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What Happens When Somebody Dies?

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Many of the phrases and terms used in this leaflet are described in more detail in the leaflet “Definitions and meanings of words and expressions used during the Administration of an Estate”

1. Effect of Death

When somebody dies, the first and most noticeable effect is that all, or substantially all, of their affairs and assets are frozen and little or nothing can be done about them until one has obtained either a Grant of Probate or a Grant of Letters of Administration. There are a few exceptions to this rule and these are as follows:-

- (a) Where the Estate is a small Estate or there are small assets, it may be possible to deal with these under the Small Estates Procedure. Broadly speaking, we are talking about assets or an Estate worth less than £5,000. Where this happens it is possible to arrange to encash these using a procedure, which normally involves production of a Death Certificate, the person's Will and a Statutory Declaration made by the next of kin. Procedures vary slightly from organisation to organisation, but are fairly quick.
- (b) Joint property can frequently be dealt with following somebody's death without further formalities. This does, however, depend upon the nature of the joint ownership, for example, a joint Bank Account will almost invariably pass to the survivor and can be dealt with without further formality, but a jointly owner house may not pass so simply.
- (c) In general it is possible to deal with things like personal chattels without a Grant of Probate although it should be borne in mind that irrespective of whether or not one has a Grant of Probate, one must comply with somebody's Will.

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2. What is Probate?

Probate is an official copy of a deceased person's Will incorporated in a document which names the deceased, gives the date of death and names of the Executors. The Executors are the people named in a deceased person's Will as those responsible for handling his or her Estate and, following somebody's death, they become the legal owners of that person's property for the purposes of giving effect to the Will. Where there is no Will, one obtains what is called a "Grant of Letters of Administration". Where there is a Grant of Letters of Administration, you do not have "Executors"; you have "Administrators". There are certain quite important legal differences between a Grant of Probate and a Grant of Letters of Administration and between Executors and Administrators. However, for the purposes of this leaflet, those differences are not material and throughout this leaflet, any references to "Probate" includes "Grants of Letters of Administration", and any references to "Executors" includes "Administrators"

3. What is the purpose of obtaining Probate?

There are two principal purposes behind obtaining Probate. The first is to establish who is entitled to deal with somebody's Estate and who are the people entitled to inherit that Estate. The second purposes is to ensure that the Inland Revenue authorities obtain any Inheritance Tax (Estate Duty) that may be payable on the Estate. To most people, the first of these is probably the most important. However, for lawyers frequently it is the tax aspect that seems to assume the greatest significance.

4. What is the effect of Probate?

The effect of the granting of Probate is to confirm the authority of the Executors to deal with the administration of the deceased person's Estate in accordance with the terms of their Will or in accordance with the terms of the Laws of Intestacy (that is the laws relating to the administration of Estates where there is no Will). In practical terms this is achieved by producing the original Grant of Probate or an official copy of it to all organisations, bodies, etc. involved with the deceased person's Estate. Following production of the Grant of Probate, those bodies will act on instructions received from the Executors.

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5. How do you obtain Probate?

- (a) **Assuming that it is necessary to obtain a Grant of Probate for a deceased relative or friend, the first point to consider is whether one is going to deal with it personally or is going to employ a solicitor. With small and relatively simple Estates it is frequently easiest and cheapest to obtain what is called a Personal Grant of Probate. Instead of using a professional, one goes along to the local County Court, obtains the relevant forms, completes them and obtains a Grant of Probate. This procedure is suitable for people who have time on their hands and are dealing with a relatively simple Estate. However, where an Estate is rather more complicated or if you do not have time, it is generally advisable to consider obtaining professional assistance, which most likely comes from a solicitor. The procedures followed by solicitors are substantially different to the Personal Applications Procedure and in general terms, if one chooses to use a solicitor, then the majority of the paperwork, dealings with the taxman and the Probate Court will be handled by the solicitor with the Executor only dealing with the decision-making process and with the more practical side of things such as distributing personal chattels etc. In the event that you feel a Personal Application is appropriate to the Estate with which you are involved, we will be happy to offer limited guidance, but as this procedure is very different from the solicitor procedure, the amount of guidance that we are able to offer is limited. Nevertheless, we will always be happy to help with any technical points that are involved. The rest of this paper assumes that you have chosen to employ solicitors and relates to the solicitor procedure.**
- (b) In order to obtain a Grant of Probate it is necessary to satisfy Courts as to the validity of somebody's Will and as to who is the Executor, or in the absence of a Will, as to who is entitled to the Estate. This is normally established by means of an Executor's or Administrator's Oath. Although this is extremely important, it is actually a fairly simply document which sets out details of the deceased's name, age and address, of his or her Will or intestacy, of the Executors or of those who are entitled on intestacy, and of the approximate size of the Estate. By this Oath the Executors/Administrators will swear to the truth of these facts and will swear to administer the Estate in accordance with English Law.

