Guide to Navigating Overseas Assets

Helping you administer deceased assets

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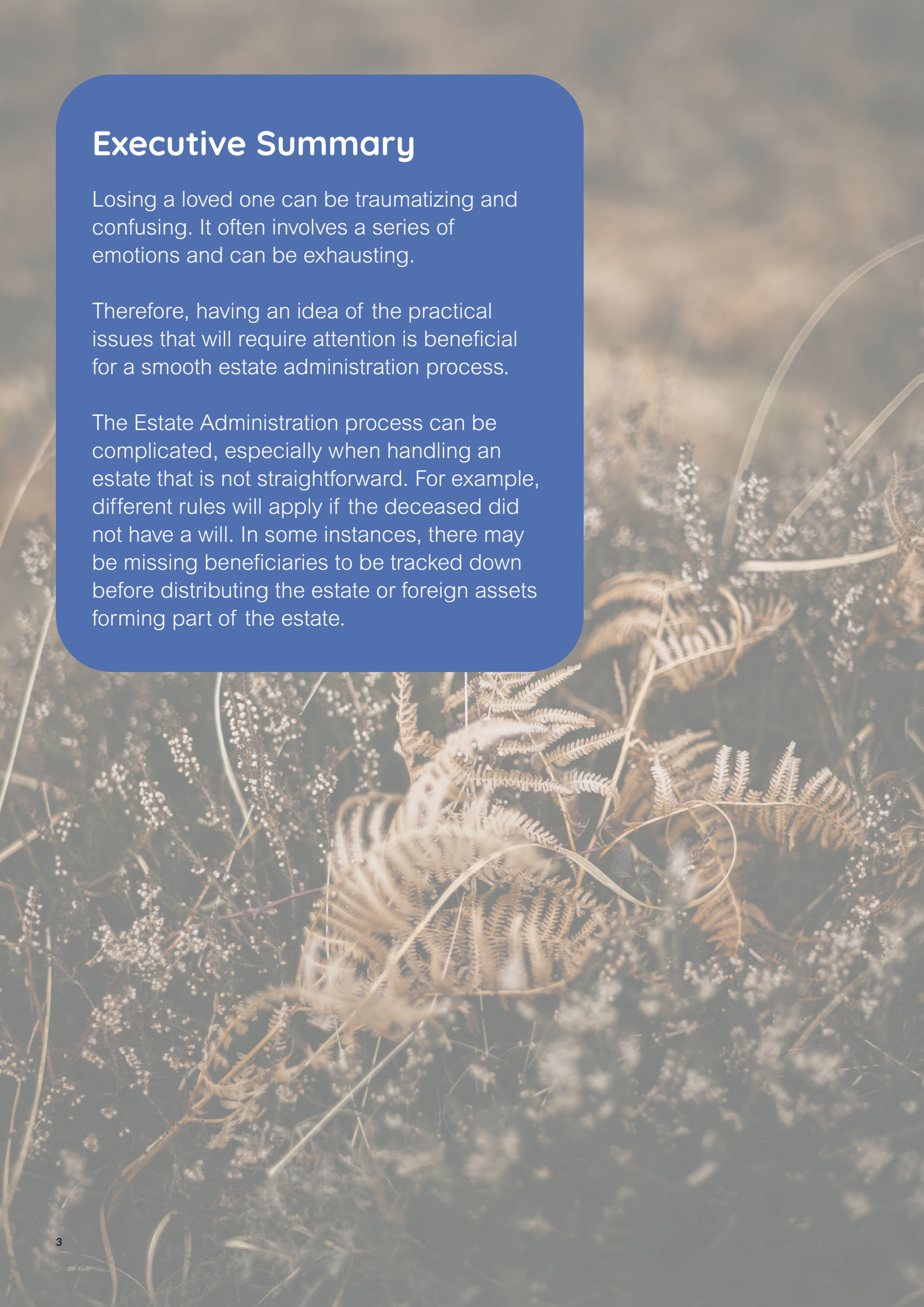

Executive Summary

Losing a loved one can be traumatizing and confusing. It often involves a series of emotions and can be exhausting.

Therefore, having an idea of the practical issues that will require attention is beneficial for a smooth estate administration process.

The Estate Administration process can be complicated, especially when handling an estate that is not straightforward. For example, different rules will apply if the deceased did not have a will. In some instances, there may be missing beneficiaries to be tracked down before distributing the estate or foreign assets forming part of the estate.

