



A W Law
North Lodge
Esher Park Avenue
Esher Surrey
KT10 9NP
T 01372 469100
F 01372 462172
E andrewwills@aw-law.co.uk
www.aw-law.co.uk

CLIENT GUIDE IN PROBATE MATTERS

1. Introduction

You have asked us to obtain a Grant of Representation (either a Grant of Probate or a Grant of Letters of Administration) in an estate of someone who has died recently. We shall do our utmost to take over the administrative burden with as little fuss and bother as possible, and the purpose of this Guide is to tell you in very simple terms what is involved in obtaining a Grant of Representation and administering an estate.

2. What is a Grant of Representation?

A Grant of Representation is an order issued by one of the Probate Registries of the High court, which confirms or confers the authority of the "personal representatives" (i.e. the executors or the administrators) to administer the estate of the deceased person. There are three types of Grant of Representation:

- (a) A Grant of Probate: This is issued to one or more of the executors named in the Will to deal with the estate. It confirms or "proves" the authority of the executors appointed by the Will.
- (b) A Grant of Letters of Administration with Will annexed: This is issued when there is a Will, but either there is no executor named in the Will or, alternatively, all the named executors are unable or unwilling to act as executors and to deal with the administration of the estate.
- (c) A Grant of Letters of Administration: This is issued when the deceased died without leaving a Will (which is known as being "intestate"). The persons who obtain a Grant of Letters of Administration are known as administrators and must establish their entitlement to apply for a Grant.

The duty of the personal representatives is to administer the estate. This includes collecting all the assets, settling all the liabilities, exercising any available powers and discretions and then distributing the rest of the estate in accordance with the terms of the

Will or the rules of intestacy. It is normally not possible to collect assets (apart from joint accounts which pass automatically to the survivor) or to pay liabilities of the estate out of the assets of the estate until the Grant of Representation has been obtained.

3. **What is needed to obtain a Grant of Representation?**

The personal representatives must swear an Affidavit for the Court. The executors must say that they are the executors appointed by the Will. The administrators must establish their entitlement to take out a Grant. In both cases, the personal representatives must state the value of the gross and net estate of the person who has died, and they must swear that they will ensure that his or her property will be distributed in accordance with the law and with the Will if there is one.

You can see, therefore, that we shall need to ask you for details of all the property and all the debts or liabilities. The property will include any house, car, furniture, savings, life insurance policies, personal possessions, jewellery and anything capable of being valued and of being transferred from one person to another. The liabilities may include a mortgage, outstanding bills, etc. and will also include the funeral expenses.

4. **How is a Grant of Representation obtained?**

An Oath for Executors or an Oath for Administrators must be lodged at one of the Probate Registries of the High Court. It will generally also be necessary to submit an Inland Revenue account setting out all the assets and liabilities. Once the Registry accepts the papers, they will issue either a Grant of Probate or a Grant of Letters of Administration. In either case it is that document which allows the executors or administrators to administer the estate. This means, for example, that the Grant will be registered with companies in which there were shares, or with building societies or banks in which there was an account in the deceased's sole name. After the Grant has been registered, it will be possible for the property or the money to be transferred to the personal representatives, so that they can deal with it in accordance with the will, or in accordance with the intestacy rules if there is no will. Of course, a final distribution of all the assets can only be made when all the liabilities, especially tax liabilities, have been ascertained and settled. This can take some time, particularly where values are uncertain and have to be agreed with the Revenue.

5. **How long will this take?**

The circumstances of each person are unique, so it is extremely difficult to predict how long it will take to obtain a Grant and to administer the estate. All we can say is that we shall keep in touch with you from time to time in order to tell you the position we have reached and how matters are progressing.

Estates which are apparently simple can prove to be complicated and take much more time than is envisaged at the outset. Similarly, a large estate may prove to be straightforward. Difficulties may arise for any number of reasons.

Typical problems which may substantially increase the time taken are:

- (a) the need to go through and sort out numerous old papers;
- (b) searching for details of lifetime gifts which the deceased may have made;
- (c) difficulty in realising assets or in settling tax or other liabilities;

- (d) difficulty in tracing beneficiaries or in dealing with beneficiaries who are under age;
- (e) foreign property and the need to liaise with foreign lawyers;
- (f) trusts in which the deceased had an interest;
- (g) agricultural or business property, especially Lloyd's assets which cannot be wound up for at least three years;
- (h) there may also be scope for tax planning and consideration of a Deed of Variation (varying the effect of the Will or the intestacy rules).

Please note, however, we advise all of our clients who are acting in an executor's capacity to wait at least 10 months after grant of probate has been obtained before distributing the estate.

Under the Inheritance (Provision for Families and Dependants) Act 1975 claims can be made against the estate of someone who has passed away, by individuals who claim they were supported by the deceased or who believe they should benefit from the deceased's estate. If AW Law are acting as an executor we will not distribute the estate until 10 months after the grant has been received has passed (6 months to issue the claim and 4 months to serve the claim). If a claim is made against the estate, this will delay the distribution of the estate.

6. **The final winding up**

There comes a point at which all the assets will have been collected and all the liabilities will have been discharged. The balance of the estate will then be ascertained and can be distributed or held in trust for the beneficiaries under the terms of the will or the rules of intestacy. When the final distributions have been made, we shall prepare estate accounts setting out full details of the administration of the estate. If the estate or its administration is complex, then it may be possible for the personal representatives to make interim distributions to beneficiaries before the final winding-up.

