

**St Leonards Office**  
28/29 Grand Parade  
St Leonards On Sea  
East Sussex  
TN37 6DR  
TEL: 01424 720044  
FAX: 01424 722221

**Bexhill Office**  
21 Eversley Road  
Bexhill On Sea  
East Sussex  
TN40 1HA  
TEL: 01424 730630  
FAX: 01424 730313

## Probate Explained

### Introduction

When a person dies, they usually leave an estate comprising money, possessions and property. Often he or she has made a Will.

The Will should appoint one or more people to act as executors who are responsible for collecting in all money, paying any debts and legacies and distributing the remainder to the beneficiaries.

In order to collect the assets the executor has to apply to the probate registry for a document called a Grant of Representation or "Grant". This process is called applying for probate. The Grant establishes who can legally collect money from banks, building societies and other organisations which hold assets belonging to the person who has died.

### Basic terminology...

#### Executor

The person appointed by the will to wind up the estate. There may be more than one.

#### Administrator

The person who takes responsibility for winding up the Estate where there is no Will or the Will fails to appoint an Executor. Usually a close relative.

#### Personal Representative

Generic term for an Executor or an Administrator

#### Grant of Probate

The official document issued by the Probate division of the High Court which gives the Executor authority to proceed. It includes a copy of the Will. The original Will is retained by the court and becomes a public document.

#### Grant of Letters of Administration

The same as a Grant of Probate but for an Administrator rather than an Executor.

#### Grant of Representation

Generic terms for a Grant of Probate or Letters of Administration.

#### Will

A signed declaration setting out a person's instructions for the distribution of their estate on death. The Will usually includes funeral requests and other instructions to the Executors. There are several formalities that need to be complied with to ensure the Will's validity.

## **Is a Grant always needed to deal with the property of a person who has died?**

Not every estate needs a Grant. A Grant **may** not be needed if:

- the home is held in joint names and is passing by survivorship to the other joint owner(s)
- there is a joint bank account or building society account
- the amount held in each bank account is very small

If none of the circumstances above apply, a Grant will probably be required.

Please note that a Grant **must** be presented in order to sell or transfer a property held in the deceased's sole name or a share of a property held jointly with the deceased person's spouse or partner as tenants-in-common. You cannot complete a sale of any property until the Grant has been issued.

## **Intestacy**

Sometimes a person dies without having made a Will or makes a Will that is not valid under the legislation.

In such a circumstance the person who has died is intestate and special rules will apply to how the personal representatives are appointed and how the estate is distributed.

Essentially family members of the deceased are ranked in an order of priority starting with the spouse of the deceased. This ranking process is done in accordance with the legislation although family members can waive their right to become the personal representative or even be a beneficiary. A popular misconception is that a surviving husband or wife gets everything. This is not so.

It can prove difficult for those inexperienced in such matters to determine what the orders of priority are for appointing personal representatives and distributing the estate to the beneficiaries and therefore it is highly recommended that you seek independent legal advice if a loved one dies intestate.

## **Inheritance Tax**

If the estate of someone who has died exceeds an amount fixed by the government inheritance tax will be payable to HM Revenue and Customs.

This figure at which inheritance tax becomes payable on the value of an estate is fixed each March by the Chancellor in the Budget.

The part of an estate which is exempt from inheritance tax is known as the "nil-rate band" and for 2009/2010 the nil-rate band is £325,000.

It is very important to deal with the inheritance tax issue as soon as possible; if

inheritance tax is payable by an estate it is normally a requirement to pay at least some of the tax before probate can be issued. In any event inheritance tax is due six months after the end of the month in which the person died.

Even if the value of the estate does not exceed the nil-rate band for that particular tax year the personal representatives will still have to complete a form to be sent to the probate registry at the time probate is applied for.

### **Acting for you on the probate**

The death of a loved one can be extremely traumatic for family and friends and the thought of having deal with the deceased's estate can be daunting.

We have for many years acted for clients during the probate process and built up considerable expertise in winding up estates whether simple or complex speedily and efficiently and economically.

There are many issues to be resolved in respect of a person's estate such as:-

- obtaining details of all the assets and liabilities of the deceased
- applying to the court for the Grant
- completing an income tax return for the period from the start of the tax year in which the deceased died to the date of death
- paying inheritance tax
- encashing the assets
- paying off the liabilities
- dealing with any property of the deceased, and
- distributing the estate between the beneficiaries

There is also a risk to personal representatives if they do not take the necessary precautions they could become liable to unknown creditors of the estate for the deceased's debts.

If a loved one has died recently and you are concerned about what to do please contact a solicitor in our Private Client Department who will be pleased to advise either over the phone or in person at our Bexhill office on 01424 730630.