

# THORNLEYS SOLICITORS

## DUTIES AND POWERS OF PERSONAL REPRESENTATIVES



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When a person dies the administration of his or her estate needs to be dealt with. In many cases where the deceased has made a Will, a **Grant of Probate** may be required. If there is no Will, then a **Grant of Letters of Administration** may be required to deal with the estate. Where there is a Will the Personal Representatives (PRs) are called '**Executors**' and where there is no Will they are called '**Administrators**'. Literally, 'probate' means 'proof' that a Will is valid.

The deceased's PRs are the people responsible for the administration of the deceased's affairs after his or her death. They must administer and wind up the deceased's estate.

### WHAT DO PERSONAL REPRESENTATIVES (PRs) DO?

The role of the PRs includes:  
Collecting in the deceased's assets

Paying off all the deceased's debts and liabilities (which may include Inheritance Tax, Capital Gains Tax or Income Tax). This may involve selling some items to raise cash

Working out who is entitled to inherit the remaining property, and

Distributing the correct property to the right beneficiaries at the appropriate time

To do all of the above, PRs are given various powers, but the role also carries with it a number of duties and consequently potential liabilities.

Although one PR is sufficient in certain cases, it is usual to appoint two or more to act in the administration of an estate. Although there may be no limit on the number of personal representatives entitled to act, no more than four can take out a Grant of Representation in respect of the same part of the estate.

The Will frequently includes the appointment of an Executor to be a Trustee as well, with a continuing obligation after the administration of the estate has ended. This often happens in situations where the deceased's beneficiaries are children and a Trust is set up under the Will for the child to receive his or her inheritance when they are 18 or older. The Trustees hold money or property for other people (ie children) and many of the legal requirements on trustees apply to PRs. The PRs 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, particularly if the beneficiaries are still children.

Executors derive their authority to act in the administration of an estate from the Will. The Grant of Probate confirms that authority and the validity of the Will until and unless the Grant has been recalled or revoked. Although they have full power to act from the time of the deceased's death, Executors will be unable to undertake certain transactions for example, sale of land, without producing the Grant as proof of authority.

Administrators have very limited powers before a Grant is made, because their authority stems from the Grant, which is not retrospective to the date of death.

As PRs are one *body* then the actions taken by one PR are regarded as being taken by all. This is with the exception of the transfer of property which requires either all the Personal Representatives to sign or for the transfer to be done under an order of the Court.

PRs must act prudently and properly in the administration of the estate as a whole and they must have regard to the unanimous wishes of adult beneficiaries. From the date of the Grant of Representation an Executor or Administrator accepts personal liability for loss arising from any breach of duty committed.

Having obtained the Grant, the PRs can call in the assets of the deceased. They must then settle all liabilities, including any taxes, completing where appropriate Tax Returns, prepare detailed Administration Accounts and attend to the distribution of the estate in accordance with the Will or Intestacy. They must pay any legacies and distribute the remainder of the estate equally between the beneficiaries who should first be presented with detailed estate accounts which they can then approve before the estate funds are distributed. When funds are distributed the Executors or Administrators should always obtain receipts from the beneficiaries to discharge them from their role as PRs of the deceased's estate.

Leaving your PR's a helpful, up-to-date Will and clear records of your property and beneficiaries will save your PR's time, trouble and expense.

### **DO PR'S HAVE TO GO TO COURT?**

Unless the estate is very small (for instance under £5,000) most PR's will need to obtain what is called a **Grant of Representation** from the Probate Registry of the High Court, but this does not mean that they have to appear in court or go into the witness box! Where PR's have the help of a solicitor, the application for the grant can be made by post. PR's would only become involved in a court case or court proceedings if there was a very serious dispute about the estate, and this is a rare occurrence.

### **HOW LONG DOES THIS TAKE?**

The process of winding up an estate can be dealt with in a matter of months provided the will is clear, there is not too much property involved and the whereabouts of those entitled to benefit under the Will 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.

### **MUST A PERSONAL REPRESENTATIVE ACT IF APPOINTED?**

A PR can refuse to act and always has the choice whether or not to act in proving a Will. Choosing not to act is called '**renouncing**' and an administrator who does not want to act is '**passed over**'.

Once the PR has begun administration he or she cannot drop out if they have a change of mind or things turn out to be difficult for them. A PR can however, 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 Solicitor if advice is needed.

### **WHAT DOES BEING A PERSONAL REPRESENTATIVE COST?**

All PR's are entitled to get a solicitor's help and to have the bills relating to the administration of the estate paid from the money in the estate.

As can be seen, the role of a Personal Representative is an onerous one and should be taken seriously. PRs would be well advised to seek the advice and assistance of a Solicitor at the outset to ensure that the correct procedures are followed. The law takes the subject of acting as a PR or a Trustee very seriously, and there are several Acts of Parliament and many other legal requirements dealing with their rights, duties and obligations, because PR's and Trustees may have control over large

sums of other people's money. Many of these rules and regulations are designed to ensure that beneficiaries can get compensation if the PR turns out to be dishonest or careless; the normal honest and conscientious PR would regard the rules and regulations to be commonsense and highly desirable in the interest of the beneficiaries.

It is helpful to PR's to have help from a solicitor in the administration of the estate, to advise on legal points as well as on practicalities and from other specialist's such as stockbrokers or financial advisers in dealing with the assets of the estate.

### **OBLIGATIONS ON THE PERSONAL REPRESENTATIVES**

PR's are expected to put the interests of the beneficiaries before their own interests and always to act in the interests of the estate rather than their own. PR's must not make a profit from their position unless authorized and they must account scrupulously to the beneficiaries for all estate money passing through their hands. Their task should be carried out with 'due diligence' and they should act reasonable 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 PR's BE BENEFICIARIES?**

It is quite possible that you will be both a PR and a beneficiary and there are no problems in this provided that the PR's remain conscious of their dual role. Their main role is as a PR and they must act in the interests of the estate and not put their own interests first. A Solicitor would always advise if there is any difficulty to be resolved.

### **WHAT INFORMATION DOES THE PERSONAL REPRESENTATIVE REQUIRE?**

As PR you will find most of the information from sorting through the deceased's papers. The Solicitor can help you with this and they will want to see utility bills any other unpaid bills, rent books, pensions books, deeds of the deceased's property, savings account passbooks, cheque books and bank statements, credit card details, income tax demands, share certificates, etc. - indeed all the documents that will help establish how much will be left for the beneficiaries once all the bills have been paid.

Do discuss with your solicitor whether you need help with arranging the funeral, or with practical matters such as insuring the deceased's property, contents, car, etc. The solicitor will be able to advise you exactly what has to be done.

Acting as a PR is an onerous and important obligation, but a close friend or family member either alone or with a solicitor 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 affairs will be dealt with by responsible and caring people of his or her choice.

PR's would be well advised to seek the advice and assistance of a Solicitor at the outset to ensure that the correct procedures are followed.

**If you would like some further information as to your role as a Personal Representative, why not call in and talk to a member of Thornleys Probate team.**



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**FOR FURTHER INFORMATION:**

On Administration of Estates please see our **Factsheet 5 - Administration of Estates Guide** on Wills generally please see our **Factsheet 1 - Wills** on Inheritance Tax Planning please see our **Factsheet 3 - Inheritance Tax** and on Trusts please see our **Factsheet 4 - Trusts including Discretionary Will Trusts**

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