

Chafes Personal Legal Services

Estates FAQ



? Q1: Who inherits assets from an estate ?

A1: A Will normally dictates who inherits a deceased person's assets. There are though certain instances where jointly owned assets pass to a surviving co-owner of an asset irrespective of the terms of the deceased person's Will.

If there was no Will, then the default intestacy rules control how a deceased person's assets will be distributed. There is a strict order of entitlement which differs depending on who the deceased person's nearest relatives were.

? Q2: What is a Grant of Probate ?

A2: A Grant of Probate is a court order empowering a deceased person's executors to deal with their assets.

? Q3: Is it always necessary to obtain a Grant of Probate?

A3: You do not need to obtain a Grant of Probate where a deceased person has few assets (typically under £5 000) or all of their assets were jointly owned with another person who automatically inherits these assets.

? Q4: Do all the executors need to apply for a Grant of Probate?

A4: An executor can stand down by renouncing their executor position through the completion of a renunciation deed. A renouncing executor needs to be careful that they have not started to administer the estate in any way beforehand though. That is because they would otherwise be barred from standing down as an executor.

Alternatively, an executor can become a sleeping executor with another person/s acting as the active decision making executor instead. The sleeping executor can then at any point decide to become an active executor in the future.

? Q5: Do I need to attend court to obtain a Grant of Probate?

A5: No. If you instruct us to deal with an estate administration, we can deal with all of the court formalities on your behalf so that you do not need to attend court.

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? Q6: Is inheritance tax payable on the estate ?

A6: To calculate whether inheritance tax is payable, you need to firstly establish what assets the deceased person is deemed to own for inheritance tax purposes. They are :

1. All of the deceased person's individual assets (including in the UK and abroad but less any debts or mortgages) – such as houses, personal items, bank accounts, life policies, investments and business interests.
2. The deceased person's share of any jointly owned assets (less any debts or mortgages).
3. The value of any trust assets which the deceased person is deemed to own for inheritance tax purposes.
4. The value of any lifetime gifts made by the deceased person within 7 years of their death or longer if they have reserved a benefit in the gifted assets.

If all of the deceased person's deemed assets total more than the then current inheritance tax free amount (currently £325,000), then the excess over this inheritance tax free amount is subject to a 40% inheritance tax charge unless it is covered by an inheritance tax exemption.

The main inheritance tax exemptions are : the surviving spouse exemption (ie gifts made to a surviving spouse who is English domiciled), the charity exemption (ie gifts made to a UK registered charity), the business property relief exemption (ie gifts of qualifying business property made to anyone) and the agricultural property relief exemption (ie gifts of qualifying agricultural property made to anyone).

? Q7: Can I pay the inheritance tax after I have obtained a Grant of Probate ?

A7: No. You will normally need to have paid all of the inheritance tax bill before you can obtain the Grant of Probate. There are certain circumstances where you can pay some of the inheritance tax by instalments but you will still need to have paid some of the inheritance tax up front even in this situation.

? Q8: How long will the estate administration take ?

A8: It is very difficult to predict a precise time frame for any estate administration because every administration is different. It will generally depend on the complexity of the particular estate itself. When we take on all estate administrations, we try to give our best guess on the time scales involved after reviewing the particular estate itself.

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