What is Estate Administration?

Estate Administration is the process of handling the deceased's legal and tax issues. The process involves dealing with all their assets (property, belongings, shares, and bank accounts), distributing the inheritance to beneficiaries, as well as paying the relevant taxes.

Difference between estate administration and probate

Simply put, probate is a part of the broader Estate Administration process. Probate involves a probate court validating the deceased will, authorizing the executor to pay any taxes, creditors and distribute the estate to beneficiaries. Depending on whether the deceased left a will, an executor or administrator will oversee the estate administration process.

Estate Administration is often complex, time-consuming, and at times stressful.
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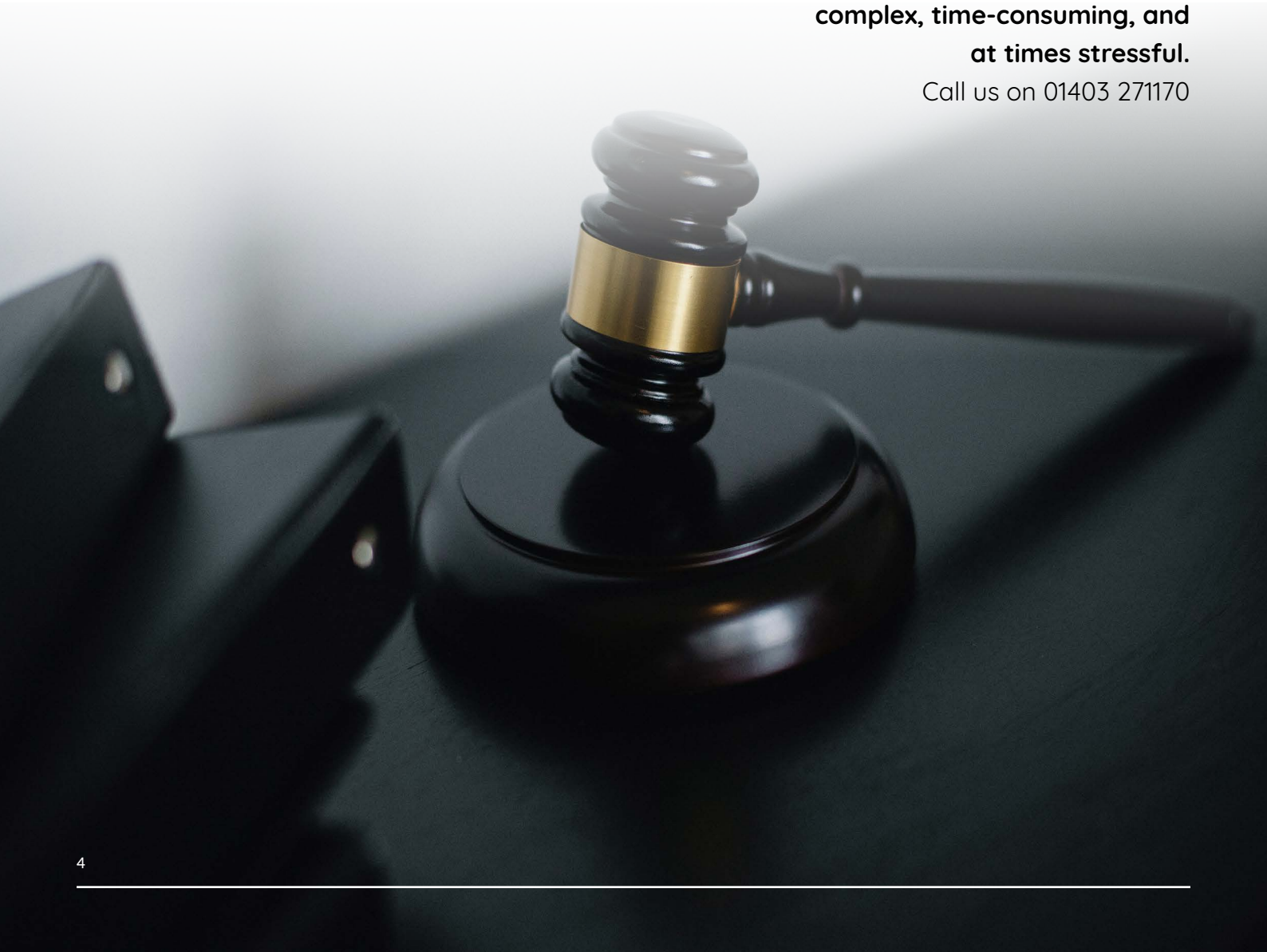

Difference between an Executor and Administrator

An Executor or an administrator is a person dealing with the person's estate who has died. An executor is formally named in the will to handle the estate administration process and may have to apply for a particular legal authority before dealing with the deceased estate. This is referred to as probate.

