

SOME PROBATE QUESTIONS AND ANSWERS

We regularly answer lots of probate questions for our clients and I thought it might be useful within this article to list some of the most recent questions that we have helped clients with:-

What is Probate?

Probate is the term given to the administration of a deceased person's estate. When someone dies, the Executors of the Will or Administrators (if no Will exists) need to deal with the deceased person's assets and property. To do this, an official Court form from the Probate Registry is required. If a Will exists, the Court form is called a Grant of Probate. If no Will exists, the Court form is called a Grant of Letters of Administration.

Once the Grant is obtained this provides the authority for the estate to be administered by either the Executors or the Administrators. The administration of the estate would typically include the sale of property and the collection of cash from banks and building societies, etc. By showing the Grant to the bank, the bank will be satisfied that you have the right to handle the estate and receive money from the deceased person's accounts or investments.

Do I need Probate?

Whether a Grant of Probate or Letters of Administration are required depends upon the size and nature of the deceased person's assets.

A Grant of Probate or a Grant of Letters of Administration is usually required for the following:-

- The sale or transfer of shares owned by the deceased person

- Any land or property owned by the deceased person as a tenant in common will require a Grant of Probate or Letters of Administration to transfer or sell the share of the deceased person in that land or property
- Some business interests require a Grant

As a general rule of thumb, if a person's estate is over £5,000, a Grant or Probate or Grant of Letters of Administration (if no Will exists) will need to be obtained from the Probate Registry.

Obtaining a Grant of Probate or Letters of Administration can be a complex matter requiring completion of a number of Probate forms. Even if the estate is below the current Inheritance Tax threshold of £325,000, an Inheritance Tax form will be required. The Inheritance Tax form will set out the deceased person's assets and liabilities as well as any Inheritance Tax liabilities which may be due.

Probate costs and fees

The costs of applying for Probate ultimately depend upon whether a solicitor is instructed or the application is made in person. Factors to consider when deciding whether to use a solicitor for Probate include the following:-

- **Speed of obtaining the Grant** – it is generally quicker using a solicitor as no interview at the Probate Registry is required when a solicitor is used
- **Property of the deceased** – if the deceased's estate includes land or a house a solicitor will need to be instructed at some stage and therefore using a solicitor for the Probate can assist in the sale of the deceased person's property
- **No Will** – if the deceased has died without leaving a Will, a solicitor can provide very useful advice on the intestacy rules (who the estate should pass to)
- **Inheritance Tax** – if the deceased's estate involves Inheritance Tax issues, a solicitor can provide expert advice and may be able to reduce some Inheritance Tax charges (e.g. through the preparation of a Deed of Variation)
- **Contested Probate** – if the Will or estate is in dispute, having a solicitor to advise upon procedure is very important

- **Fully Insured** – a solicitor carries Professional Indemnity Insurance for all work undertaken, which does help alleviate individual concerns an Executor or Administrator may have when undertaking Probate personally

Does an Inheritance Tax Return have to be completed in every case?

As stated above, an Inland Revenue Inheritance Tax Return must be completed in every case. If the estate is under the Inheritance Tax threshold of £325,000 then an IHT205 must be completed. For estates above £325,000 a full Inheritance Tax Return called an IHT400 must be filed with the Inland Revenue.

How long does Probate take?

We are frequently asked how long Probate takes. The length of time typically depends upon the size of the estate and the assets to be collected. The estate administration typically starts with the various assets and liabilities being quantified and dependant upon the financial institutions response this can be undertaken relatively quickly. Thereafter, the Inheritance Tax Returns need to be completed and any tax paid. This then allows the application to be made for the Grant of Probate or the Grant of Letters of Administration, after which the assets can be collected and any liabilities settled. We find that most cases generally take between 6 to 12 weeks. However, if Inheritance Tax has to be paid or statutory notices placed (to notify potential creditors) then Probate can take up to 3 to 5 months.

I am an Executor and I no longer want to act – what are my options?

The role of an Executor is very important when administering an estate. For this reason, it is often the case that an Executor will appoint a solicitor to act on his or her behalf. Typically, an Executor has a number of options. Firstly, they can renounce Probate, which means that the Executor would have no involvement in the Probate process whatsoever. An Executor can only renounce Probate if they have not started dealing with the estate. Secondly, if there are a number of Executors, one or more Executors can agree to “power reserved” – this means that whilst they are not named on the Grant of Probate or Grant of Letters of Administration they can re-enter the Probate

process should they wish to do so at a later date. Thirdly, the Executor can appoint an Attorney to apply on their behalf.

How can I obtain a copy of a Will?

When someone has died, if a Grant of Probate or a Grant of Letters of Administration is obtained in their estate, the Will and the Grant of Probate become public documents which can be obtained from the Probate Registry. It is important to appreciate that only those cases in which a Grant of Probate or a Grant of Letters of Administration have been issued will a Will become available from the Probate Registry. To see whether a Grant of Probate has been issued, you can apply for what is known as a Standing Search at the Probate Registry. By paying a small fee the Probate Registry will search their archives and see whether a Grant has been issued. If so they will then send you a copy of the Grant together with a copy of the Will. The information required by the Probate Registry is as follows:-

- Full names of the deceased (forenames and surname) including any names by which the deceased was known and the name in which the death was registered
- Last permanent address of the deceased
- Date of birth of the deceased
- Date of death of the deceased or a range of dates if the exact date is not known to you
- Details of your name and address

You must provide the full and correct details for the deceased. The search is made by checking the details you have provided against the Probate Registry records. If you give incorrect details your search is unlikely to be successful.

I hope this article has provided you with some useful information. If you have any comments or queries regarding anything contained within this article or indeed if you have any queries regarding Wills, Lasting Powers of Attorney documents, Court of Protection, Trust and Estates please do not hesitate to contact me at Busbys.

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