

THE PROBATE PROCESS

**How to prepare for estate administration and
enlist the right support**



HERE FOR YOU AND YOUR FAMILY

01242 420744 | contact@timbrell-law.com | www.timbrell-law.com
twitter.com/TimbrellLaw | facebook.com/TimbrellLawSolicitors

TABLE OF CONTENTS

	Page
Foreword	3
Chapter 1: The immediate steps that should be taken when someone dies	4
Chapter 2: Preparing for the three stages of estate administration	6
Stage 1: Identifying who should administer the estate	7
• Looking for the Will	7
• The duties and responsibilities of a personal representative	8
• Top tips: how to prepare for administering an estate	9
Stage 2: Applying for the Grant of Representation	10
• What is a grant of representation?	10
• How to find out if a grant of representation is required?	10
• What steps need to be taken to obtain the grant of representation?	10
Stage 3: Administering the estate	11
Chapter 3: Enlisting the right support	12
• How to determine whether or not you need a probate solicitor	12
• What are the benefits of using a professional?	12
• Important questions that you should ask your probate solicitor	13
• Top tips: how to reduce the cost of a full professional estate administration	14
Chapter 4: How we can support you	15

Disclaimer

The information contained in this booklet ("the Material") is for general information purposes only and does not constitute legal advice. It is not a complete guide to the process of administering an estate. The Material is believed to be correct at the time of writing (December 2018), but no representation or warranty is given (express or implied) as to its accuracy, completeness or correctness. Timbrell Law Limited accepts no liability whatsoever for any direct, indirect or consequential loss or damage arising in any way from the use of or reliance on the Material for any purpose. If you have any questions, please contact the firm on 01242 420744.

FOREWORD

The weeks and months after a death can be an emotional and challenging time. However, if you are dealing with a deceased estate you need to be prepared; to equip yourself for the difficult task ahead or at least have a better understanding of the role you are expected to fill.

If you are reading this booklet, you are at least considering taking on the responsibility of administering a deceased estate.

Acting as a personal representative comes with specific duties and responsibilities. It is not something that should be undertaken lightly. Mistakes can lead to personal liability. Ignorance and lack of understanding is not an excuse.

Accordingly, the fundamental question that personal representatives often ask me is "*Do I need to enlist support?*". My honest response is that only you can answer that question.

This booklet will give you a brief insight into the process of estate administration and help you understand the various support options available. You may ultimately decide to do it yourself, seek help with obtaining the grant only or opt for a complete administration service. What matters is that you are happy and comfortable with your choice.

I hope that you can use the information provided to work out the level of support that you need.

Alice

Alice Timbrell
Director of Timbrell Law

CHAPTER 1: THE IMMEDIATE STEPS THAT SHOULD BE TAKEN WHEN SOMEONE DIES

Before you can even think about dealing with the estate of someone who has died, some important practical steps should be taken. Ensuring that these steps are carried out promptly and are appropriately documented will make the administration process easier for you and your adviser.

Step 1: Securing the deceased's home and possessions

If the deceased lived alone, you should visit the property as soon as possible to:

- make sure all doors and windows are locked;
- cancel any deliveries;
- remove perishables from the property;
- adjust the heating;
- place valuable items out of sight; and
- change the locks (if necessary).

If the deceased lived in a residential or nursing home, you may need to remove their possessions and store these safely. The home will let you know how quickly this needs to be done.

You should also collect the deceased's papers ready for probate. Documents of interest would include bills, contracts, loan papers, insurance plans, pensions documents, employment details, tax papers, car logbooks and any original paperwork, certificates or deeds relating to assets (e.g. for shares or property). If in doubt preserve all documents.

Step 2: Informing the insurers

You should take steps to notify the current building and contents insurers about the death and let them know if the property will be unoccupied checking that adequate cover will remain in place. You should keep a record of your conversation as part of the estate administration.