An Administrator oversees the estate administration process under certain circumstances. For example, if there is no valid will or where the named executors are unwilling to act. An administrator must apply for letters of administration to administer the estate.

In other instances, banks and will-writing companies can be named as executors. Over the years, there have been cases where some will-writing firms and banks offer enticing discounts or even free will writing services to unsuspecting families only to appoint themselves as the joint or sole executor. They then charge very high fees for doing very little probate work.

The law states that if a bank or a solicitor is named an executor in a will, they have absolute power to act and can only be removed by High Court application, which would be very costly and time-consuming. It is, therefore, hugely important for most families to pay close attention to the executor clause in the will to ensure the person/company named as the executor is of their choice.

In Scotland:

Executors appointed in a will are known as ‘Executor-nominate.’ Whereas an ‘Executor-dative’, is appointed by the courts to act as an Administrator.

Probate may be required depending on the financial value of the estateW. Generally, the probate thresholds for financial institutions, banks and building societies vary from £5,000 to £50,000.

Instances when probate may not be required

Small estates with low financial value do not necessarily require probate. For example, if the deceased had less than £5 000 in their accounts, many banks will not require a grant of probate to release the funds.

Insolvent estates. The value of the assets in the estate amounts to less than the debts left by the deceased. Any personal representatives appointed to handle insolvent estates should act with caution and consider seeking professional advice.

In addition, other factors can prevent the execution of probate, including;

Owning property jointly

Having your spouse or friends as a joint owner of your property, shareholdings, or money makes it easy to transfer the assets to them when you die without needing probate. Under UK law, the property is passed directly to the surviving spouse, civil partner, or friend.

Opening a Trust

Property held in trust is not part of your estate upon your death. Generally, the trustee controls the trust assets and distributes them according to the terms and conditions stated in the trust. However, there are many rules relating to trust taxation, and one should seek professional advice on how to handle assets within the trust.

Open accounts payable upon death

For bank accounts, pension plans and insurance policies, it is possible to select beneficiaries payable on death. The financial institutions offer forms to be filled out, and upon death, the funds are transferred to the beneficiaries, and the account is closed.

Grant of Probate or Letters of administration?

A Grant of Probate is the legal document issued to an executor of a will by the Probate Registry that gives the executor the authority to handle the deceased's assets. If there is no will, or the executor does not apply for a Grant of Probate, Letters of Administration are issued, which confers the same authority as the Grant of Probate.

For example, if the deceased owned any properties in their sole name, financial institutions like banks or building societies would require the Grant of Probate before releasing any funds.

Is a Grant of Probate or Letters of Administration always required?

Generally, all asset holders will set limits above which Grant of probate or letters of administration is required. Where immovable assets such as houses, buildings, and land are concerned, a Grant of Probate or letters of administration will likely be needed.

Where properties are in the deceased sole name, financial institutions like banks or building societies would require the Grant of Probate before releasing any funds.

What are the steps when a family member or friend has died?

Step 1: Determine if there is a Will

Firstly, check whether the deceased had a will by searching their personal belongings or consulting their close friends and family. Alternatively, banks used by the deceased may have stored a will on their behalf. The will must be legally valid and prepared in advance according to the applicable rules, which include:

1. Knowing all assets owned by the deceased.
2. Being aware of the effects of including, or excluding, parties as beneficiaries.
3. Others do not influence the wishes stated in the will.
4. The will is created voluntarily and without manipulation.
5. The will is signed in the presence of independent witnesses.

The will might outline the funeral wishes of the deceased, all assets owned by the deceased, savings, and insurance policies. Finally, the family of the deceased must register the death and obtain a death certificate. The death certificate is an essential document in the estate administration process and should be stored carefully.

