

## **ISON HARRISON PROBATE FAQ**

### **What is involved in the Administration of an Estate?**

Administering an estate involves dealing with all the property, investments and other assets of the person who has died and settling all their debts, including Income Tax liabilities, and then distributing the estate between the beneficiaries entitled under the deceased's Will or the Intestacy Rules. If the estate exceeds a certain sum, known as the Nil Rate Band (currently £325,000 for the tax year 2010 / 2011), there may also be Inheritance Tax payable, subject to a variety of tax reliefs. Estates falling within the Nil Rate Band may also be taxable if the deceased made lifetime gifts or settlements, or was a beneficiary under a trust or settlement.

The most important form of tax relief is the complete exemption from Inheritance Tax between married couples and couples in Civil Partnerships, but there are also highly beneficial, but complex rules providing tax relief on business property and agricultural property. Charitable gifts are also exempt from Inheritance Tax.

### **What if there is no Will?**

If the person who has died has left a Will, the Executors can prove it and a Grant of Probate can be obtained. If there is no Will, the deceased is said to have died "Intestate" and his or her estate is distributed in accordance with statutory rules. In such cases, a Grant of Letters of Administration is obtained, normally by a close relative.

### **What if there are problems administering the estate?**

If an estate is incorrectly administered, or if the money is distributed before all the debts have been discovered and settled, the Executors or Personal Representatives may be made personally liable. The Administration of an estate may also include defending attacks on the validity of a Will on the grounds of lack of testamentary capacity or undue influence.

### **Is it always necessary to obtain a Grant of Probate or Letters of Administration?**

No. It is often the case that husbands and wives hold their assets jointly and in such cases the survivor of them may take over any jointly-owned assets upon production of the Death Certificate. However, even in such cases, it may be helpful to consult us for general advice first or to deal with any minor assets which are not in joint names. Similarly, it may still be necessary to settle the Income Tax of the person who has died. In many cases it is not necessary to obtain a Grant of Probate or Letters of Administration where the estate does not exceed £5,000.00, but even so if there are a number of small assets totaling less than £5,000.00, it may still be swifter and more convenient to obtain a Grant.

### **What is a Grant of Representation?**

It is a court order issued by one of the Probate Registries of the High Court. It confers authority on the Personal Representatives (executors or administrators) to administer a deceased person's estate. There are a number of types of Grant of Representation but

the two that are most common are a Grant of Probate and a Grant of Letters of Administration. A Grant of Probate is issued to the executor, or executors, named in the Will and it confirms the authority of the executors whom the Will appoints. A Grant of Letters of Administration is issued where there is no Will, or where there are no executors appointed in the Will or the named executors have died. A Grant of Letters of Administration is issued to the persons entitled in law to act as the deceased person's administrators.

Personal representatives are obliged to administer the estate of the deceased according to law. This involves collecting in all the assets, settling all the liabilities, and distributing what is left in accordance with the Will or the rules of intestacy. Usually, apart from joint accounts which pass automatically to the survivor, a Grant of Representation has to be obtained before it is possible to gather in the assets and discharge the liabilities of the estate.

### **Is it possible for someone to make a claim against my Estate?**

Yes. Under the Inheritance (Provision for Family & Dependents) Act 1975 it is possible for certain persons to make a claim against your estate if you have failed to make reasonable financial provision for them. The persons who can make such a claim include a spouse and also a former spouse. A former spouse cannot however, make a claim if she or he has remarried or if the Court barred such a claim on the grant of the divorce. A child can also make a claim as can any person who immediately before your death was being maintained wholly or in part by you, or was living with you for two years immediately before your death. Such a claim has to be made within six months of the Grant of Probate of your Will, though this period can be extended by the court in exceptional circumstances. It may therefore be wise to delay the distribution of the Estate until after this time period has expired.