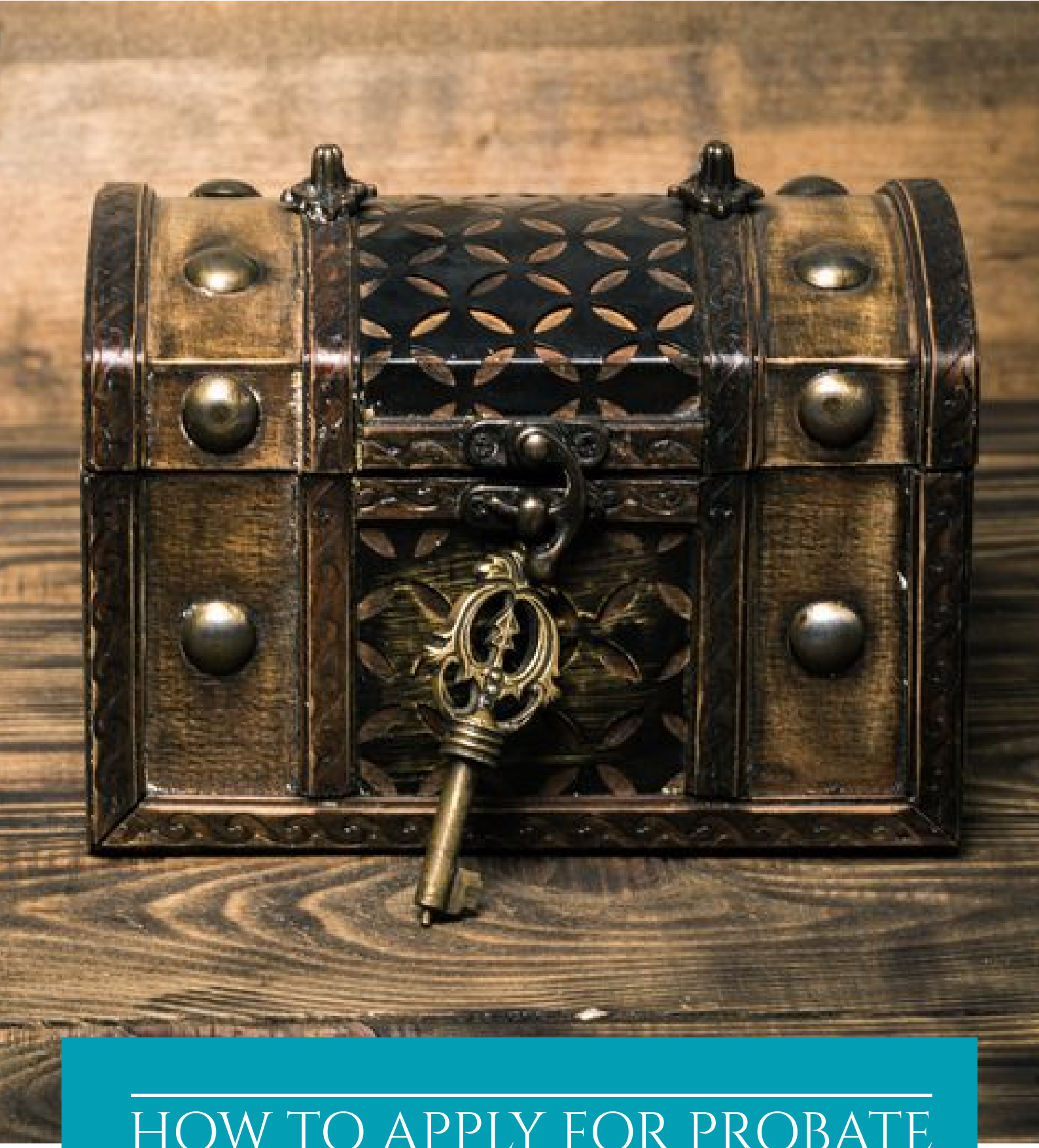


HOW TO APPLY FOR PROBATE

LEXINGTON
WEALTH MANAGEMENT

The finance side of death

When someone dies their estate must be dealt with to ensure that all debts and taxes are paid and the assets are distributed to those who inherit. As such this is also an area where financial advice may be necessary.

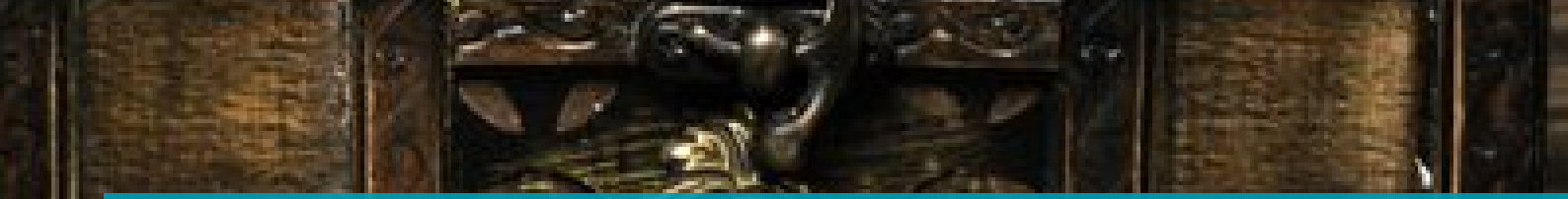
Therefore a financial planner may be one of the first people the widow/widower or the executors will call. The financial planner may have been involved in giving pension advice, setting up investments, a trust or a life assurance policy for the deceased in which case they can help with the claim.