Step 2: Getting hold of the legal authority to act

Applying for a Grant of Probate is usually a part of the Estate Administration process, undertaken by an Executor or Administrator, but can be complex and overwhelming. In addition, financial institutions like banks or building societies will need to see the 'Grant of Probate' before releasing any funds if the deceased owned any properties in their sole name.

Applying for a Grant of Probate could involve:

- Completing an application via a PA1P form, if there is a Will, or a PA1A form if there isn't (England and Wales).
- Submitting a C1 form with other (C5, C5SE, or IHT400) forms, depending on the estate (Scotland).
- Supplying all the relevant documents, including the death certificate, to the Probate Registry.
- Completing all Inheritance Tax forms and submitting them to the HMRC.
- Completing applicable Income Tax work for the year of death.
- Postal redirection.
- Registering unregistered properties.
- Valuing the deceased's assets.
- Property valuation and sale.
- Cancelling utilities.
- Distributing assets to beneficiaries.

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There is no will: Intestacy and how it affects estate administration?

When a person dies without a will in place, the estate is distributed according to the intestacy rules, where only specific individuals can automatically inherit the estate. These are civil partners, husbands, wives, and children.

Where the deceased has no living children or other surviving relatives, the spouse receives the entire estate minus administration costs. The spouse benefits the most as any claims by other relatives, for example, parents are automatically eliminated.

If the couple had children, the surviving spouse would automatically inherit the first £250,000 of the estate and have the legal right to half of the remaining estate (a life interest in half of the remaining estate). The children are entitled to the unclaimed half, although they can only access the inheritance when they are 18.

Unmarried partners with no children are not entitled to any estate assets. Instead, blood relatives such as parents, brothers, sisters, nephews, and nieces become next to inherit the estate.

The default order of priority in distributing the estate is as follows:

1. The spouse
2. The children
3. The parents
4. The siblings
5. Half-brothers and/or sisters
6. Grandparents
7. Uncles and Aunts (the parents' siblings)
8. Uncles and Aunts (the parents' half-siblings)
9. The Government

Different Rules in Scotland

Prior Rights

Rules of Intestacy in Scotland are slightly different from those in England and Wales.
Under Scottish law, the spouse has prior rights to the estate. Therefore, they have the first call on the deceased's assets and property.

Where the deceased lived rather than where they died dictates which intestacy laws apply. In most cases, the level of prior rights is often large enough that the spouse can claim the entire estate. Children can only claim their share after the satisfaction of prior rights. Prior rights take precedent over legal rights.

The prior rights fall into three different categories:

1. Home – The spouse inherits the house they shared with the deceased, up to a value of £473,000. The surviving spouse must usually be resident in the property at the time of death

2. Furnishing – The surviving spouse can claim furniture, also known as plenishings, in the house shared by the deceased, up to a value of £29,000.

3. Cash sum – If the deceased has children, the spouse is entitled to a £50,000 cash sum. If there are no children, the spouse can claim up to £89,000.

Legal Rights

Legal rights apply to intestacy as well as when a will exists. It allows a surviving spouse or child to receive a fixed share of the moveable assets, excluding land and buildings. A spouse can claim half of all movable assets if they have no children and one-third if they have children. When the deceased is survived by children only, they are entitled to one half of the moveable estate divided equally among them. By exercising all legal rights, both the spouse and the child relinquish rights granted by the will.

Step 3: Identifying all the beneficiaries

One of the executor's duties is identifying all beneficiaries who inherit the estate. Where a valid will exists, this task is less complicated as all beneficiaries to the estate are named in the will. However, this becomes complicated without a will, especially with the current dynamics in family structures where several family variations exist. From formal to informal, adoption, single mothers /fathers to children born outside marriages, accurately reconstructing a family tree can be very challenging.

The executor is ultimately responsible for any mistakes made and can be held personally liable. Seeking expert help on reconstructing the family tree or locating missing beneficiaries can help save time and reduce the chances of future claims.

Step 4: Valuing the estate

One of the executor's key responsibilities is to determine the value of the deceased’s assets at the time of their death. Before applying for a Grant of Probate and Letters of Administration, all the deceased’s assets must be tracked down and valued. The assets include but are not limited to property, shares, wages, state benefits, national savings, foreign assets, current and savings accounts, personal items, life insurance, and tax refunds.

