

A Guide to the Administration of an Estate




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INTRODUCTION

When a person passes away the responsibility of dealing with their estate can be a daunting task particularly for someone who is dealing with the grief of losing a friend or family member. The purpose of this guide is to provide an overview of the main steps/stages in relation to dealing with a deceased person's estate.

WHAT IS THE 'ESTATE'?

When a person dies, everything they own is referred to as the deceased's estate. After payment of debts and taxes, the estate is divided among the beneficiaries in accordance with the deceased's Will or if there is no will, among the closest relatives in accordance with rules set out in law. Who is responsible for the Administration of an estate? The personal representative/s of the estate. If the deceased person made a Will the personal representative will be the executor/s named under the Will. If there is no Will or, if there is a Will but there is no executor named therein, the personal representative is known as an administrator- this will usually be the next of kin. The Succession Act 1965, sets out the priority in relation to who is entitled to act in the event there is no executor appointed.

What are the duties of a Personal Representative? A personal representative is obliged to administer and distribute the estate as soon as possible after the death (ideally within a 12 month period from death known as the 'executor's year'). They are under a duty to preserve the assets of the deceased until they have been administered and to protect the assets from devaluation.

THE PRIMARY DUTIES OF A PERSONAL REPRESENTATIVE INCLUDE;

- Payment of funeral/testamentary expenses;
- Ascertain the beneficiaries of the estate;
- Gather together and protect all the deceased's assets such as money, shares and property and find out their combined value;
- Collect in any outstanding funds due (money owing to the deceased);
- Discharge any debts or taxes owed;
- Notify spouse/civil partner about their legal entitlements
- Ensure correct distribution of assets.
- Settlement of tax or any other liabilities affecting the estate

IS A PERSON OBLIGED TO TAKE ON THE ROLE AS PERSONAL REPRESENTATIVE?

No. An Executor named under a Will is not bound to act. You can either reserve or renounce your entitlement to act. If you reserve your interest you can step back in at a later stage however if you renounce you will be prevented from taking your role as executor. Once you have decided to take on the role of the Executor and have acted in relation to the administration you will be unable to step down without the requirement for a court order. In a situation where there is no Will there is no obligation for a person so entitled to act however in order for the person/persons next entitled to proceed they will need the person initially entitled to renounce their interest. In the event that a person who is entitled to act as Personal representative refuses to administer the estate an application can be brought by the person/s next entitled to force the person initially entitled to accept or refuse to act.

WHAT POWERS DO PERSONAL REPRESENTATIVES HAVE?

Personal Representatives have wide ranging powers to deal with the estate for example power to lease/sell assets, discharge debts or appropriate property. Personal Representatives also have the power to represent the deceased in legal actions and to settle legal actions against the deceased's estate

WHAT INITIAL STEPS SHOULD I TAKE AS PERSONAL REPRESENTATIVE?

1. Determine if the deceased person made a Will and the location of same, this will determine who the personal representative of the estate is.
2. Obtain an official copy of the Death Certificate from the Health Centre in the area in which the person died or from the Register General.
3. Prepare a preliminary list of assets & liabilities from the information available to you
4. Notify Revenue & the Dept. of Social Welfare (if the deceased was in receipt of any benefits) of the death
5. Notify any other party making payment to or receiving payment from the deceased (employee/private pension schemes, utility providers etc)
6. Protect the assets of the estate by ensuring property is insured etc
7. Retain an estate agent/valuer re valuation of Property & investment portfolio

WHAT ARE THE MAIN STAGES IN THE ADMINISTRATION OF AN ESTATE?

1. Collection of information regarding the estate and safeguarding of assets.
2. Preparation of the legal paperwork to apply to the Probate Office for a Grant of Representation.

3. After the Grant has been issued, the collection of assets and payments of outstanding debts.
4. Distribution of the estate in accordance with the wishes of the testator, if there is a Will, and in accordance with the law if there is no Will. This final stage includes the preparation of the necessary accounts of the administration and finalization of any tax liabilities arising (income tax, capital acquisitions tax, capital gains tax).

WHAT IS A GRANT OF REPRESENTATION?