Fundamentals

When someone dies their legal personal representatives (LPRs) must sort out their estate. They are called executors if there is a valid Will, or administrators if there is no valid Will. Before the LPRs can act they must apply for a grant of probate (letters of administration if there is no valid Will). In Scotland the equivalent terms are executors nominate and executors dative respectively and confirmation nominate or dative.

For simplicity we will use the term “probate” whether there is a valid Will or not. The application is made to the local Probate Registry.

Before probate is granted any inheritance tax (IHT) liability on the estate must be settled.



IHT FORMS AND ACCOUNTS

Prior to applying for probate, a return of estate information form must first be completed giving details of all of the assets that form part of the deceased estate.

Where the estate qualifies as an 'excepted estate' the short form IHT205 (in Scotland Form C5) will be sufficient. An 'excepted estate' is broadly one where no IHT is due.

This is because the value of the estate is below the 'excepted estate limit' (usually the same as the nil rate band) or the value is less than £1,000,000 and there is no IHT to pay because of the nil rate band, and the application of the spouse, civil partner or charity exemption (although different rules apply where the deceased was not UK domiciled).

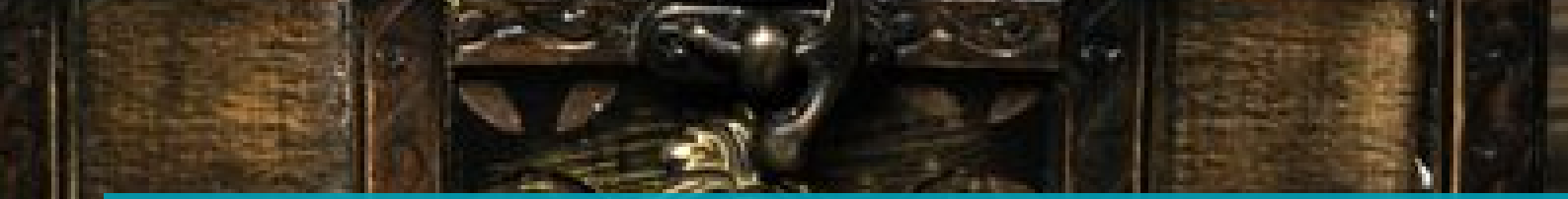
In other cases, a more detailed account is required using Form IHT 400 and supplementary page IHT 421 (Probate Summary).

Note that where a transferable nil rate band is being claimed, the excepted estate limit is effectively doubled. A claim to transfer any unused nil rate band must be made using Form IHT402 (and a claim to transfer any unused residence nil rate band must be made using Form IHT436) no later than 24 months after the end of the month in which the second spouse/civil partner died.

These forms should be sent to HMRC by the personal representatives, preferably at the same time they send in form IHT400 or IHT205, as appropriate, along with the required supporting documentation.

HMRC has now launched an online service for personal representatives, trustees, agents and other people who are liable to IHT and/or who need probate to administer an estate to submit accounts and provide other documentation that HMRC requires.

More details can be found at https://www.gov.uk/inheritance-tax



Calculating and paying IHT

The IHT liability will be calculated in the usual way depending on the value of the estate and the identity of the intended beneficiaries. For these purposes, a person's estate includes:

- **everything owned in their sole name;**
- **their share of everything jointly owned** (even if passing by survivorship);
- **the value of any trust assets to which they are beneficially entitled for IHT purposes**; and
- **the value of any gifts made during lifetime but treated as gifts with reservation of benefit.**

When the estate includes the value of a trust fund in which the deceased had an interest in possession which is treated as being in the beneficiary's estate for IHT purposes (for example an Immediate Post-Death Interest or a Transitional Serial Interest), the IHT liability in respect of this will fall on the trustees (so will be paid out of the trust fund) but the remaining IHT liability must be paid from the estate.

