

Any disposal of assets such as houses etc could not be undertaken until the Grant of Probate is obtained.

Furthermore certain institutions etc need to be notified of the death such as the Department for Work and Pensions ( DWP ) if any pensions or benefits were being received by the deceased ; insurance companies, if any benefits, pensions or annuities are being received etc.

## **Time Limit for Inheritance Tax**

There are 2 types of Inheritance Tax forms – Form IHT205 which is used when there is no Inheritance Tax to pay. There is no deadline to submit that form.

The long Inheritance Tax Return form – IHT400 – is used when Inheritance Tax is payable. This Form must be submitted within a year after the deceased died.

If Inheritance Tax is payable it must be paid within 6 months of the date of death. Is this 6 month deadline isn't met there could be additional interest or financial penalties. There could be a negotiated longer time if there is property that needs to be sold.

Once Inheritance Tax has been paid, HMRC will issue a receipt normally within 4-6 weeks. That would need to be sent to the Probate Registry along with the application for the Grant of Representation/Grant of Probate.

## **How long do People have to make a Claim on an Estate**

If someone wants to make a claim on a deceased person's Estate, they only have a limited time to do so. The deadline to make a claim is 6 months from the Grant of Representation/Grant of Probate being issued, though they may be able to apply to the Court for an extension.

Before the Grant of Representation/Grant of Probate is issued, it is possible for someone to lodge a caveat at the Probate Registry. This will prevent the Grant from being issued and, in turn, prevent any payments from being made out of the Estate while the claim is being investigated. A caveat can remain in place for up to 6 months.

Under the Inheritance (Provision for Family and Dependents) Act 1975, certain individuals can make a claim against the Estate for 'reasonable financial provision'. These individuals include the spouse, former spouse or a child of the person who has died. This is called contentious Probate.

### **Our Fees**

The level of fees will depend upon the scope of work required, the complexity of the Estate, the amount of time it takes to complete the work which varies enormously from one Probate to another, and the level of skills and responsibility involved. We also believe that we can provide advice from a tax point of view which may not be available elsewhere. Our hourly charge-out rates are in the order of £300 per Partner and £100-£200 for other members of staff or professionals dependent upon ability and experience – these rates are quoted excluding VAT. The rates themselves are reviewed periodically, often annually.

We can discuss fees in advance of commencing work but generally speaking it is difficult to estimate at the outset the amount of time it will take to administer an Estate. Because of the quantum of assets and liabilities, the range and complexities thereof and also whatever assistance and advice clients require. Our experience as accountants will enable us to assist with preparing tax affairs for the deceased and for the administration of the Estate as well as advice that we can give.

We would normally offer a free half hour initial consultation to discuss our approach and to be able to give an indication of the amount of work that might be involved. An indication of the fees for the different aspects of work would be:-

<b>Work Involved</b>	<b>Estimated Cost ( excluding VAT )</b>
Grant of Probate where IHT400 Form is not required	£1,250 - £3,000
Grant of Probate where IHT400 Form is required	£3,000 - £12,000
Estate Administration, preparation of the Estate accounts and relevant Tax Returns which are prepared after the Grant of Probate has been obtained	*

\* Fees will be based on time spent at the charge out rates mentioned ; a quote can be given as an indication of the fees prior to the work which varies enormously and depends on the quantum and complexity of the Estate and the dependence upon third parties – as indicated in the report above.

### **Other Questions or Queries**

If you have any other questions or queries then please don't hesitate to email [elliott.cohen@shacter-cohen-bor.com](mailto:elliott.cohen@shacter-cohen-bor.com)

Please note - these notes are for guidance only and should not be relied upon. Further detail and discussion is necessary to proceed.

**Note**

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