This process is straightforward if the estate is modest, and the deceased has few assets to sell. However, if the estate is large with high-value assets, properties and bank accounts located overseas, the process can be complicated and time-consuming. In addition, addressing different laws and regulations can delay identifying and valuing assets. Therefore, it is advisable to start the process early. A comprehensive search is recommended to identify all assets.

To fully understand the estate's value, any form of debt needs to be deducted from the assets. If the estate is large and complex, the executor may need to advertise in the local paper to alert creditors to put forward their claims. Creditors often have a period of six months to lodge a claim in an estate.

Step 5: Selling properties and assets

Before selling the deceased’s property and assets, it is crucial to understand how they were owned

Joint tenancy vs tenancy in common

Joint tenancy allows each person ownership of the whole property. This type of homeownership permits no more than four people to share ownership rights. When one person dies, the property is automatically passed to the remaining joint tenants, therefore, avoiding probate.

Tenancy in common permits all owners equal rights to the entire property, but each owns a specific portion. When one owner dies, their rights in the property does not automatically go to the other joint owners. It is passed to their next of kin instead.

Sole ownership

These are solely owned by the deceased and should be distributed as stated in the will. The executor can, depending on the will's terms, decide to either sell or transfer the property direcly to the beneficiary (ies). In the absence of a will, the property is distributed according to the intestacy rules.

Step 6: Applicable Taxes

Tax bills arising from the estate might include income tax, Capital Gains Tax, and inheritance tax. Executors or Administrators are expected to take care of all the tax bills arising from the estate. Therefore, it is important to seek professional help to calculate the tax due on the estate to ensure accuracy.

Inheritance tax

Calculating inheritance tax is done by subtracting outstanding debt from the net value of all the deceased assets. Assets over £325,000, also known as the Nil Rate Band (NRB), are taxed at 40% tax, and the executor must fill out Form IHT 400 for the inheritance tax. If the estate is below the IHT threshold (£325,000), the executor will fill out the IHT 205 form.

Who needs to pay inheritance tax?

The IHT forms can be complicated to understand. If the estate is liable for inheritance tax, it must be paid by the end of six months after the person's death. Failure to pay the inheritance tax will result in HMRC charging interest. A reference number needs to be obtained at least three weeks before making the payment.

Within the first six months of the death, the executor should start making tax payments if the estate is likely to exceed the inheritance tax threshold. Doing this helps the estate cut down the interest it could be charged if there is a delay in disposing assets and paying creditors.

In addition to the nil-rate band, the residence nil rate band introduced in the 2017/18 tax year is available where the deceased leaves a property in which they have lived at some point to their direct descendants (children and their issue). With the IHT thresholds maintained up to 2025/26, the RNBR is benched at £175,000 with a £2 million taper threshold. Unused NRB and residence nil band rate can be, transferred to a surviving spouse.

Capital Gains Tax

Any property or assets not sold before the deceased's passing do not incur any Capital Gains Tax. However, if the property or asset is sold during probate and its value increases since the date of death, Capital Gains Tax will be liable.

Generally, Capital Gains Tax is calculated based on the increase since the death. Assets inherited by beneficiaries are transferred at their probate value. Concerning other assets, Capital Gains Tax is calculated on how much the increase in value is since the person's death. In other words, Capital Gains Tax will be paid on the rise in value from when the person died to when it was sold or given away.

Income Tax

An example of income received after a person's death would be rent from a property owned by the estate. This type of income usually does not have tax deducted before being received. However, executors must report this to HMRC as part of probate so that an accurate, amount of tax is calculated and paid by the estate.

The usual tax-free allowances a person has when alive, for example, personal allowance or personal savings allowance, do not apply to a deceased estate.

Step 7: Distributing the estate

When distributing the estate, it is critical to follow the procedure set out by law. The order of priority is as follows:

1. Her Majesty's Revenue & Customs (HMRC) – Inheritance tax is paid before probate or granting of Letters of Administration.

2. Creditors – All those owed money by the deceased

3. Beneficiaries – Those set to inherit as stated in the will or under intestacy.

Disposing of the deceased's remains comes first. Beneficiaries, creditors, and tax authorities receive nothing if the funeral arrangements consume the entire estate.

Executors and administrators should take the role seriously. Personal representatives have a fiduciary duty to act in the best interest of the deceased person and the beneficiaries, including avoiding loss or injury to the estate. If suspected to have breached this duty, the executor can be taken to court and charged with theft. Therefore, personal representatives should always consider whether they need professional assistance either at the outset or as soon as they feel they cannot deal with a difficult situation.