Step 3: Registering the death

A person's death must be registered within 5 days. Details of who can register the death, where to register and the information you will need to provide to the registrar can be obtained from your local registry office or online on the www.gov.uk website.

Once the death is registered, you will receive:

- *a Certificate for Burial and Cremation*

This form should be delivered to the funeral director. It permits burial or cremation.

- *a Certificate for Registration of Death*

This form can be used to inform the Department of Work and Pensions of the death. Alternatively, you may wish to use the Tell Us Once Service to notify many government organisations all at once. The registrar should be able to provide you with further information about this service.

- *the Death Certificate and any additional copies requested*

It is generally a good idea to obtain multiple copies of the death certificate during your visit to the registrar, as these will need to be sent out to third parties to notify them of the death.

Step 4: Arranging the funeral

In most cases, a funeral director will have been contacted shortly after death to arrange to take the body away. Once the death is registered, and the Certificate for Burial and Cremation issued, the actual funeral can take place.

Your chosen funeral director will be able to help guide you through the various options surrounding both burial and cremation. Where there is a Will, you should check whether the deceased left any funeral wishes; while these wishes are not binding, they can help shape the funeral arrangements.

Paying for the funeral

Before making the funeral arrangements, it is worth checking whether the deceased purchased a prepaid funeral plan or took out funeral insurance. Importantly a funeral plan may tie you into using a particular funeral director.

If the funeral plan or insurance does not cover the entire expense of the funeral, the funeral director will usually look to the person organising the funeral for payment.

Generally speaking reasonable funeral expenses, including the cost of a gravestone, flowers and refreshments, are payable from the deceased's estate. What is reasonable is a question of fact in each case but will typically be tied to the size of the deceased's estate as a whole.

You may be able to secure payment from:

- the deceased's bank who may be willing to make a direct payment from the deceased's account to the funeral directors; or
- from a family member who is prepared to pay for the funeral and later seek reimbursement from the estate. They will need to be comfortable with the risk that if the estate is not large enough to cover this, they will not be repaid.

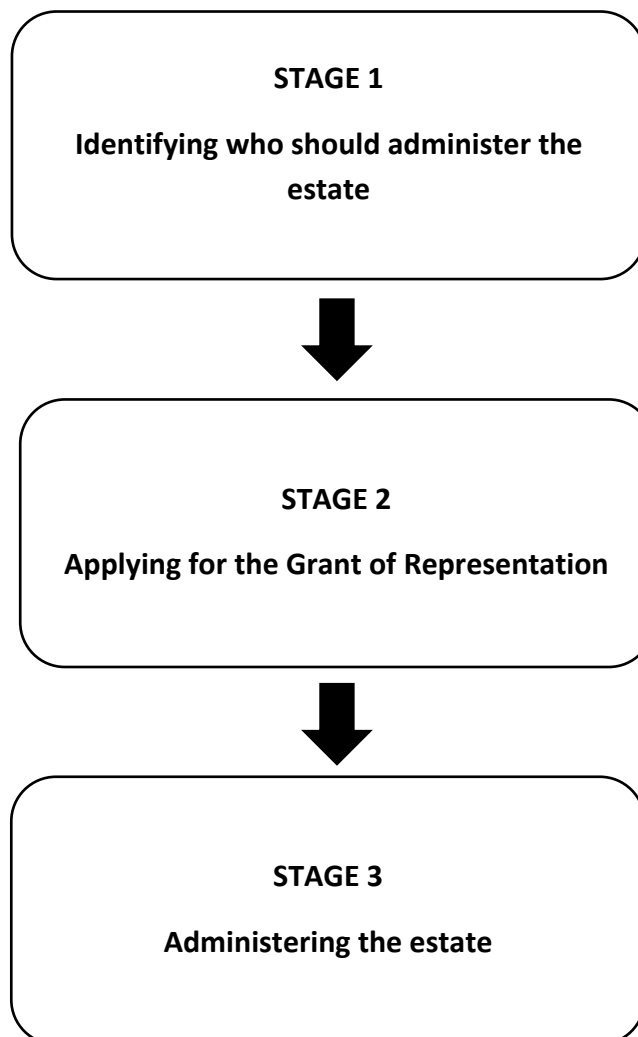
CHAPTER 2: PREPARING FOR THE THREE STAGES OF ESTATE ADMINISTRATION

Having dealt with the immediate practical concerns in Chapter 1, you can now focus on dealing with the deceased's assets and ultimately distributing these to the entitled beneficiaries.

