

Acting as a Personal Representative?

Firstly, what is a Personal Representative?

A personal representative is someone who is dealing with the estate. This can either be as an Executor when you have been appointed by the Will or as an Administrator when you have been appointed by the Court.

An outline of the responsibilities involved:

Being a Personal Representative can be daunting especially when you have no previous experience.

When you are surrounded by paperwork and have beneficiaries contacting you, knowing where to start can be the first hurdle.

It is important to know that being Personal Representative means that you are personally responsible for: -

- Collecting in the deceased's assets;
- Settling all the outstanding debts and liabilities; and
- Distributing the estate in accordance with the terms of the deceased's Will or the law.

If you have been appointed by a Will, then you are an Executor. As an Executor, you take authority from the Will which means you can start acting on the deceased's behalf immediately.

If the deceased did not leave a Will then they are deemed to have died "intestate" in which case the law assumes who should have been appointed and they become an Administrator. An Administrator has no authority to deal with the estate until they have been appointed by the Probate Court.

The Deceased's Assets

Assets include all bank accounts, policies, property, shares, personal possessions etc.

As a Personal Representative you have a duty to collect together all of the deceased's assets. It may be that you do not have a full or detailed knowledge of all of the deceased's dealings which mean it can be impossible to know if you have covered everything.

As a Personal Representative, you have a duty to collect in any asset with "due diligence" and failure to do so can result in the beneficiaries of the estate pursuing you personally for its value.

Liabilities

Liabilities are any debts owing by the estate (such as a mortgage on a property) or any bills that have arisen during the administration.

If an estate is insolvent, then the law sets out the order of payment of creditors

Grant of Representation

If the estate of the person you are dealing with is over a certain amount, you will need to obtain a Grant of Representation.

Before you can apply for the Grant, the value of the estate has to be calculated and this involves collecting in the value of each individual asset as at the date of death together with the amount of debts and liabilities owing as at the same date. If the gross value of the estate exceeds the Inheritance tax threshold, then the tax has to be settled before a Grant can be applied for.

General Information

Notices

In order to ensure that details of all debts have been received, once a Grant has been issued, and before any monies from estate are distributed, a Personal Representative should place the statutory Section 25 Trustee Act notices in the London Gazette and the newspaper local to where the deceased died. The purpose of the notices is to give a period of two months for any claims to be made against the estate and also to limit the Personal Representative's liability. If no claims are received within the time limit, the monies can be distributed to the beneficiaries.

However, if the notices are not placed, the Personal Representative will remain personally liable indefinitely for any claims made against the estate even after the funds have been distributed.

Distributing the Estate

It is important for a Personal Representative to ascertain exactly who should inherit from a Will or under the Intestacy rules.

It may seem straightforward as to who should inherit. However, there can sometimes be ambiguities (especially if the Will is homemade) which can complicate matters.

If you are unsure who should inherit an estate you should take professional legal advice.

Other matters to take into consideration

If the deceased had foreign property, their estate is over the inheritance tax threshold or they had a complex family arrangement, then matters can be complicated.

Probates are not simple and unfortunately, cannot be finalised overnight. Care and caution should be taken by all Personal Representatives to avoid any unwanted difficulties.

If you are a Personal Representative and you are unsure on any of the above or have any queries then you should take legal advice before acting.

Earl & Crocker Solicitors
6 West Street
LISKEARD
Cornwall
PL14 6BW

Tel: 01579 345304
Email: enquiries@earlandcrocker.co.uk
Website: www.earlandcrocker.co.uk