Step 8: Preparing estate accounts

Preparing estate accounts is the last step of the estate administration process. Some estates may not require a grant of probate, but the executor will need to create an estate account. The estate accounts include a record of all the money gathered and paid out during the estate administration process and evidence showing inheritance and income tax payments. The HMRC can request for the estate account for up to 20 years.

How Share Data can help

Share Data's highly skilled team of specialists offers a range of services for Executors, Administrators, and beneficiaries, whether they reside in or outside the United Kingdom. Services include, but are not limited to:

- Domestic and overseas estates and assets
- Resealing Grants of Probate
- US shares and Estate Administration

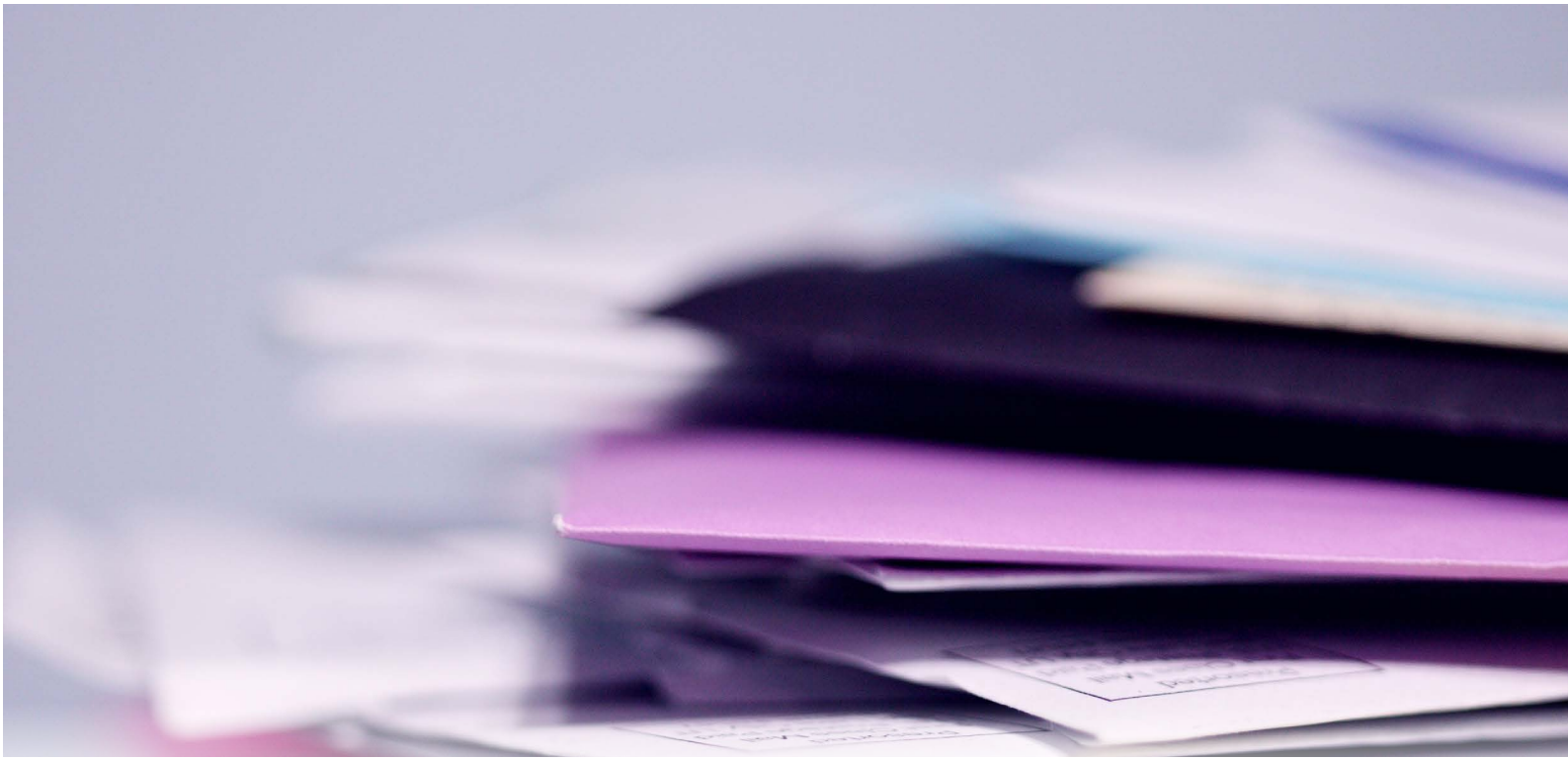
Domestic and Overseas estates and assets