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The second main limb of obtaining a Grant of Probate is to satisfy the Inland Revenue on Inheritance Tax, and here the procedure will vary depending on what is involved in an Estate. Broadly speaking, there are two categories of Estate with which one is concerned namely Excepted Estates and Taxable Estates.

(c) Excepted Estate

This is an Estate which, either because of its size or because it is passing to someone who is exempt from tax – usually a spouse or a charity – is not liable for Inheritance Tax. In these estates provided the total value does not exceed £1m, a simplified Tax Return has to be prepared and remitted. The Revenue have the right to request a full Tax Return (as described below) and it remains necessary to obtain and have available all the information that might have to be included had the estate been taxable.

(d) Taxable Estate

This is an Estate where the taxable property passing on somebody's death exceeds the threshold for Inheritance Tax. Above the threshold tax is chargeable at 40%. The definition of “property passing” is complex. It includes firstly any property that the deceased person owned, secondly any property included in a Trust from which the person benefited, thirdly any lifetime gifts made by the person within 7 years of their death, but it excludes (for tax purposes) any exempt property passing to the deceased person's spouse or to charities. It should also be borne in mind that any overseas property is included and is potentially taxable. In such cases it will be necessary to comply with the Probate procedures in the country in which that property is situated. Sometimes it may also be necessary to pay tax in that country although sometimes by virtue of double taxation conventions, some of that tax can be off-set against any tax chargeable in the United Kingdom.

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6. Preparing a Probate Application

In order to prepare the Probate Application, it is necessary to establish full details of a deceased person's assets. Whilst we welcome any help that clients can give to us, experience indicates that it is best for clients to provide us with details of names, addresses, account numbers, etc. and to leave us to do the rest. The reason for this is not that we are trying to create work for ourselves, but that the information required to satisfy the Revenue and Court authorities is very precise and unfortunately lay people rarely ask the correct questions. Please see the separate leaflet *“Information required to obtain a Grant of Probate”* for details of the information that we require.

Having obtained all the information and having got all the relevant assets valued, it is then possible for us to decide whether an Estate is exempt, excepted or taxable and we can set about preparing the Application.

We will prepare the Executor's Oath and the Inland Revenue Account. These will then have to be signed and sworn by the Executors and where relevant the necessary funds obtained for payment of Inheritance Tax (see below). The documents are then lodged with the Probate Registry (a division of the High Court that deals with Probate) and with the Inland Revenue. Assuming that all is in order, the Grant of Probate is normally issued in about 10 working days.

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7. Paying Tax---Taxable Estates Only

The Tax Return used in connection with Estates, normally called the Inland Revenue Account, is a form of self-assessment Tax Return. After Probate is granted, the Inland Revenue will go through the Inland Revenue Account in detail with a view to verifying all the figures contained in it.

If it appears that tax is payable on an Estate, it may be necessary for some or all of that tax to be paid before the Grant of Probate can be obtained. As the main assets of the Estate will have been frozen, this can sometimes present a problem, in that the Executors have got to raise money to pay this tax. Fortunately it is usually possible to use Bank or Building Society Accounts for paying the tax, but on the other occasions it is necessary to borrow money from a Bank in order to pay the tax. There are no hard and fast rules but it is fairly rare that this presents a major problem.

8. What happens after Probate is granted?

Once Probate is granted, the authority of the Executors to deal with the Estate is confirmed and production of the Grant of Probate or an official copy proves this authority. Accordingly, once Probate is granted, one normally sets about registered it with all organisations in which a deceased person was involved or had assets or investments. This enables the Executors to close off Banks and Building Societies, to collect money together and use it to pay off any taxes, debts etc. Payment of these sums is the first priority.

When the Executors are satisfied that they have done this, they then are able to set about paying any legacies or transferring any bequests to the named beneficiaries. At the same time it may be possible to make some sort of interim distribution to the residuary beneficiaries, for example, a house or a block of investments could be transferred. It is also at this stage that one should be able to deal with such things as clearing up somebody's tax affairs to the date of their death. This task is frequently one of the longest and slowest tasks involved in somebody's estate.

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9. Amendments to the Estate – Taxable Estates only

During the course of registering the Grant of Probate, selling or transferring assets, it is almost inevitable in an Estate that is subject to Inheritance Tax, that some amendments will come to light, for example, it is discovered that somebody had more or less shares than was originally thought. Alternatively, it may be that the District Valuer (an officer of the Inland Revenue specialising in property valuations) decides that somebody's house was worth more, or less, than originally notified in the Inland Revenue Account. These changes must be notified to the Capital Taxes Office and will result in consequential amendments to the Inheritance Tax bill. Sometimes there may be a process of negotiating values and this can be quite long-winded. On other occasions this may all happen within a matter of a few months.