The process of winding up the affairs of someone who has died is known as “**estate administration**”.

If you are considering taking on the responsibility of administering an estate, you may wish to use the information in this booklet to help you decide if you require support and if so, at what level.

Broadly speaking the estate administration can be broken down into the three stages below.



STAGE 1: IDENTIFYING WHO SHOULD ADMINISTER THE ESTATE

When a person dies, one of the first questions to be asked is whether there is a valid Will. If you do not already know where the Will is or if the deceased even made a Will, time will need to be spent investigating the position.

Finding the Will is essential not only because it determines who will inherit from the estate, but also who is responsible for dealing with the estate.

Providing that the Will is valid, the “**executors**” will have the authority to deal with the deceased’s assets from the date of death. The Grant of Probate (as an order of the court) confirms their authority to act for the benefit of third parties. *Please remember that those appointed as executors can choose not to act. An executor must be both willing and able.*

If the deceased died without a Will (i.e. intestate), the process is more complicated. An application for a Grant of Letters of Administration will need to be made to bestow authority on an “**administrator**”. There are rules which determine who can be an administrator.

The term “**personal representative**” covers both executors and administrators.

Looking for the Will

In an ideal world, the deceased will have told his executors of their appointment under the Will and confirmed the location of the original document. However, if this is not the case the best place to look is in the deceased’s home.

If there is a Will, there will usually be a copy of the document with the deceased’s papers. If the Will was prepared by a professional, their contact details are likely to be set out on the cover page. They should be contacted without delay as they may be storing the original Will or be able to confirm its location.

If you cannot find the Will (or a copy of it) in the deceased’s home, you may wish to pursue the following lines of enquiry:

- contact any professional advisors, such as accountants, IFAs and solicitors, that you are aware the deceased has contact with during his lifetime;
- check with the deceased’s bank to see whether they hold any original paperwork;
- check whether the deceased left his Will with the Principal Registry of the Family Division;
- conduct a search of commercial Will registers/storage providers;
- advertise for the lost Will in local papers; or
- make contact with local solicitors and will writers.

Once you have located a Will, you will need to check that it is valid. If you have concerns, seek professional advice.

THE DUTIES AND RESPONSIBILITIES OF A PERSONAL REPRESENTATIVE

As a personal representative, you are under a duty to ensure that the estate is administered and distributed correctly. If you fail to achieve this, there is a risk that you may be held personally liable.

To be able to meet your duties you need to fully understand, or have the support of an adviser to assist you in understanding, the following:

- if there is no Will, how the intestacy rules apply specifically to the deceased's estate; or
- where there is a Will, how the terms of the Will affect the administration and the provision made for the beneficiaries.

This will include:

- acknowledging where gifts have failed or lapsed and if there are any substitute provisions that have come into force;
- understanding where gifts are contingent on a specified event and if that contingency has been met;
- knowing where the burden of tax falls; and
- if the Will creates a trust, what the terms of that trust are.

You will also need to be confident that you understand the extent of your powers, i.e. what you can and cannot do.

The risk of personal liability

As a personal representative, if you fail to pay an unknown creditor or a beneficiary you are at risk of being held personally liable to that person.

Criminal and civil sanctions can also arise if a Will or codicil is concealed or false information is provided about the beneficiaries, the assets of the estate or any lifetime gifts made by the deceased.

Furthermore, HMRC imposes substantial penalties on personal representatives who provide inaccurate information for tax purposes.