Share Data can help in the administration and consolidation of assets through the United Kingdom and most global jurisdictions. Where appropriate, our trusted agents and associates can assist. Our team can also help where the jurisdictions of Jersey, Guernsey, the Isle of Man, and the Republic of Ireland are involved, whether it be obtaining a Grant of Representation or dealing with assets situated there.

Share Data's team can arrange for the reseal of probates issued in the territories listed in the Colonial Probates Act to enable the handling of UK assets. These territories mainly consist of those in the Commonwealth. Once resealed, probates issued overseas will have the same authority of a full Grant of Probate as if issued by the Probate Registry in England and Wales. This ensures that assets in England and Wales can be managed appropriately. In Scotland or Northern Ireland, resealing can no longer take place.

The Colonial Probates Act 1892 applies to:

- Aden (Yemen)
- Alberta
- Antigua
- Australian Capital Territory
- Bahamas
- Barbados
- Basutoland (Lesotho)
- Bechuanaland Protectorate (Botswana)
- Bermuda
- British Antarctic Territory
- British Columbia
- British Guiana (Nation of Guyana)
- British Honduras (Belize)
- British Solomon Islands Protectorate
- British Sovereign Base Areas in Cyprus
- Brunei
- Ontario
- Papua
- Prince Edward Island
- Queensland
- St. Christopher, Nevis and Anguilla
- St. Helena
- St. Lucia
- Cayman Islands
- Ceylon
- Christmas Island (Australian)
- Cocos (Keeling) Islands
- Cyprus (Republic)
- Dominica
- Falkland Islands Colony
- Falkland Islands Dependencies
- Fiji
- The Gambia
- Gold Coast (Ghana)
- Gibraltar
- Gilbert and Ellice Islands
- Grenada
- Hong Kong
- Jamaica
- St. Vincent
- Saskatchewan
- Seychelles
- Sierra Leone
- South Australia
- Southern Rhodesia (Zimbabwe)
- Swaziland Protectorate (Eswatini)
- Tanzania
- Kenya
- Manitoba
- Nyasaland (Malawi)
- Malaysia
- Montserrat
- New Brunswick
- New Guinea (Trust Territory)
- New South Wales
- New Zealand
- Newfoundland
- Nigeria
- Norfolk Island
- Northern Territory of Australia
- North-West Territories of Canada
- Nova Scotia
- Tasmania
- Trinidad and Tobago
- Turks and Caicos Islands
- Uganda
- Victoria
- Virgin Islands
- Western Australia
- Zambia



Why Share Data for Resealing Grants of Probate?

Share Data has been dealing with Probates or the equivalent and estate administration from around the world since 1995. Our vast experience allows us to advise Executors and beneficiaries alike on most estate situations, either looking outwards from the UK or looking inwards from outside the UK.

US shares and Estate Administration

US securities and assets can sometimes prove problematic. For example, when dealing with assets worth more than $60,000 on the day of death, most US firms, including share registrars, require a federal tax clearance and transfer certificate [Form 5173] as one of the documents to transfer the asset into the name of the executor and enable the sale or transfer of the asset to beneficiaries. The process of obtaining Form 5173 is currently taking the United States IRS at least 12 months, and therefore, Share Data must be instructed in these matters as soon as possible.