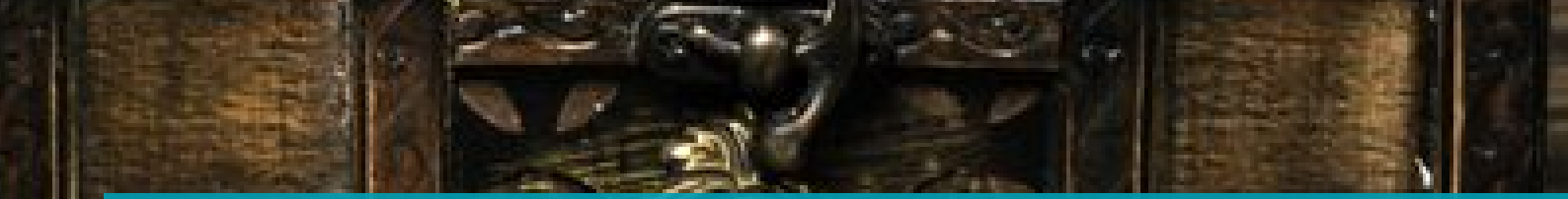
The applicant for probate can work out the IHT liability themselves or they can ask HMRC (Inheritance Tax) to do it.

Important to note

The fact that probate will not be granted until the IHT is paid, means that the LPRs cannot sell any assets (as they have no legal title to them) to obtain cash – this can pose a bit of a conundrum. HMRC will accept certain assets in satisfaction of the IHT liability (e.g. National Savings). Alternatively, the deceased's bank will usually advance a loan against the deceased's bank account. Another solution is for the beneficiaries of the estate (who would often be the same individuals as the LPRs) to lend their own money for this purpose (ideally received from the proceeds of a life assurance policy in trust for their benefit, often effected for this specific purpose).

There is an agreement between HMRC and the British Bankers Association / Building Societies Association whereby participating institutions (this is a voluntary scheme) will, at the request of LPRs, transfer funds directly to HMRC to meet an IHT liability before probate is obtained.

In some cases, IHT may be paid in equal yearly instalments over 10 years, i.e. on qualifying assets which include land (including leasehold or freehold property), a business or interest in a business, timber, a controlling shareholding and unquoted shares which satisfy certain conditions.



Applying for probate

Once the IHT liability on the estate has been calculated and settled, the LPRs can apply for probate.

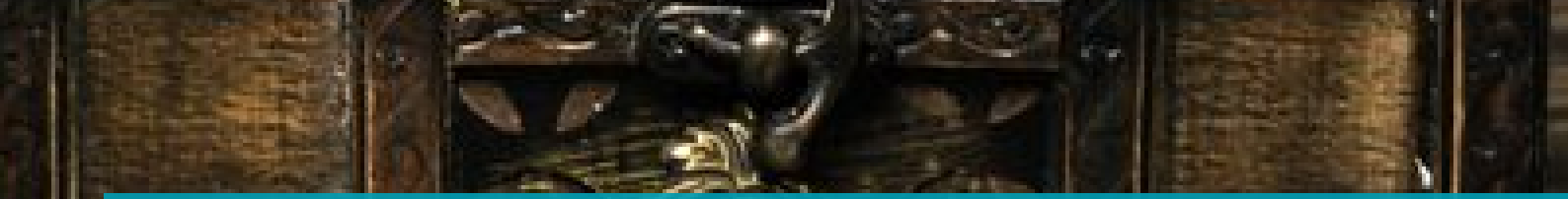
The application can either be completed online or in writing by post.
At present (October 2020), probate applications are charged a fee of £155 if made by a solicitor, and £215 if made by an individual. These fees apply to estates worth £5,000 or more.

Over the past couple of years consideration was being given to changing the probate fees and replacing the flat fees with a banded structure, but the Government decided against this in October 2019.

Once Grant of Probate has been obtained, the LPRs can arrange for the transfer of ownership of the deceased's assets into their names so they can deal with them. For investments such as Unit Trusts / OEICs, this will involve the completion of stock transfer forms. The LPRs will also make claims under any life assurance policies which are not in trust.

Before the assets (or the proceeds thereof) can be passed to the beneficiaries, the LPRs will need to settle any debts, liabilities and unpaid taxes of the deceased and deal with any tax liabilities that may have arisen during the estate administration period – for example there may be income that has arisen after the death or assets which have been sold during the administration period which realise a capital gain.

The LPRs' final job is to distribute the assets in accordance with the Will or laws of intestacy as appropriate.



Planning

It is sometimes possible for a financial planning client to take steps during lifetime which will ensure that the need for probate is avoided on their death in respect of certain assets.

Usually, this will involve transferring assets to a trust.

Because the trustees become the legal owners of the assets following creation of the trust, there will be no requirement for probate (which effectively proves title) in respect of those assets following the settlor's death.

The trustees (provided at least one survives the settlor) can therefore access the trust investments (usually on production of a death certificate) and distribute them immediately.

Trusts of this type are particularly useful in conjunction with investments and protection policies – ensuring that the policy proceeds can be used to discharge any IHT liability without getting into the 'cycle' of needing probate to be able to access the deceased's funds but having to pay IHT before probate is granted.

LEXINGTON
WEALTH MANAGEMENT

Lexington Wealth Management
Orchard House
Bagbury Lane
Lydiard Millicent
SN5 4LX

t: 01793 771093
e: theteam@lexingtonwealth.co.uk
w: lexingtonwealth.co.uk