Seeking Support

Thankfully administering an estate is not something that the average person is asked to do very often. Unfortunately, being unfamiliar with the process or ignorant of the tax or legal position is not an excuse for non-compliance.

If you are not comfortable with the responsibility of administering an estate or are worried about making mistakes and being held personally liable, you can seek support from a professional.

In Chapter 3 we look at how to determine if you need a probate solicitor, the benefits of using a professional and the essential questions to ask before agreeing on an instruction.

TOP TIPS: How to prepare for administering an estate

1. Purchase a good number of death certificates when you register the death. As you will need these to notify asset holders, a shortage of death certificates can cause a delay.
2. Conduct a thorough search for the Will as soon as possible. If the Will is missing, it can take time for other professionals such as accountants, local solicitors or banks to check their archives.
3. Collect all the personal papers you can find in the deceased's home. You never know what might turn out to be important.
4. Consider placing a mail redirection on the deceased's home, so that any new correspondence comes to you.
5. Keep copies of all estate expenses paid for by you and ask family members to do the same. You will need this evidence to claim a reimbursement from the estate later.
6. Consider opening a separate bank account for receipt of estate funds. If you are using a solicitor for the full administration, then you are likely to be able to use their client account.
7. Keep copies of all correspondence you have with asset holders. If you speak to a third party on the telephone about the estate, remember to make a note of the call. These notes will help jog your memory during the administration process and, if you seek support, will help your adviser find out what you have already achieved.
8. Think about keeping the beneficiaries updated. A beneficiary should be informed promptly of their entitlement in the estate; however, their right to further information depends on the nature of their interest. In our experience keeping beneficiaries updated regularly reduces the risk of conflict.

STAGE 2: APPLYING FOR THE GRANT OF REPRESENTATION

Having accepted the role of personal representative, you now need to take action to comply with your duty to ascertain the assets and liabilities of the estate.

The deceased may have helpfully left an asset log for you. If not, you will need to systematically review the personal papers you collected from their home to determine the extent of the estate and the work to be done. *If you are considering seeking support for the full administration, your solicitor will do this for you and manage all contact with the third parties involved.*

What is a Grant of Representation?

To be able to transfer or release assets to the personal representatives, asset holders will typically require proof that they are entitled to deal with the deceased's estate. This proof takes the form of a court order, known as a "**Grant of Representation**".

There are several different types of Grant. Where there is a Will, the Grant is called a "**Grant of Probate**"; hence the phrase "applying for probate".

How to find out if a Grant of Representation is required?

The only way to accurately find out if a Grant is needed to deal with a particular asset is to ask the asset holder.

Every organisation will have different rules. Some will even require a grant to release a small amount of money held in the name of the deceased. For third parties, the Grant is evidence (sealed by the Court) that you are entitled to deal with the estate and ultimately the asset they are holding.

Of course, there are situations where it is likely that a grant will be required:

- if the deceased held stocks and shares or any other investments;
- if there is a property which needs to be transferred or sold; or
- there are savings with any one organisation totalling more than £15,000.

What steps need to be taken to obtain the Grant of Representation

To get a Grant, you will need to accurately value the estate as at the date of death to calculate and settle any inheritance tax due. Collecting the information required can take several months; a long-form account can be over 100 pages! You will need to make sure that you claim all possible inheritance tax reliefs and that you correctly identify assets which fall within the estate for inheritance tax purposes.

Once the inheritance tax account is ready, you can make formal application to the Probate Registry for the Grant. The application process involves swearing an oath before a solicitor and submitting the original Will (if there is one). If you chose not to instruct a solicitor, you might have to attend an interview at the probate registry.

STAGE 3: ADMINISTERING THE ESTATE

On receipt of the Grant confirming your authority to act, you will be able to collect in the deceased's assets, e.g. by selling investments, selling or transferring property, dealing with private shares or business interests, encashing bonds and closing accounts.

