

PROBATE (and TRUSTS)

A death will, for most, be a sad, emotional and very stressful time. That will be particularly the case when a member of the family is also an Executor of the Deceased's Will or is placed in a position to have a represent the estate where a Will does not exist (which is called an intestacy).

The process of obtaining a Grant of Representation to an estate (Probate where there is a Will, Letters of Administration either where there is none or no Executor is acting) can similarly be stressful, having to learn the rules and what otherwise unusual words mean, taking the time to find out and understand how the rules apply and deal with the necessary agencies, such as banks, building societies, the Land Registry, Registrars of Companies, HMRC and the Probate Courts.

These problems if anything have been increased by the introduction of the ability to apply for a Grant online as the applicant often has to rely on help supplied online rather than dealing with an individual who is familiar with the whole process.

There are also the complexities of the tax system, the identification of beneficiaries and ensuring a secure means of receiving and distributing the estate according to the rules, which will depend on a number of factors.

Nearly all estates are subject to one form of Trust or another and the Executor will often also be a Trustee and expected to be familiar with how trust work and what needs to be done in that context.

Executors must understand that they have a personal responsibility and liability in administering an estate and will be expected to know all the processes and rules, a tall order if one has never had dealings with an estate before, especially when they are changing all the time. Since 2000 there have been fundamental and far reaching changes in how estates and trusts are taxed. Executors will need to know what type of Return or account must be prepared for giving information to HMRC Inheritance Tax in respect of the assets and liabilities of the estate and the correct treatment of those for tax purposes.

Fee earners at Thompson Leatherdale dealing with these areas of work, have many years experience upon which a client can rely and importantly insurance to back them up. They will know the processes inside out, the tax system and will be keeping up to date with the rules involved as they change. We take the view that if you do not do so, you should not be taking on these areas of work.

Fee Earners

John Thompson (jthompson@thompsonleatherdale.co.uk)

He is a Solicitor who has been in practice for 50 years either as a Principal, Partner, or (as he is now) a Consultant. He deals with all aspects of Probate and Trusts whether on or off-share, will writing and advising on all aspects of tax involved in these areas of law, no matter the value of the estate or funds involved. He is a member of The Law Society's Private Client Section, which includes solicitors who deal with these areas of work, and is regulated by the Solicitors Regulation Authority, as all are at Thompson Leatherdale. His hourly charge is £250 per hour in relation to matters which are largely routine without any complexities but when particularly complex or high value matters are involved then it will be between £300 and £500 per hour.

Clients would be advised in the event that the higher rates would be charged.

William Fursman (wfursman@thompsonleatherdale.co.uk)

He is a Solicitor who has been in practice for 46 years, either as a Principal, Partner or as he now is, as a Consultant.

He will deal with Probate but not Trusts.

His hourly charge is £225 per hour except when particularly complex or high value matters are involved when his hourly charge would be £275 per hour. Clients will be advised in the event that the higher rate is charged.

Ann Tong (athong@thompsonleatherdale.co.uk)

Ann is John Thompson's secretary and Personal Assistant of 36 years. Through close involvement with this type of work Ann represents a crucial first contact, particularly where the Fee Earners involved are not immediately available and is familiar with all the forms and processes required.

Costs

We know how important it is that clients have an idea of the cost of our services from the beginning and what it covers.

There are two services which we provide to clients in administering estates where the Will or intestacy is not challenged/contested, all the assets and liabilities, if any, are held within the United Kingdom, and results in a Grant of Representation being obtained and then, as required by the client, dealing with getting in the assets, discharging the liabilities, dealing with the assets as necessary and in conformity with the Will, the preparation of Estate Accounts and eventually after any necessary checking and advertisement, the distribution of the estate.

