Smith Law Partnership
Solicitors

CLIENT GUIDE TO PROBATE MATTERS

Introduction

The purpose of this Guide is to tell you in very simple terms what is involved in obtaining a Grant of Representation and administering an estate.

What is a Grant of Representation?

A Grant of Representation is an order issued by one of the Probate Registries of the High Court, which confirms or confers the authority of the "personal representatives", i.e. the executors or the administrators, to administer the estate of the deceased person. There are two types of Grant of Representation:

(a) A Grant of Probate.
This is issued to one or more of the executors named in the Will to deal with the estate. It confirms or "proves" the authority of the executors appointed by the Will.

(b) A Grant of Letters of Administration.
This is issued when the deceased died without leaving a Will (which is known as being "intestate"). The persons who obtain a Grant of Letters of Administration are known as administrators and must establish their entitlement to apply for a Grant.

The duty of the personal representatives is to administer the estate. This includes collecting all the assets, settling all the liabilities, exercising any available powers and discretions and then distributing the rest of the estate in accordance with the terms of the Will or the rules of intestacy. It is normally not possible to collect assets (apart from joint accounts which pass automatically to the survivor) or to pay liabilities of the estate out of the assets of the estate until the Grant of Representation has been obtained. However, it is possible to pay any funeral expenses with the agreement of the Bank.

What is needed to obtain a Grant of Representation?

The personal representatives must swear an Affidavit for the Court. The executors must say that they are the executors appointed by the Will. The administrators must establish their entitlement to take out a Grant. In both cases, the personal representatives must state the value of the gross and net estate of the person who has died, and they must swear that they will ensure that his or her property will be distributed in accordance with the law and with the Will if there is one.

It is also necessary to complete Inland Revenue Inheritance Tax Accounts. The information supplied to the Revenue must be correct otherwise penalties can be incurred. It depends on the type of assets, the value of assets and gifts made as to whether a full inheritance tax account is required or a shorter form.

You can see, therefore, that we shall need to ask you for details of all the property and all the debts or liabilities before we make the application for a Grant of Representation. The property will include any house, car, furniture, savings, investments, life insurance policies, personal possessions, jewellery and anything capable of being valued and of being transferred from one person to another. The liabilities may include a mortgage, outstanding bills, etc. and will also include the funeral expenses.

How is a grant obtained?

An Oath for Executors or an Oath for Administrators must be lodged at one of the local Probate Registries of the High Court – we tend to use Ipswich. It will also be necessary to submit the Inland Revenue Inheritance Tax Account to the Inland Revenue. The process can be as short as two weeks and as long as two months depending on the individual circumstances of the person who has died and whether a full Inheritance Tax Account is necessary.

The Grant is the document which allows the executors or administrators to administer the estate. This means, for example, that the Grant will be registered with companies in which there were shares, or with banks or building societies in which there were accounts in the deceased's sole name. After the Grant has been registered, it will be possible for investments to be cashed or transferred and likewise any property can be sold or transferred to the beneficiaries. We would anticipate the encashment or transfer of assets to take about three to eight weeks depending on the types and number of assets involved. In our experience, dealings in shares which require contact with the registrar will take eight weeks (and sometimes longer where share certificates are missing). Any legacies due under a Will are normally paid after the collection of the majority of the assets. A final distribution of all the assets can only be made when all the liabilities especially tax liabilities have been ascertained and settled. This can take some time particularly where values are uncertain and have to be agreed with the Inland Revenue.

The Final Winding Up

There comes a point at which all the assets will have been collected and the debts, expenses and legacies paid. The balance of the estate will then be ascertained and can be distributed or held in trust for the beneficiaries under the terms of the Will or intestacy if there is no Will. When the final distributions have been made, we shall prepare estate accounts setting out full details of the administration of the estate. If the estate or its administration is complex, then it may be possible for the personal representatives to make interim distributions to beneficiaries before the final winding up.

Gifts and Variations

In certain cases we receive requests from beneficiaries to divert their inheritance to another person, possibly a child or grandchild. It is possible to vary gifts so that the varied gift is deemed (by HMRC) to have been made by the person who has died. This is beneficial from an Inheritance Tax view and may also have positive Capital Gains Tax consequences. We ask that you let us know if you wish to consider making such an alteration – such a variation MUST take place at least 3 months, but not more than 2 years, after the death of the person who has died and must be in the correct legal form.

Wills

Please bear in mind that your circumstances may have changed sufficiently for you to revisit your own Will or indeed make one. We are happy to advise or help in any way we can. Your call to us is confidential and we are independent advisors.

Financial Planning

We do not offer financial advice, however, if you think you need investment advice we have personal experience of a number of local independent financial advisors who we are happy to recommend. Please note we have no formal relationship with any such organisations – we recommend them because we believe they look after their clients well.

Summary

In order to keep you informed we will, throughout our correspondence, refer to different stages of the Probate process, as follows:

Stage 1	Registration of death formalities; obtaining values of all assets; checking liabilities, contacting beneficiaries; initial HMRC enquiries
Stage 2	Preparation of Inheritance Tax forms and the Grant of Probate
Stage 3	Submission of Inheritance Tax Accounts; application for the Grant of Probate
Stage 4	Receipt of Grant; registration of Grant with asset holders
Stage 5	Collection of assets; completion of income tax affairs; dealing with Inheritance Tax; payment of smaller legacies
Stage 6	Completion of estate accounts and accounting to the executors; Inheritance Tax clearance; income tax matters finalised.

For further details please contact a member of the team on **01376 321311**.