



# A GUIDE FOR PERSONAL REPRESENTATIVES

## What does the expression "Personal Representative" mean?

Personal Representatives ("PRs") can be either:

- (a) The people named by someone in a Will to act as **Executors** and administer the estate; or
- (b) If no Will has been left, the next of kin of the Deceased are usually appointed to administer the estate. They are known as **Administrators**.

Often there are two PRs, but one person can act alone in that capacity and the maximum number who may act together at any one time will be four PRs.

Where a Will is made and Executors are appointed this will often be a relative or close friend.

## What is the role of a PR?

It is their job to:

Find out the value of the Deceased's property and possessions at the date of death. This is known as the **estate**;

Pay from the money, in the estate, any debts the Deceased has left unpaid, including funeral expenses, and this may involve selling some items in the estate to raise cash to pay creditors;

Distribute what is left to those entitled to it, either under the terms of the Will or, if there is no Will, under the intestacy rules as laid down by Parliament. The persons entitled to the estate are known as the **beneficiaries**.

## **How long will the process take?**

The process of winding up an estate can often be completed quite quickly – within a matter of months – if there is a Will which is clear, if there is a relatively small estate and the whereabouts of the beneficiaries entitled to it are known.

However it can take much longer, sometimes years, if, for example, beneficiaries cannot be traced or there are difficulties in establishing title to assets in the estate.

It can also take some time if the estate includes a house, which has to be sold but perhaps a buyer cannot easily be found.

As part of the administration of the estate it will be necessary to resolve taxation issues with HM Revenue & Customs and this may include income tax, Capital Gains Tax and, where appropriate, Inheritance Tax matters.

## **Does a PR have to go to Court?**

Unless the value of the estate is very small, for example under £5,000.00, most PRs will need to obtain what is called a **Grant of Representation** from the Probate Registry of the High Court. However, this does not mean that they have to appear in Court or go into the witness box but it will involve a visit to the local Probate Registry to meet an officer of the Court to go through the papers applying for the Grant of Representation and to make sure that everything is in order.

Where PRs instruct jBWills to assist in the application for the Grant of Representation then we will deal with all of the matters arising with the Court and the PRs attendance at Court will **not** be required.

If, within the administration of the estate, there is a very serious dispute, for example about the terms of a Will and Court proceedings take place then the PRs may be required to attend Court in relation to those proceedings. Such actions, however, are extremely rare.

## **What is the Grant of Representation?**

This document is the key to the administration of the estate.

It is a document produced by the Probate Registry at the High Court which shows to all those concerned, for example banks and building societies, that money or other items previously belonging to the Deceased can safely be handed over to the PRs.

To obtain the Grant of Representation the PR's must complete a form of Oath, by which they promise (known in legal terms as to swear) that they will administer the estate properly and in accordance with the Law.

In making the application to the Probate Registry the Court will charge a fee which is payable from the money in the estate.

The involvement of jBWills will ensure that all paperwork required by the Court is properly presented and any relevant Court procedures are followed.

### **What is meant by the expression "getting probate"?**

Literally, probate means "proof" that a Will is valid. Strictly speaking the term probate only applies where the Deceased has left a valid Will, however, despite the fact that most people die without leaving a Will, the term has come to be used in reference to all estates.

Where there is a Will, which is proved by an Executor then he or she will obtain a **Grant of Probate**.

If there is no Will and the Deceased died intestate then an administrator's grant is called **Letters of Administration**.

Broadly speaking both types of grant have the same purpose and effect.

### **Is there a difference between being a PR and a Trustee?**

The position of a PR is slightly different from that of a Trustee as PRs are only in charge of someone's estate for a particular purpose – primarily that is to pay the Deceased's debts and to hand the remainder of the estate over to the beneficiaries.

Trustees however hold money or property for other people, for example beneficiaries who are under the age of 18 years, although many of the legal requirements on Trustees also apply to PRs.

PRs may become Trustees after the administration of an estate has been completed, if for example the beneficiaries are still children and assets are to be held for them until they reach an age at which they will be entitled to those assets absolutely. In legal terms the minimum age for such entitlement is 18 years however, if there is a Will the Deceased may have specified a greater age than this.

## **Must a PR act if they have been named as such in a Will or if they are the next of kin?**

The short answer is no.

PRs, whether appointed in a Will or by the intestacy rules, have a choice as to whether they act or not.