The three most common types of Grant issued by the Probate Office are the following;

1. Grant of Probate - Where a person dies leaving a valid Will and appoints an Executor under same.
2. Grant of Letters of Administration - Where a person dies without having made a valid Will, they are deemed to have died intestate. The Grant issues to the person or persons who were their nearest next of kin at the date of death. The Succession Act 1965, sets out the priority and determines who is next of kin.
3. Grant of Letters of Administration with Will Annexed - Where a person dies having made a valid Will and a person other than the executor applies, the Grant issues to the persons entitled by law.

WHAT IS THE PURPOSE OF THE GRANT OF REPRESENTATION?

The core function of a Grant of Representation is to give authority to the correct person at law to deal with the deceased person's estate. In most cases the estate of the deceased person cannot be administered until the Grant of Probate is received from the Probate office.

IS OBTAINING A GRANT ALWAYS NECESSARY?

In certain cases where the deceased's property was held jointly or small sums only are involved, a Grant may not be necessary.

HOW LONG IS THE PROCESS?

Although the law allows one year from the date of death for a personal representative to administer the estate, the time it takes very much depends on the circumstances of each individual case and the size and complexity of the estate. For a straight forward estate the period can be in the region of 6-8 months.

CAN AN EXECUTOR ADMINISTER THE ESTATE WITHOUT A SOLICITOR?

Yes, in order to make a personal application you must attend the Probate Office in person. Before deciding to apply to the Probate Office you must be confident that you have the ability to research and undertake the legal responsibilities associated with administering the estate.

To make a personal application you must attend in person. The Probate Office has discretion to refuse to allow a personal applicant to be attended by an adviser. It may also refuse to allow an applicant to personally continue an application if it had been initiated by a solicitor.

Once the paperwork is completed however and the Grant issues the job does not end there. The Executor or Administrator must then distribute the estate to the beneficiaries in accordance with the Will or the law if there is no Will.

Invariably, even what can appear as the most straightforward of administrations can have its pitfalls.

WHY SHOULD I INSTRUCT A SOLICITOR TO APPLY FOR A GRANT OF REPRESENTATION?

It is helpful that you seek the advice of a Solicitor to guide you through the process. This will give you peace of mind that the application is being handled correctly and that any legal or tax issues arising from the administration of the deceased's estate will be dealt with in an efficient manner.

A number of legal issues can arise on a person's death which will require specialist legal advice to include;

- Disputes regarding the validity of a Will
- Confirmation of which assets should be used to discharge debts and what to do if there is insufficient monies to discharge debts
- If there are outstanding legal proceedings in being or proceedings have issued against the estate by creditors (banks etc)
- If a beneficiary is under 18 or suffering from a disability
- Dealing with assets situated in other jurisdictions

The main advantage of using a solicitor to apply for a Grant of Representation is that it will shorten the time line considerably. Although it can vary the average time for the Probate Office to process an application for a Grant of Representation made via a Solicitor is approximately 10-12 weeks. The approximate waiting time for a first appointment with a Probate Office official is approximately 26 weeks. If you do choose to proceed without a solicitor helpful information can be found within the Probate section of the courts service website. As set out above although the Probate office will assist you they will expect you to be fully familiar with your legal responsibilities regarding all aspects the administration of an estate given that failure to comply with your legal obligations may result in you being open to penalties and/or legal sanctions.

ARE THERE CIRCUMSTANCES WHEN YOU MUST INSTRUCT A SOLICITOR TO CARRY OUT THE APPLICATION?

The Probate Office will insist that the application for a Grant is made by a Solicitor in the following situations:

- If the person entitled to take out the Grant is a minor (a person under the age of 18 years), a ward of court or of unsound mind.
- Other circumstances include where there is a question over the validity of the Will or the original will has been lost.
- In some circumstances, individuals also will not be permitted to take out a Grant where the beneficiaries or the deceased person was resident outside of Ireland.
- The Probate Office can also refuse to permit an individual to take out the Grant if an Officer deems it appropriate.

John O'Connor Solicitors specialize in the administration of all types of estate and have a wealth of experience in dealing with complicated estates. If you require more information in respect of dealing with the administration of estates or the affairs of a person who has passed away feel free to contact John O'Connor Solicitors at at [01-6684366](tel:01-6684366) or info@johnoconnorsolicitors.ie.



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