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L. E. LAW INFORMATION SHEET NO. 2

GUIDE TO PROBATE AND WINDING UP AN ESTATE WHEN SOMEONE HAS DIED

This document is intended as a brief guide to the usual steps that have to be taken when somebody dies and an application has to be made for a grant of Probate. Not every step described will be relevant in every single case. If there is anything you would like us to explain further please do not hesitate to contact us.

What is probate?

A grant of probate is the document issued by the court which recognises that the person to whom it is issued is entitled to deal with the estate of the deceased.

If the deceased has left a valid will, the grant will be issued to one or more of the executors named in the will.

If the deceased has not left a will, the grant will be issued to the next of kin. In this case, the person concerned is called an “administrator” rather than an executor and the grant is called a grant of “letters of administration”. In this guide we will use the term “executor” and “probate” to cover both.

When is it necessary to obtain probate ?

A grant will usually have to be obtained whenever the deceased owned land, bank accounts, stocks and shares, etc. before the executors will be able to collect in and deal with those assets.

The only assets for which a grant is not needed are :

- Personal possessions
- Assets held in joint names, which pass automatically to the survivor (eg a joint bank account)
- Assets held on trust (eg the proceeds of any life policy written in trust) which do not form part of the deceased’s estate, and will be dealt with according to the terms of the trust document irrespective of the terms of any will

What do we need to deal with the estate ?

We will need the following :

- The Registrar's copy of the death certificate
- The deceased's last will (if one exists)
- Full details with supporting evidence of all assets and liabilities (eg pension book, bank statements, passbooks, share certificates, details of occupational pensions, house deeds and/or mortgage details, outstanding bills and any other relevant details and addresses).
- Full details of the deceased's professional advisors (accountant, solicitor, etc)
- Full details of the deceased's tax office, and of all income received since the April before the date of death (to enable us to prepare a final income tax return and pay any outstanding income tax or claim a rebate as appropriate).

The Stages in Winding up an Estate

(1) Establishing the value of the Estate

Once we have the necessary information referred to above, we will notify the necessary authorities of the death, eg bank, building society, DSS, insurance companies etc. We will ask for closing balances of any accounts, and where necessary seek valuations of assets. We will verify the extent of any debts owed.

Please note that the Inland Revenue will expect some value to be attributed to the deceased's personal effects. Any items of significant value (jewellery, antique furniture, works of art etc) will need to be professionally valued.

(2) Inheritance Tax (IHT)

IHT is payable at the rate of 40% on any part of the deceased's estate in excess of £325,000 (as of 6 April 2009). Gifts made in the last 7 years of the deceased's life (whether in the form of cash or assets) will be added to the value of the estate for IHT purposes, so it is important that we have details of all such gifts. Various reliefs and exemptions are available which we will advise you on where relevant.

If IHT is likely to be payable, a very detailed tax return has to be prepared and submitted to the Inland Revenue, and the tax due has to be paid before the Grant of Probate can be applied for. This means that it is often necessary to apply for a short-term bank loan to pay the tax bill until the grant can be obtained and the assets collected in.

Tax due on certain assets (eg land, businesses) can be paid in instalments over 10 years.

Tax is due 6 months after the end of the month in which death occurred, and interest will be charged on any tax paid late.

(3) Applying for the Grant

Once any tax due has been paid, an application can be made to the Probate Registry (a division of the High Court) for a grant of probate (if there is a will) or Letters of Administration (if there is no will).

An affidavit will be prepared by us giving details of the deceased, and the persons applying for the grant, and explaining how their entitlement to apply arises.

When the affidavit has been sworn, it is lodged at the Probate Registry together with the will (if any) and a cheque for the court fees.

If the court is satisfied that everything is in order, the grant will then be issued.

(4) Collecting in the assets

The grant can then be shown to any necessary authorities (e.g. banks) and monies due to the estate can be collected in. The grant will also need to be obtained before certain assets can be sold, e.g. land or shares.

(5) Distributing the estate

Once money is available, any legacies in the will and any debts owing by the deceased can be paid.

A corrective account may have to be filed with the Inland Revenue if any further assets come to light, or if estimated values were given for items which prove to be incorrect.

The executors will have to prepare tax returns for income tax and capital gains tax for the period of the estate, and pay any further tax due.

An advert will have to be placed in suitable newspapers inviting claims from any creditors of the deceased, to protect the executors from being personally liable to meet such claims after the estate has been distributed.

Inheritance tax clearance must be obtained (ie confirmation that all tax due has been paid) from the Inland Revenue.

Once these steps have been taken, final estate accounts can be prepared for approval by the beneficiaries, and the remaining funds in the estate distributed.

How long does this all take ?

A simple estate on which no IHT is due can be wound up within 6 months. It is generally inadvisable to wind up the estate in less than 6 months, as the executors will be personally liable if they distribute the estate within that time and it turns out they have failed to take account of a valid claim against the estate.

An estate on which IHT is payable will take several months longer to wind up, and in the case of a more complicated estate could even take years. That does not mean that no payments can be made to beneficiaries in the meantime, it would be usual to make interim payments if funds are available.

Deeds of Variation

It may be that the deceased's will does not make the best use of IHT exemptions and reliefs, e.g. because tax laws have changed since it was made. It may also be the case that the main beneficiary does not wish to receive the assets he or she has been left under the will.

In these circumstances, a Deed of Variation can be entered into in order to save tax. Such a deed must be completed within 2 years of the date of death. If this is of any interest to you, please ask for further details.

Disclaimer

This information sheet is for guidance only and does not remove the need to take professional legal advice relevant to the specific facts of any individual case. No responsibility will be accepted for any losses occasioned as a result of any action taken in reliance on the contents of this document.

Contact Details

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