This includes, but is not exhaustive:-

- Confirming the existence and validity of a Will and searching to ascertain if any other Wills exist
- Advising on the correct tax treatment of an estate.
- Writing to all agencies who may be involved with regard to assets and liabilities of the estate.
- Arranging the storage/safe keeping and/or insurances of assets where necessary and required.
- Ascertaining any gifting by the Deceased and advising on the tax or other consequences if found.
- Arranging valuations.
- Preparing the necessary Inheritance Tax Return or Account and applying all available reliefs where possible and appropriate.
- Preparing and submitting the application for Probate or Letters of Administration.
- Organising where required the payment of Inheritance Tax before Probate is obtained.
- Following the Grant of Probate sending the same to all necessary agencies involved in the collection in of assets whether cash or chattels.
- Completing the Income and Capital Gains Tax's compliance where necessary.

- Preparation and agreement of Estate Accounts and an account of the distributions.
- Confirming the identity of and thereafter to the distribution to beneficiaries.
- Obtaining Bankruptcy Searches where required.
- Advertising for debts or liabilities.
- Dealing with any special requirements of beneficiaries who are registered charities.
- Advising on steps that can be available to mitigate tax during the administration and afterwards where there are continuing interests arising out of the Will/intestacy.
- Advising on steps to be taken in case of beneficiaries who are minors and/or vulnerable.

Whilst we will always quote where there are special cases, such as an estate having one or very few assets but of possibly considerable value, on average our charges would start at £4,000 plus VAT and any payments (disbursements) that we make on behalf of the estate. Typically, the cost of administration overall will be somewhere in the region of 2% of the gross value of the estate plus VAT and disbursements and in practice the larger the value of the estate the more percentage mentioned would decrease.

The likely disbursements will be the Probate application fee which at present would be £275 plus £1.50 for the provision of each of a suitable number of sealed copies of the Grant used in the administration, bankruptcy searches currently £2 per person (more if the beneficiaries are abroad) and advertising for debts or liabilities, which works out somewhere between £175 and £250. Apart from advertising these disbursements do not attract VAT.

Occasionally it will be necessary for paper applications to be made in certain circumstances which case there may be additional fees depending on the type of application, the number of exhibits to the application or Statements involved.

There will be occasions when the estate and the surrounding factors are either complex or out of the ordinary and therefore might require a higher fee. The sort of complexity or unusual areas that might come into play (although this is not exhaustive) are as follows:

- Where there are businesses, farms or special investments owned by the Deceased.
- The sale or a transfer of such assets.
- The valuing of Private Company or business holdings.
- Where assets are held outside the United Kingdom.
- Assets of an unusual nature such as fine art, literature, or sporting memorabilia.
- Wills made in special or unusual circumstances.
- Land and property issues such as missing documents or adverse rights.
- Variations disclaiming or the renunciation of benefits under intestacies or Wills the appointments of Executors, or the redirection of all or part of the estate to different beneficiaries including trusts.
- Where there is a large number of certificated shareholdings and/or bank or building society accounts.

- Where the domicile of the Deceased may not be straightforward or exist in two or more jurisdictions.
- The particular tax treatment of any of the circumstances mentioned above.

Other examples of circumstances that would have a significant effect on our fees and costs are as follows and again since no estate is similar to another, these are the more common factors:-

- Continuing a business or participating in company affairs for the purposes of a future sale or to conform with the terms of the Will.
- Dealing with where there is an intestacy and the enquiries that have to be made to ascertain who are the beneficiaries under the rules.
- Advising on future arrangements for the maintenance and protection of young and/or vulnerable beneficiaries including setting up Trust arrangements.
- Where there are no family members or friends available to act or to refer to and having to deal with all consequent aspects of the administration not usually covered by a professional Executor including registering the Death arranging the funeral and making all necessary enquiries before doing so and all that that implies.

The fees and expenses we have mentioned are those which would be involved in not only obtaining the Grant of Representation but also dealing with the administration thereafter. It will not be possible always to be able to determine exactly what the total fees will be but we will do our best based on our experience, which is considerable, of dealing with various types of estates. Sometimes there will be estates which have a large number of shares and bank or building society accounts but with relatively low values but each will need to be treated in the same way as those with much higher values. What we always try to achieve is to effect an efficient administration of the estate at a reasonable cost.

