

Winding up an estate

Introduction

When a person dies everything they leave behind is known as his or her “estate”. This estate then reaches its new owners either according to the terms of the will of the person who has passed away or if there is no will then the person is said to have died “intestate” and the estate goes to the next of kin according to rules laid down by law.

Wills

To be valid a will must be in writing and signed or marked by the maker in presence of 2 witnesses.

Beneficiaries

The people that share in the estate of someone that has died.

Executors

If the person who has died left a will it is almost certain to appoint “executors”. These may be friends, or next of kin, or professional people such as solicitors. It is the duty of executors to collect the deceased's estate and pay debts and taxes applicable and clear up the dead person's affairs and then transfer property or assets to the beneficiaries. The law says that executors as they are named in the will become executors and can start to wind up an estate immediately and that the grant of probate confirms their authority.

Administrators

If there is no will then the person who looks after the deceased's property is an “administrator”. The people who can apply to be administrators are laid down in a list with those at the top usually the closest relatives as having the first claim. If there is no will then it is difficult for an administrator to act until letters of administration have been obtained.

Grant of Probate or Administration

The procedures to be followed in order to effect the transfer of assets or property from an estate to the ownership of the beneficiaries vary depending upon the type of assets involved. Often the executors or administrators cannot make much progress with the transfer of assets until they have

obtained a “grant of representation” from the court. The court is the local probate office of the High Court and the grant is obtained by sending off the proper papers and fees to the Court and in the majority of cases there is no need for anyone to personally attend the court to obtain the grant of probate or for a court hearing. The grant is an official document which proves the status of the executors or administrators and enables the estate to be wound up. There are two main types of grant of representations: - If there is a will which appoints executors then the grant is a grant of probate, if there is no will then it is a grant of administration. If there is no will then it is difficult for an administrator to act until letters of administration have been obtained.

When is a grant needed?

The grant of representation can be shown to anyone who needs to see it. It enables, for example, property or investments to be sold and for bank Accounts to be closed. Banks may allow accounts to be closed without probate if the sums involved are small - usually under £20,000. Probate is always required when there is a house or other land and is usually required for larger or more complex estates.

Trusts and Trustees

If a beneficiary is under 18 then usually their share will be held in trust for them until they are 18. Sometimes a later age is specified in a will. If no age is specified then the usual age is 18. If a beneficiary is over 18 then they are entitled to their share straightaway. The trustees holding the money are usually the same people as the executors.

Tax

There may be inheritance tax to pay when someone dies. The tax starts on estates above £325,000 and the tax rate is 40%. Inheritance tax can be quite complicated to work out and there are reliefs and allowances which may reduce the tax payable. Usually the tax or a part of it has to be paid within 6 months of the month of death and before probate is granted. There may also be other taxes to pay such as income tax on a property which is rented out.

David Gray LLP can help with the administration of the estate including ascertaining the value of the estate, assisting in the disposing of the contents of a house, helping to deal with the sale of property, dealing with the conveyancing on any property, transferring stocks and shares, obtaining probate valuations of assets, applying for the Grant of Probate or Letters of Administration, advising as to

Inheritance and Income Tax and advising executors and beneficiaries as to their duties and entitlements.