



LEGAL

*“Work is not
just about
money, it
is about
achievement”*

The Personal Representative's Guide



WHAT ARE PERSONAL REPRESENTATIVES?

Personal Representatives (or PRs) are either:

- the people named by someone in a Will to act as his/her executors and administer the Estate;
- or if no Will was left, the next of kin of the deceased are usually appointed to administer the Estate. They are known as administrators.

There are often two PRs, but one can act alone in certain circumstances, and a maximum of four may act together.



WHAT DO PRS DO?

It is their job to:

- i. find out the value of the deceased's property and possessions (the Estate)
- ii. report their findings to HMRC (Her Majesty's Revenue & Customs) and pay any inheritance tax due.
- iii. swear an Oath that they are going to uphold the wishes in the Will or distribute an estate according to the intestacy rules
- iv. pay, from the money in the Estate, any debts the deceased left unpaid (this may involve selling some items to raise cash)
- v. establish any trusts
- vi. finalise any income tax or any inheritance tax affairs
- vii. distribute what is left to those entitled to it (the beneficiaries)
- viii. keep all papers and records for a minimum of 12 years

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HOW LONG DOES THIS TAKE?

In some cases the process of winding up an Estate can be completed quite quickly – in a matter of months – if the Will is clear, if there is not much property involved, and the whereabouts of those entitled to it are known. It can take much longer, sometimes years, if, for example, beneficiaries cannot be traced. It can also take longer if a house has to be sold but a buyer cannot be found, or there are tax questions to resolve with the Inland Revenue.

DON'T PRS HAVE TO GO TO COURT?

Unless the Estate is very small (say under £5,000) most PRs will need to obtain what is called a Grant of Representation from the Probate Registry of the High Court. Where PRs have the help of a Professional, the application for the grant is much simpler and can be done by swearing an oath at a local high street Solicitor. PRs can become involved in Court case proceedings if there is a serious dispute about the Estate.

WHAT IS THE GRANT OF REPRESENTATION?

This is a document produced by the Probate Registry, which shows to those concerned that money and other items previously belonging to the deceased can safely be handed over to the PRs. To obtain it, PRs have to fill in a form and promise, by swearing an Oath, that they will administer the Estate properly.

A fee is payable (from the money in the Estate) to the Probate Registry. Where PRs have the help of a professional probate Advisor, all the paperwork will be taken care of by him/her.





WHAT IS MEANT BY 'GETTING PROBATE?'

Literally, Probate means 'proof' that a Will is valid. Strictly speaking the term Probate only applies where the deceased left a Will but (despite the fact that most people actually die without leaving a Will) the term has come to be used to refer to all estates. The Grant an Executor gets is called the Grant of Probate, and an Administrator's Grant is called Letters of Administration. Both Grants have broadly the same purpose and effect.

IS THERE A DIFFERENCE BETWEEN TRUSTEES AND PRS?

Trustees hold money or property for other people (children, for example) and many of the legal requirements on Trustees apply to PRs. The PR's position is slightly different though, as they are only in charge of someone's Estate for a particular purpose – primarily to pay the deceased's debts and hand the remainder over to the beneficiaries. PRs may become Trustees after the administration of an Estate has been completed if, for example the beneficiaries are still children under 18 years.

MUST PRS ACT IF THEY HAVE BEEN APPOINTED IN A WILL, OR IF THEY ARE NEXT OF KIN?

No, they always have the choice. Choosing not to act as Executor is called renouncing and an Administrator who does not wish to act is passed over.

WHAT IF SOMEONE WANTS TO STOP BEING A PR?

Once administering an Estate has begun a PR cannot drop out if, for example, he or she has a change of mind or if things turn out to be more difficult than expected, but a PR can apply to retire for a good reason such as ill health. It is important to know in advance what being a PR involves. Always ask a Professional if advice is needed.

WILL IT COST ME ANYTHING TO ACT AS A PR?

All PRs are entitled to get Professional help, and to have the bills related to the administration of the Estate paid from the money in the Estate. Professional bills must be fair and reasonable having regard to all the circumstances and can be checked.

Of course, if you get personal advice from a Professional – for example, about having investing what you have inherited – you will have to pay for this yourself in the ordinary way.

IT ALL SOUNDS LIKE A HEAVY RESPONSIBILITY

It is. The law takes the subject of acting as PR (or Trustee) very seriously, so much so that there are several Acts of Parliament, and many other legal requirements dealing with their rights, duties and obligations. It is not difficult to see why, since PRs and Trustees may have control over large sums of other people's money. However, many of the rules and regulations are designed to ensure that beneficiaries can be compensated if the PRs turn out to be dishonest or careless; the normal honest and conscientious PR would regard them as common sense and highly desirable in the interests of the beneficiaries.

It is usually helpful to PRs to have Professional assistance in the administration of an Estate to advise on legal points as well as on practicalities.

WHAT OTHER HELP IS AVAILABLE TO PRS?

As well as Professional probate help; PRs should take other specialist advice (such as a stockbrokers') when they do not have the necessary expertise themselves. This is also paid for from the money in the Estate. In some cases they are entitled to safeguard themselves against complaints or claims from beneficiaries. Your Probate Advisor will advise about when this is possible.

We are not solicitors, nor do we hold ourselves out to be solicitors. We do however have legally trained staff.

WHAT ARE THE MAIN DUTIES AND OBLIGATIONS OF PRS?

These could be summed up by saying that PRs are expected to put the interests of the beneficiaries before their own interests, and always act in the interests of the Estate rather than themselves.

In addition, they must not make a profit from their position unless authorised, and they must scrupulously account to the beneficiaries for all the money passing through their hands. Their task should be carried out, as the law says “with due diligence” and PRs should act reasonably and prudently in relation to the Estate property. PRs who act wrongly may have to pay compensation to beneficiaries out of their own money.

CAN PRS BE BENEFICIARIES TOO?

It is quite possible that you will be both a PR and a beneficiary. For example, a woman can appoint her husband as Executor and leave everything to him and vice versa.

ARE THERE ANY PROBLEMS FOR PRS WHO ARE BENEFICIARIES TOO?

There are no worrying problems, but these PRs should always bear in mind their dual role. Their main role as PR. As PR they must act in the interests of the Estate and must not put their own interests first. Your Probate Advisor will always advise if there is any difficulty to be resolved.

WHAT INFORMATION WILL I NEED?

You should be able to find most of the detail you need at the beginning from sorting through the deceased's papers. Your Probate Advisor can sort these papers for you but it will probably save time and expense if you go through everything yourself. Your Probate Advisor will want to have things like bills (electricity and gas accounts for example and any other unpaid bills), rent books, pension books, credit cards etc. income or other tax demands, welfare benefit details, share certificates, cheque books, bank statements, passbooks, in short all the documents that will help establish how much will be left for the beneficiaries once the bills have all been paid.

Do discuss with your Probate Advisor whether you need help with arranging the funeral or with practical matters, such as ensuring Estate property (perhaps the deceased's house or car) is secure and fully insured.

NB: You should not drive the deceased's car unless you are sure the legal minimum cover is in force.

WHAT IS A PRS FIRST STEP?

Consult your Probate Advisor about the Estate to find out what has to be done.

The Advisor who prepared the Will is usually pleased to help.

ACTING AS A PR

Acting as a PR is an important obligation, but a close friend or family member either alone or with a Professional is often the right choice. Knowing who will act gives the maker of a Will peace of mind, and the knowledge that his or her or her affairs will be dealt with by responsible and caring people of his/her choice.



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