

# Probate Sales: What Executors need to know

As an Executor of a deceased person's Will, you are responsible for winding up their estate and distributing their assets in accordance with their wishes, or the Intestacy Rules if they die without leaving a Will. If the deceased owned a house, this will need to either be transferred to the beneficiaries, or sold to release the equity in it.

Here we explain the process of selling the property and look at what can be done to ensure a smooth transaction.

## Is a Grant of Probate required to sell the property?

Probate is the process through which someone is given the authority to administer the estate of a person who has died. A Grant is applied for by the executor named on the deceased's Will or, if there is no Will, a person called an Administrator who is usually a close family member.

If the deceased owned the property in their sole name, a Grant of Probate will be required to sell the property or to transfer it to the beneficiaries.

If the deceased owns the property with one or more people, whether a Grant is required is dependent on how they jointly own the property – joint tenants or tenants in common.

**If the property is held as joint tenants, the deceased's share automatically passes to the surviving owners outside of the Will and therefore a Grant is not required.**

If the property is held as tenants in common, the deceased owns a share of the property and that share passes in accordance with their Will, or the Intestacy Rules if there is no Will. A Grant of Probate may be required and our Probate team or Residential Property team will look at the circumstances and confirm either way.

## How long does it take to obtain a Grant of Probate?

Whilst there is nothing preventing the property being marketed for sale immediately, contracts cannot be exchanged until the Grant is obtained.

When a Grant can be applied for depends upon the complexity of the estate and how long it therefore takes to get together all the information to make the application. We will advise you of the estimated timescales once we have reviewed all the paperwork relating to the assets.

Presently, once the application is submitted Grants are taking around 8 weeks to be issued. Potentially buyers must be made aware that there may be a delay in exchanging contracts.

## Property Valuation

Before being able to apply for a Grant of Probate, Executors need to complete either a return of estate information form or an IHT account (which document will depend upon the value and nature of the estate). The documents detail all the assets and liabilities of the estate at the date of death. Executors are advised to obtain three probate valuations of the property and use the average on the return. Estate agents may charge for probate valuations.

## Title Deeds

If a property is registered at the Land Registry, your solicitor will be able to obtain electronic copies of the Register of Title. These will be checked to make sure that the title is in order, that the plan accurately depicts the extent of the property being sold, and there is nothing that would prevent a sale from proceeding smoothly. Any defects can be remedied before a buyer is found thus ensuring that the sale proceeds swiftly once a buyer is found.

If the deceased has owned the property for over 30 years, and particularly if it is in a semi rural location, the property may not be registered. The paper deeds will need to be located and reviewed. They could be held by the deceased themselves, or in storage with a bank or solicitors.

## Capital Gains Tax

If the property is not sold until some time after the date of death, and the value of the property has increased, the Executors may be responsible for the payment of a Capital Gain Tax (CGT) liability if the gain exceeds the annual allowance of the beneficiaries. (Click [here](#) for details on the allowance available) Our Probate team here at Butcher & Barlow can advise you more fully on the potential CGT liability and the options to mitigate the tax payable.

## Insurance

Insurance will need to be maintained on the property and any contents until it is sold. Insurance that was in place at the date of death may have lapsed or may not cover unoccupied properties. You should speak with the existing insurers to confirm the position and ensure that you comply with the terms of any insurance policy.

## Selling Price

As an Executor you are under an obligation to sell the property for the best possible price. If you sell for less, the beneficiaries may seek to recover the difference from you.

There is no obligation to obtain a beneficiary's consent to any sale (unless the Will states to the contrary), but it is advisable to have open and clear communications and get things which have been agreed in writing to prevent any future disputes.

## Clearing the property

The property must be cleared of all the deceased belonging by the completion date, unless the buyer has agreed to particular items being left. This can be a long task, so it is important to be realistic about timescales.

## Proceeds of Sale

Following completion, your Residential Property solicitor will pay off any outstanding mortgage, pay the estate agents and monies to settle their legal fees. The net proceeds of sale will then be transferred to the Probate solicitor to distribute in accordance with the Will or Intestacy Rules.

This article is intended to give a brief overview of the matters that need to be considered when selling a probate property and does not cover all the aspects of the procedures involved. Our Probate and Residential Conveyancing teams can give you advice and guidance tailored to your specific circumstances.

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