10. Clearance Certificate – Taxable Estates only

Where an Estate has been subject to Inheritance Tax once the Revenue have completed their examination of the tax returns and have completed their enquires they will automatically issue a Clearance letter. This is a short formal document that the Revenue grants by reference to the documents and information that they have seen. It absolves the Executors from any further liability to Inheritance Tax that may arise from matters they have disclosed. It does not, however, absolve the Executors from any liability for matters which have not been disclosed and if by any chance any other matters came to light after the Clearance Certificate was granted, it would not protect the Executors who would be obligated to notify the Revenue of the amendments. **The Executors' liability for Inheritance Tax is a personal one and in certain circumstances can extend to a liability to pay Inheritance Tax on lifetime gifts made by a deceased person.** It follows from this that when acting as an Executor, it is necessary to make very full enquiries about all relevant matters, to ensure that they are fully disclosed and only to distribute the Estate when one is satisfied that all matters have been disclosed and all tax paid. There can be substantial penalties for non disclosure even when it is the result of a mistake or misunderstanding accordingly great care is required.

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11. Deeds of Variation

Wills sometimes offer families opportunity for Inheritance Tax planning by seeking to ensure that assets of the Estate are distributed in a manner which minimises the tax paid by the family. In some instances, if a Will has failed to take full advantage of Inheritance Tax reliefs, it may be possible for the family to execute what is called a Deed of Variation. In crude terms this involves re-writing a section of the deceased's Will. Although this is frequently done to obtain some tax advantage it can also be done for other reasons, for example to provide for somebody who was neglected by the Testator, to satisfy the claims of a former spouse or possibly to create Trusts which may protect a member of the family. Such Deeds require to be executed within 2 years of death. Sometimes they may be executed before Probate. We will always advise in any case where we think there may be grounds for looking at a possible Deed of Variation.

12. Taxation during the administration of an Estate

During the administration of an Estate, the Estate is treated as if it is a separate taxable individual. Income received by the Executors is subject to tax at the rate applicable to investment income or at the basic rate. Capital Gains are, subject to a tax-free allowance, subject to tax at 18%. The Executors are under an obligation to notify all beneficiaries of their share of income from the Estate and, depending on circumstances, may also be under an obligation to submit Tax Returns. Any income received during the period of the administration is deemed to be the income of the beneficiaries and ultimately must be included in their own Tax Returns. Beneficiaries should always take care to ensure that they obtain from the Executors details of their income for any relevant tax year before submitting their Tax Returns. Sometimes tax advantages can be obtained by trying to arrange that Capital Gains arising in an Estate are treated either as the gains of the Estate or alternatively gains of the beneficiaries. We will always attempt to obtain the maximum advantages that can be obtained from this sort of scheme.

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13. Estate Accounts

When all matters relating to the administration of the Estate have been completed, it is normal to provide Estate Accounts and we will prepare appropriate Accounts. These will vary depending upon the complexity of the Estate and the circumstances of the deceased and of the beneficiaries, but will aim to disclose all information to show that the administration has been dealt with property and to provide beneficiaries with such information as they may need for their own future tax affairs. In theory such Accounts must be available for production to the Courts although in practice it is extremely rare that this is required. However, occasionally the Inland Revenue will request copies of the Accounts.

14. Timescale

We normally estimate that it will take between 2 and 3 months from the date of someone's death to obtain a Grant of Probate, although in simple cases and emergencies it may be possible to obtain a Grant very much more quickly. Once a Grant is obtained a simple Estate, where there is no tax to pay and there are no complicated property transactions, can normally be completed within 3 to 6 months. Where there is Inheritance Tax to pay, or where some complications arise, for example over the deceased's debts, it is likely that it will take up to 1 year. Occasionally it may take more than a year to deal with an estate but generally speaking that is rare

15. Disputes

Occasionally a dispute may arise over the terms of a Will or some other aspect of the administration. In general we shall seek to anticipate and resolve such disputes in such a way as to minimise the inevitable delay and costs to the estate that are caused by such disputes. If it proves impossible to resolve such matters amicably, the dispute (but not the estate administration) will be passed to our litigation department who have considerable experience of such disputes. Occasionally, when such disputes arise, we may find ourselves in a position where there is a conflict of interest. If this happens it may be necessary for other solicitors to become involved. If it is thought that a dispute could arise please ensure we are notified as soon as possible; the sooner we know the better are the chances of resolving the dispute early.

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