Once the estate is in funds, you will need to pay off any debts, outstanding inheritance tax, funeral and administration expenses and any legacies (i.e. gifts) owed under the Will or the rules of intestacy. You will also be responsible for any tax arising as a result of income or gains received during the administration period, including submitting an estate tax return if necessary.

The remaining balance will be distributed to the beneficiaries.

If there are continuing trusts, you may need to step into the role of a trustee to manage the ongoing trust fund for the benefit of the specified beneficiaries. *Being a trustee is an entirely different role accompanied by a new set of responsibilities. The role of a trustee is not contemplated here.*

CHAPTER 3: ENLISTING THE RIGHT SUPPORT

How to determine whether or not you need a probate solicitor

Deciding whether to take on an estate administration yourself or to seek the support of a professional can be a difficult decision. The bottom line is that there is no right or wrong answer.

Some personal representatives choose only to seek support in obtaining the Grant of Representation. Others prefer for a professional to guide them through the entire process.

The average estate administration takes between 9 to 12 months to complete. You will need to have the time, energy and patience to dedicate yourself to the administration throughout. If you don't the administration will drag on unnecessarily.

Similarly, DIY probate does not mean that you can cut corners. You are legally responsible for ensuring that the estate is administered and distributed correctly. If you fail to fulfil this duty, you could be held personally liable and at risk of a claim from third party creditors or beneficiaries. Inexperience is not an excuse.

What are the benefits of using a professional?

Instructing a professional to assist you with the estate administration has numerous advantages:

1. They are experts in the law

Probate solicitors have spent years learning the law (and the accompanying tax regime) and have years of experience dealing with estate administration. Their expertise means that they can **simplify the process for you** and **easily overcome obstacles** that would cause concern in those less experienced with the process. An experienced probate solicitor will work to alleviate your concerns and make sure the estate administration runs as smoothly as possible.

2. They have the resources available to them

Professional probate solicitors will have developed systems to deal with each stage of the administration to ensure that matters move forward **as quickly as possible**.

3. They can help to minimise family conflict

Even in the closest families, estate administration can bring out a degree of mistrust and conflict. Emotions are often running high and those not acting as personal representatives often feel excluded or kept out of the loop. A probate solicitor can help **ease family tensions** as an independent third party.

4. The time factor

If the estate contains multiple assets dealing with a large number of organisations can quickly become confusing and vital details can be missed. Hiring a professional means that you will have someone who can **dedicate the time needed** to finalise the estate rather than DIY probate fitting around your busy schedule.

5. Reassurance

Instructing a professional who knows the law, is familiar with the administration process and has experience dealing with estate complications provides you with the reassurance you need to know that **you are fulfilling your duty as personal representative**.

6. Avoiding personal liability

Hiring a professional **reduces the risk of personal liability** providing there is honest and open communication between you and your adviser.

7. Reduce stress

Placing the day-to-day estate administration in the hands of a professional means that **you do not have to worry about chasing or organising third parties**.

It can be worth at least consulting a probate solicitor if any of the following issues arise:

- The original Will is lost.
- You suspect there is a problem with the Will, i.e. there are missing pages, it is not signed correctly or witnessed.
- The Will or rules of intestacy create trust interests.
- The beneficiaries include children under the age of 18.
- The estate is subject to inheritance tax.
- The deceased had an interest in a business, agricultural land or owned foreign property or assets.

Important questions that you should ask your probate solicitor

Before you officially instruct a professional, you should be clear about the scope of their service.

You may wish to ask:

1. What does their service include?

Your solicitor should give you a clear breakdown of the tasks that they are going to carry out on your behalf, what services need to be carried out by third parties and what you will need to do personally.

2. How do they charge for their service?

Best practice is for your solicitor to carefully consider the assets in the estate and their ultimate distribution to provide you with a tailored estimate for the administration.

The fee charged will depend on how long your solicitor believes it will take to deal with winding up the estate charged at their hourly rate. Note some professionals choose to charge a fixed percentage of the total value of the estate. We would be cautious about accepting an estimate which is not a reflection of the actual level of work involved.

