

Probate Trust

Briefing Note

On the death of an investor, it may take a minimum of six months to obtain probate, without which the policy proceeds cannot be claimed.

However, if a policy is under trust, in the event of a death claim, the insurance company would simply need a copy of the death certificate for the life assured and a completed claim form for the trustees to receive the proceeds – this could take a matter of weeks.

The terminology used in this briefing note is based on the process for England and Wales but is broadly similar to Scotland and Northern Ireland. The process and terminology for other jurisdictions will vary.

What is probate?

Probate is the process of dealing with the estate of someone who has died. When a person dies, someone has to collect all the assets, pay any debts and distribute the estate to those people entitled to it.

The deceased person may have appointed one or more persons to deal with the estate in their will, called 'executors'. If they have not appointed any executors, or if the executors cannot, or will not act, the High Court may appoint an 'administrator' to deal with the estate.

If the deceased person has not made a will, known as dying 'intestate', then the Court may appoint an administrator.

The executors appointed by the will may be confirmed in their position by the Court: the document by which the Court does so is called a 'grant of probate' ("confirmation" in Scotland) of the will. The document by which the Court appoints an administrator is called a 'grant of letters of administration'. In general these documents are called 'grants of representation'.



Why is a grant necessary?

Organisations holding money belonging to the estate (for example, banks, building societies and life offices) need to know that the people to whom they pay the money are legally entitled to have it. Organisations call this process 'giving a good discharge' because if they pay the wrong people, they may have to pay the money all over again to the correct individuals. A grant is proof that the people named in it are entitled to receive the money and they can then distribute it to the people who inherit the estate, during their lifetime.

Polices held in another jurisdiction

As an offshore investment bond is issued by a non-UK life company and is held in a separate legal jurisdiction, the asset forms part of the deceased's estate in that jurisdiction.

As such, probate also needs to be obtained in that jurisdiction, in addition to UK probate for the rest of their estate, to enable the executors to deal with the bond. This can be costly and take time to obtain. However, most life companies offer a version of a probate trust to avoid this requirement, often at no cost.

Where the investor holds an Isle of Man bond, if the value of the bond is more than £25,000 an Isle of Man probate would be required. However, where the investor holds an Ireland bond, Irish probate would only be required if there was a dispute on the estate.

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Types of Probate Trust

Probate Bare Trust

A probate bare trust is a trust where the investor is the absolute beneficiary; however the underlying policies are owned by the trustees rather than the investor.

There are no inheritance tax (IHT) benefits with a probate bare trust; it is solely for the purpose of avoiding a delay on death, as the full value of the policy will be inside the investor's estate at all times.

As the absolute beneficiary, the investor is entitled to receive all future benefits from the policy including withdrawals or partial surrenders.

On the death of the investor, providing they are the last life assured to die, the life company will not require a grant because it can pay the surviving trustees as legal owners.

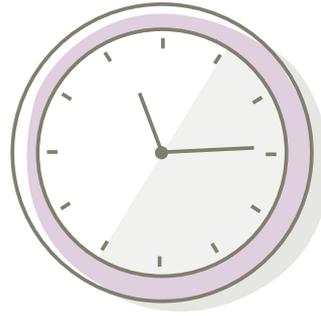
Once the trustees have received the proceeds they have to decide on their next course of action as the beneficiaries of the investor's estate will now become the people who are the beneficiaries of the trust.

The trustees may decide to reinvest the proceeds until a grant has been issued, or the trustees could (if the trust deed was drafted carefully) borrow against the bond or effect a surrender of the bond before probate is granted, to lend the money to the executors to pay any inheritance tax due or pay the probate fees.

Probate Discretionary Trust

With a probate discretionary trust there can be a wide range of potential beneficiaries, including the investor. As the investor is a potential beneficiary, this will be a gift with reservation. The value of the bond will be in the investor's estate for IHT purposes at the time of death.

As the investor is not the sole beneficiary, under the probate discretionary trust the trustees also have the authority, and the discretion, to make payments to the other intended beneficiaries of the trust, without any need for probate.



A transfer into a probate discretionary trust will be a chargeable lifetime transfer (CLT). This will create an entry charge if the value of the gift, when added to any other CLTs made in the previous seven years, exceeds the current nil rate band (£325,000). Discretionary trusts may also be subject to periodic charges every 10 years as well as exit charges

Practical effects of putting the policy into a probate trust

The investor can benefit under the trust during their lifetime.

The life company will require the signatures of all trustees for transactions relating to the policy. To protect the investor and the life company from financial crime, the life company may need to verify the identity and address of all owners, including newly-appointed trustees.

If the investor is the only (or the last) life assured, the death benefit will become payable to the trustees, and not the personal representatives. The trustees will give the insurance company discharge for the policy monies. Otherwise, the policy remains in force until the death of the last surviving life assured or prior surrender, but the trustees may choose to assign the policy before those events occur.

In addition, the trust deed allows the trustees to lend money to the persons entitled to the trust benefits. They may choose to do this if funds are needed urgently, before probate is granted, and they are cautious about legal entitlements.

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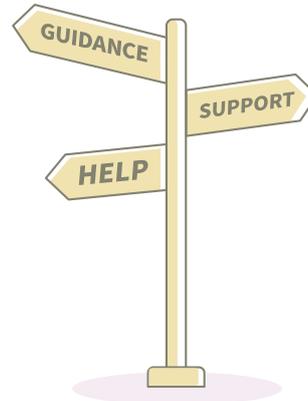
Summary

Probate bare trust:

- no inheritance tax implications
- relevant property regime does not apply
- the value of the policy would be included in the calculation for probate fees
- on the policyholder's death the trustees can distribute the proceeds or make a loan to the estate beneficiaries, once probate has been obtained.

Probate discretionary trust:

- gift into trust is a chargeable lifetime transfer
- relevant property regime applies with reporting requirements, possible periodic and exit charges
- administration duties
- the value of the policy would not be included in the calculation for probate fees
- on the policyholder's death the trustees can distribute to any one, or more, of the potential beneficiaries.



This document is based on Canada Life's understanding of applicable UK tax legislation and current HM Revenue & Custom's practice, as at April 2021 and could be subject to change in the future. It is provided for professional advisers only. Any recommendations are the adviser's sole responsibility.



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