7. **Fees**

It is very difficult to estimate the likely cost of obtaining a Grant of Representation and administering an estate. The main reason for this difficulty is that there is insufficient information at the outset as to the nature of the estate and the potential problems.

Our charges are calculated in accordance with the Solicitors' (Non-Contentious Business) Remuneration Order 1994. This provides that a solicitor's remuneration for non-contentious (i.e. non-litigious) matters should be such sum as may be fair and reasonable, having regard to all the circumstances of the case. The most important factor to be taken into account is the time spent in dealing with the matter. There are also other factors such as the complexity and importance of the matter, the skill involved, and the need for urgency.

In non-contentious matters such as probate, our costs are based on two factors, a "time element" and a "value element".

(a) The time element

We have a time-recording system which records the time spent by fee earners on any particular matter. Each fee-earner has an "hourly charging rate" which has

been calculated in accordance with the Law Society's published guidelines. The hourly charging rate covers overhead expenses and includes a service increment.

As mentioned earlier, it is impossible to estimate how many hours of work will be needed to obtain the Grant and to administer the estate. Each case will depend on its individual facts and unexpected difficulties may arise. Having said that, it may be helpful to give some simple examples to illustrate the amount of time which might be involved in certain cases:

- (i) Example 1: A very small estate (say, under £50,000) can sometimes be wound up in about five hours if there are no complications and if there is a sole executor who is also the sole beneficiary.
- (ii) Example 2: A modest estate (say, £50,000 to £100,000 without a house) might be wound up in between 5 and 15 hours, depending on the number of beneficiaries and the difficulty in collecting the assets and settling the liabilities.
- (iii) Example 3: A medium-size estate (say, £100,000 to £250,000 with a house and Stock Exchange investments) might be wound up in between 15 and 50 hours, depending on the nature of the assets and assuming that there are no major difficulties.
- (iv) Hourly Rates as at June 2011 (subject to review)

Partner/Senior Solicitor	£225
Assistant Solicitor	£165
Trainee Solicitor/Legal Executive/Paralegal	£ 95

(b) The value element

Our charges will also contain an element based on the value of the estate. This is because the value is a reflection of the importance of the matter and, consequently, the responsibility imposed on the firm. The value element is 1.5% of the gross estate. This applies where the gross estate does not exceed £750,000. Above £750,000 there is a regressive scale starting at 0.5% up to £2.25 million, decreasing to 0.166% above £3 million and 0.83% above £3.36 million.

There are some further modifications:

- (i) In calculating the gross estate, the value of the deceased's interest in his or her residence is halved.
- (ii) In calculating the gross estate, the value of any property which does not vest in the personal representatives is excluded. Thus, no value element would be charged on a half-share of a house which was owned by the deceased as a beneficial joint tenant, and so passed to the other owner outside the terms of the Will or the intestacy rules.
- (iii) Where a Partner or Solicitor is appointed as an executor, an additional value element of 0.5% is charged.
- (iv) If the instructions relate solely to the application for a Grant of Representation, no value element is charged.

Our charges will, therefore, normally include both the time element and the value element. Our charges **do not** include VAT, which will be added to the bill.

There will also be certain additional expenses (known as disbursements) such as Court fees, statutory advertisements and charges for official copies of the Grant of Representation, which we shall be obtaining for you from the Court. We shall obtain your approval before incurring a disbursement of £600 or more. If for any reason this firm does not complete the work which you have instructed us to do, then a charge will be made in respect of the work which has already been completed. This will be based on the time element (plus the service increment) and on a proportion of the value element. We shall estimate a fair and reasonable proportion of the value element according to how much work has been done and how much work remains to be done. VAT would be payable on that amount and the estate would also be charged for any disbursements incurred.

8. Terms of business

We shall deliver bills at regular intervals for the work carried out during the administration of the estate. This enables you to keep track of costs. We are sure that you will understand that, in the event of a payment not being made, we must reserve the right to decline to act any further and that the full amount of the work done up to that date will be charged. Accounts should be settled on presentation. If the bill remains unpaid after 21 days interest will be charged from that time on the amount of the bill, including any disbursements and VAT, at the rate of 15% per annum calculated on a daily basis.

9. Complaints

We aim to offer all of our clients an efficient and effective service and I am confident that we will do so in this case. However, we have a written complaints procedure and are sure that any complaints will be handled fairly and effectively in accordance with it.

If you are not satisfied with the amount of our fee you have the right to ask us to reconsider the fee in which case the following procedure will apply. One half of the fee, all the VAT and the paid disbursements (if any) must be paid within one month of the date of the invoice. If the bill has already been paid or deducted from monies held on account, you must write to us within two months of the date of the bill. However, you may ask us to waive these requirements so that you would not have to pay anything for the time being. You would have to show that exceptional circumstances apply in your case.

Once this part of the bill has been paid the fee will then be assessed by an independent assessor. If the fee is reduced, the cost of the assessor will be payable by AW Law, but if the fee is upheld (or assessed at a higher figure) the assessors fee will be paid by the person requesting the assessment.

We will only charge the fee that has been specified in the bills or invoices or the lower fee calculated by the assessor, not any higher fee that the assessor may decide.

There may also be a right to object to the bill by making a complaint to the Legal Ombudsman at PO Box 15870, Birmingham B30 9EB or on 0300 555 0333, and/or by applying to the Court for an assessment under Part III Solicitors Act 1974.

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