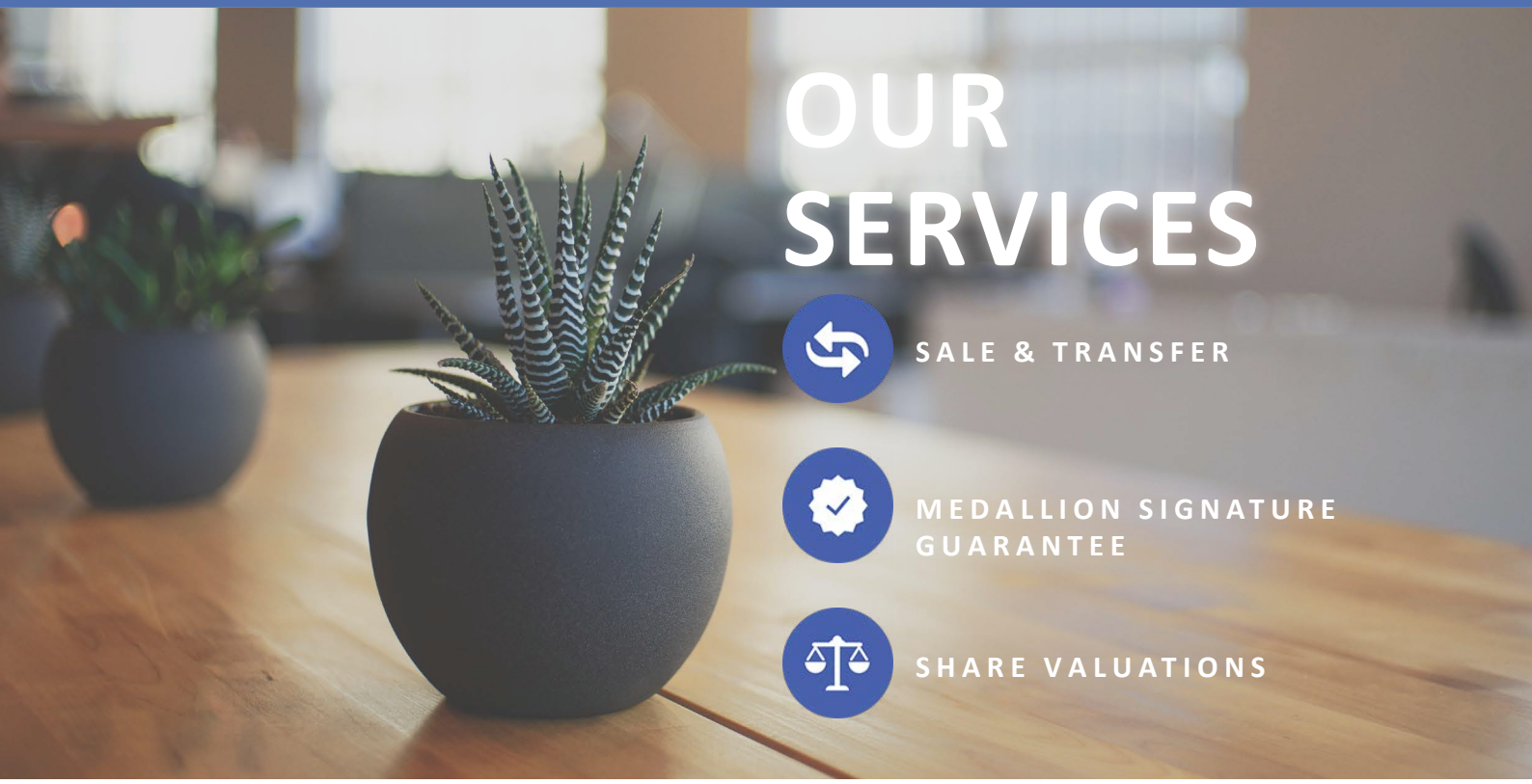
Several forms are required to apply for Federal tax clearance, including Form 706NA and Form 8971. Share Data can prepare these and guide you through the process. Once Form 5173 is obtained, it will be possible to process the actual death registration. Share Data has the expertise to streamline the process, including the service to provide the Medallion Guarantee Stamp – another requirement for the transfer or sale of a US asset.

Medallion Signature Guarantee

When selling or transferring North American securities held in physical certificates or electronically, a Medallion Signature Guarantee is required to authenticate an investor's identity and prove they legally own the assets they intend to transfer or sell. The transfer agent of the financial institution administering the transactions will require the parties in-volved to obtain a Medallion Signature Guarantee. Share Data is one of the few companies outside the USA certified to administer a Medallion Signature Guarantee stamp and, has been a member of the Securities Transfer Agents Medallion Programme (STAMP) since 2014.

ABOUT SHARE DATA

Established since 1995 in Horsham, West Sussex, Share Data is a provider of high quality, prompt, efficient and comprehensive valuation services dedicated to both professionals and private individuals. Our clients choose our services so that they can feel secure in knowing that we are able to take care of everything involving tradeable securities both in the UK and abroad.



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