Timing

It should normally be possible to obtain a Grant of Administration relatively quickly. There are at present serious delays at the Probate Service and there is no way of knowing when a Grant will be issued after the application has been made. Unfortunately also where the gross value of the estate is over £3M but there is no tax to pay because of the reliefs available, or where there is tax to be paid in any case, we are dependent on HMRC sending a form called a Probate Summary duly stamped to prove that the necessary tax compliance has been carried out prior to applying for a Grant of Representation to the Probate Service and in some cases it can take the Revenue weeks or months to do so. We attempt to do as much as possible during that period including preparing the application for the Grant of Representation and we also invite HMRC where we anticipate a delay to leave any matters that they wish to raise until after Probate is granted, particularly where there may be an opportunity to sell certain assets which without a Grant cannot proceed. In our experience they are sympathetic to such an approach.

In a straightforward case we would hope to complete the administration for the most part within six to nine months but it may be possible to make interim distributions during that time dependent upon a number of factors. The sorts of matters which often need quite a lot of work but with little reward are the filing of Tax Returns, not only for the Deceased's personal affairs up to the date of death but also during what is called the administration period following that

date. Often the retention can be held back when making a distribution to cover any liabilities for tax and the cost of dealing with any further enquiries by HMRC.

There may be assets that are particularly difficult to sell and that would depend on the property market, arranging special auctions where there are unusual assets and this can take time and trouble to maximise the benefits being passed to the beneficiaries. Where we believe that there are factors present that may delay the final administration of the estate we let the client and if necessary the beneficiaries know.

The Grant

Sometimes we are asked simply to obtain a Grant of Representation and only to deal with a relatively small number of matters in the administration. This might be because there is no real property (land) involved but bank accounts or such assets as ISAs which are in the sole name of the Deceased and for which Probate is granted but thereafter a lay Executor can deal with the matters without any further involvement of the firm. Where such involvement is necessary we do of course quote for what we think the fees might be.

As soon as instructions are received and we have useful information concerning the estate and any liabilities we deliver what is called a Client Care Letter, which gives an indication of our fees, normally on a fixed fee basis for the cost of obtaining the Grant in those circumstances. The sort of fees that are typically quoted and fixed are as follows:-

- Where there is one asset for which Probate is obtained and no others typically between £500 and £1,000_ plus VAT and any disbursements.
- Where there are a number of assets the valuation for which has been obtained by the client between £1500 and £3000_ plus VAT and disbursements.
- Where we are asked to make enquiries with regard to all the assets and liabilities of the estate including any necessary advertising and there is no tax to pay between £2,500 and £5,000 plus VAT.
- For a taxable estate and depending on the number of assets and liabilities and any special factors including our fees would start at £4,000 and typically costs between £7,000 and £15,000 to administer.

N.B.

Whilst uncomplicated matters should normally take no more than six months to resolve completely, the current delays at the Probate Service can make this substantially greater. In all cases we try to identify ways of avoiding the necessity for Probate and if necessary approaching any institutions or companies for agreement that it is not necessary.

In any complex or high value cases it should take between six months and a year to deal with the requirements of Probate but with the delays mentioned that may increase the time scales by anything up to eighteen months.

As part of this we would always advise on what basis any valuation should be obtained and provide a questionnaire which would assist a lay client in providing the necessary information to enable us to make an application for a Grant of Representation and once we have all the necessary information we have been able to clarify any anomalies or ambiguities, we would expect to provide drafts of the necessary papers to be signed within 10 working days of receipt. When submitting such papers a full explanation of each will be given to enable us to satisfy ourselves that the client fully understands the information being given and the consequences of

giving it.

Finally, it should be understood that in cases where an estate is taxable, it is likely that a certain amount of tax will have to be paid on delivering the Inheritance Tax Account and that may need to be raised either where there are funds available in the estate and the agency holding those funds is agreeable or arranging a loan based on the value of the estates. The preparation and submission of an Inheritance Tax (IHT) Account is a very detailed and time consuming process which is compulsory where tax is payable and sometimes when it is not. It is vital that any reliefs against tax are identified at an early stage and in some cases although reliefs available cancel out any tax an IHT account is necessary to claim them. These matters can all increase the cost of administration and the time taken to administer.