If an Executor named in a Will chooses not to act then he is said **renounce** his appointment.

Where an Administrator does not wish to act then he is said to be **passed over**. If a PR does not wish to act in that capacity then he must make a prompt decision to that effect as there are precise rules covering the circumstances in which a PR may choose not to act, particularly if the administration of the estate has already begun.

What if someone wants to stop being a PR?

Once the administration of an estate has begun, a PR cannot drop out of it if, for example, he or she merely has a change of mind, or if things turn out to be much more difficult than expected.

However a PR can apply to retire for a good reason, such as ill health.

It is therefore important to know in advance what being a PR involves. At jBWills we endeavour to offer as much information and assistance as we can.

## **Will it cost me anything to act as a PR?**

All PRs are entitled to obtain the help of professional advisers and to have bills related to the administration of the estate paid from the money in the estate.

jBWills provide, at the beginning of an administration, our terms of business letter in which we set out the basis on which our charges for work done in the administration of the estate will be made. We will also provide, in writing, confirmation which will not increase as the administration progresses.

## **Is it a heavy responsibility?**

The law takes the subject of acting as a PR (or Trustee) very seriously, so much so that there are several acts of Parliament, passed over many years, together with many other legal requirements dealing with the rights, duties and obligations of PRs and Trustees.

It is not difficult to see why there is this raft of legislation since PRs and Trustees may have control over large sums of other people's money.

For the most part the rules and regulations are designed to ensure that the beneficiaries receive the maximum benefit to which they are entitled from an estate and indeed can get compensation if the PR turns out to be dishonest or careless.

All of that said however the normal honest and conscientious PR would regard the safeguards that are in place as common sense and highly desirable in the interests of the beneficiaries.

The role of this firm is to advise you on the legal points arising in the administration as well as helping with the practicalities.

### **What other help is available to PRs?**

As well as obtaining the assistance of this firm PRs can also take other specialist advice (such as from a Stockbroker or an Accountant) when they do not have the necessary expertise themselves. This is also paid for from the money in the estate.

If the administration of the estate involves investment of funds on behalf of beneficiaries we can obtain for you independent financial advice of the highest quality through our contact with independent financial advisers.

### **What are the main duties and obligations on PRs?**

In summary:

PRs are expected to put the interests of the beneficiaries before their own interests, and

PRs are expected to act in the interests of the estate, rather than themselves.

In addition PRs must not make a profit from their position unless they are expressly authorised to do so and they must scrupulously account to the beneficiaries for all of the money which passes through their hands in the administration of the estate.

The law says that the tasks of PRs should be carried out "with due diligence" and PRs should act reasonably and prudently in relation to the estate property.

PR's who act wrongly may have to pay compensation to beneficiaries out of their own money.

### **Can a PR also be a beneficiary?**

It is quite possible for a person to be both a PR and a beneficiary of an estate. For example, a wife may wish to appoint her husband as her Executor of her Will and leave everything to him and vice versa.

Are there any problems for PRs who are also beneficiaries?

A PR must always remember that their main role is as a Personal Representative. In that capacity they must act in the interests of the estate as a whole and so they must not put their own interests first. It may be that where a PR is also one of a number of beneficiaries that a potential for a conflict of interest arises. However where a sensible and practical approach is taken during the administration of the estate such a conflict is rare and we will always be happy to advise if there is any difficulty to be resolved.

### **What information will I need?**

It will be necessary to sort through the papers of the Deceased to find most of the details needed to commence the administration of the estate. Jane Barlow can assist in sorting these papers for you.

The essential papers will include:

- Original death certificate
- The original Will (if any)
- Original title deeds (if any)

In addition we will need to see papers relating to:

#### Assets

Pension records, share certificates, cheque books, bank statements, pass books, insurance policies, etc

#### Liabilities

Utility accounts (eg gas and electricity, council tax demand, rent books, etc) any other unpaid bills, credit cards, and the funeral expenses account.

In short what is required is all of the documents that will help establish how much will be left for the beneficiaries once bills have all been paid.

Please discuss with Jane Barlow any help which you feel you need in arranging the funeral or with other practical matters such as ensuring that the property of the estate, perhaps a house or car, is secured and fully insured.

### **Acting as PR**

Acting as a PR is an important obligation. Jane Barlow has many years experience in dealing with the administration of estates and indeed subsequent trust funds and is happy to discuss any aspect of the role of PR and other ancillary matters.