3. How often will they update you?

You should agree in advance the service level you want, whether this is a regular monthly update or ad hoc next step instructions. Taking the time to discuss your expectations at the outset will ensure that you and your adviser are on the same page.

TOP TIPS: How to reduce the cost of a full professional estate administration

1. Be proactive before meeting with your solicitor for the first time. If you have already undertaken some of the work, show them. If you can provide a list of asset holders with account numbers and references, this will help.
2. Respond promptly to correspondence so that your solicitor does not have to chase you. The same goes for signing and returning documents. Not only will this reduce the cost, but also mean the administration moves faster.
3. Carry out as many of the non-legal tasks as possible:
 - Be available to meet valuers and estate agents.
 - When the time comes to clear the property, arrange for clearance rather than asking the solicitor to do this.
 - Field questions from the beneficiaries' directly and manage their expectations early.

CHAPTER 4: HOW WE CAN SUPPORT YOU

If you have decided that you would like support, Timbrell Law would be happy to help. We have years of experience helping our clients deal with the after-effects of death and pride ourselves in being able to help wind up estates with as little stress and disruption as possible.

We offer two levels of assistance, tailored to how much or how little of the day-to-day administration you wish to deal with personally: **Grant Only Application** or **Complete Estate Administration**.

A COMPARISON OF OUR SERVICES

Grant Only Application	Complete Estate Administration
<p>Our service includes:</p> <ul style="list-style-type: none"> • Taking your instructions and helping you prepare the probate paperwork and inheritance tax papers. • Assisting you to sign the paperwork. • Submitting the application on your behalf and liaising with the relevant bodies. • Forwarding you the finalised Grant to enable you to complete the estate administration. 	<p>Our service includes:</p> <ul style="list-style-type: none"> • Gathering the evidence needed for the probate application including ascertaining the assets and liabilities of the deceased. • Preparing the probate and inheritance tax papers and calculating any inheritance tax due. • Assisting you to sign the paperwork. • Submitting the application on your behalf and liaising with the relevant bodies. • Collecting in the estate assets or their sale value. • Dealing with HMRC negotiations (if necessary). • Paying any debts, taxes, legacies and funeral and administration expenses from the estate. • Preparing full estate accounts and tax returns. • Distributing the estate to the entitled beneficiaries.

We calculate our fees on the hourly rates of the fee earners involved in your matter and the time spent carrying out your instructions. This will depend upon whether there is a Will, the terms of the Will, the size and complexity of the estate and the type of assets involved. Please get in touch for a tailored estimate.

QUESTIONS ABOUT PROBATE OR ESTATE ADMINISTRATION

If any particular probate issues are causing you concern, we offer a **free no-obligation initial consultation** where we can discuss the particulars of the estate and your next steps.

For example:

- Are you looking for a Will?
- Are you trying to determine if you need a Grant of Representation?
- Are you struggling with the intestacy rules?

If you would like any further information or wish to set up a call, please let us know.

SUPPORTING PERSONAL REPRESENTATIVES

Our Complete Estate Administration service is tailored to making the whole process as straightforward as possible. We are diligent in keeping you updated and ensuring that there are no unnecessary surprises. In particular, we provide:

- 1. Regular updates**

In addition to contacting you to discuss the next steps and actions as they occur throughout the matter, we will send you a comprehensive update of what has happened in the estate at the end of every month.

- 2. Clear estimates**

Our initial estimate for the estate administration is based on the work that we believe needs to be done to ensure the estate is administered and distributed correctly and the extent of our involvement. If further assets or complications come to light, we will discuss the impact of these on our fees with you first and agree the best way forward. You will always remain in control.

If you need to support, we hope to hear from you.



HERE FOR YOU AND YOUR FAMILY

01242 420744 | contact@timbrell-law.com | www.timbrell-law.com
twitter.com/TimbrellLaw | facebook.com/TimbrellLawSolicitors