

## **ISON HARRISON PROBATE GLOSSARY**

### **Abatement**

The process of determining the order in which the estate will abate to pay debts, liabilities and expenses.

### **Ademption**

When a person makes a declaration in their Will to leave a gift to another but revokes the gift before death either by destroying it, selling it or disposing of it in some other way.

### **Administration**

Managing the affairs of the deceased. This involves establishing, collecting and distributing the assets of the estate as laid out in the Will or, where there is no Will, according to the intestacy rules that apply.

### **Administration period**

The time taken from the date of death to the completion of the estates administration.

### **Administrator**

The person who deals with distributing the estate in cases when there is no Will.

### **Affidavit**

A written statement, confirmed by oath, for use as evidence in court.

### **Apportionment**

The proportionate division of income between certain beneficiaries.

### **Attorney**

Someone appointed by another to act on their behalf.

### **Attestation**

Witnessing a signature.

### **Asset**

Property, money or belongings owned by the deceased.

### **Beneficiary**

Anyone or thing that is entitled to a share of the estate of the deceased.

**Bequest**

Any gift left in a Will that is not land or buildings.

**Capital Taxes Office**

The Inland Revenue Department that deals with all aspects of inheritance tax.

**Capital Gains Tax**

Often referred to as CGT it is a tax on the profit made when selling an asset.

**Chargeable Gift**

An item given in a Will on which tax may have to be paid.

**Chattels**

Any movable personal property or belongings not used for business.

**Codicil**

An addition or change made to a Will. It has to be signed and witnessed in the same way as a Will. A codicil may be needed, for example, to increase a cash legacy, change an guardian or executor named in a Will, or to add another beneficiary. Codicils should only be used to perform minor changes to the existing Will. If more complicated changes are needed it is advisable to make an entirely new Will.

**Contingent Legacy**

A gift with a condition attached for example a gift conditional on the beneficiary reaching a certain age.

**Conveyancing**

Conveyancing is the legal work that needs to take place when buying, selling and re-mortgaging property.

**Covenant**

A legally binding obligation contained in a deed.

**Crown**

Where your estate goes if you have no next of kin and did not make a Will.

**De facto**

A common law spouse. Not legally married, but living together as if married.

**Deceased**

The person who has died.

**Deed of Variation**

A Deed of Variation can be used by beneficiaries to redirect inheritance entitlements in a Will or intestacy for tax purposes within two years of the date of death. The most common reason for drafting a Deed of Variation is to reduce the amount of inheritance tax payable from the deceased's estate.

**Devise**

A gift of leasehold or freehold property stated in the Will.

**Discretionary Trust**

A trust where the trustee has the full power to decide when and which certain beneficiaries are to receive their capital.

**Donee**

The person who receives the gift.

**Donor**

The person leaving the gift.

**Estate**

The property, money and possessions of the deceased person.

**Estate Accounts**

Accounts of the financial transactions recorded during the Administration Period.

**Excepted Estate**

An estate where no inheritance tax has to be paid because the Inheritance Tax Threshold has not been met.

**Executor**

The person appointed in a Will or codicil to administer an estate.

**Fixed / Floating charge**

A charge or mortgage is created over a specific asset or assets as security for borrowings or other debts.

**Gift**

Any legacy left in a Will.

**Grant of Letters of Administration**

The legal document issued by the Probate Registry, appointing an administrator to deal with an estate. This is issued when there is a Will but no named executor, where the executors are unable to apply, where they do not wish to be involved in dealing with the estate, or where the deceased has not made a Will or any Will that the deceased has made is not valid.

**Grant of Probate**

The document obtained by the executors of a valid Will from the Probate Register

**Grant of Representation**

An order from a court authorising a person to deal with the estate of the deceased when no Will is in place.

**Guardians**

The people chosen by the testator to look after their children in the event of their death.

**Immovable Property**

Freehold or leasehold property.

**Indemnity**

An agreement to compensate someone for any loss suffered as a result of a failure to act by another.

**Inheritance Tax**

Often referred to as IHT, it is the tax which is payable on the deceased's estate.

**Inheritance Tax Threshold**

The amount allowed before tax is payable.

**Inquest**

A public enquiry, held by a coroner into the circumstances surrounding a death.

**Insolvency**

When there is a shortfall of funds to meet all liabilities.

## **Instrument of Variation**

A document which varies a Will or the provisions of intestacy after a person has died.

## **Interest**

The right to property.

## **Intestacy**

The name for the situation which arises when someone dies without having made a legally valid Will. Their estate is then distributed according to the laws governing intestacy.

## **Issue**

All the direct descendants of a person.

## **Intestate**

When a person dies with no legally valid Will.

## **Joint Tenants**

Property that is owned by 2 or more people. Joint tenants are usually husband and wife and in the event of the death of one tenant, the other automatically becomes the owner of the whole property. In these situations it is not possible for a tenant to make a gift of their share of the property to someone else as it is not theirs to give.

## **Lapse**

When a beneficiary dies before the testator.

## **Last Will and Testament**

A legal document that lays out the way a person wishes to have their estate distributed upon death. It can also contain their wishes for their burial/cremation.

## **Laws of Intestacy**

The Intestacy Laws (1925) dictate how your estate will be distributed should you die without leaving a legally valid Will. See our Intestacy Diagram to determine who will receive your property and possessions should you die intestate.

## **Leasehold**

A form of property tenure where one party buys the right to occupy land or a building for a given length of time.

**Liabilities**

The debts that need to be settled by the estate following the death of the deceased.

**Life Interest**

The right to enjoy for life or for a specified time period either money or property which will eventually revert to the original estate in some way on death.

**Living Will**

A Living Will usually covers specific directives as to the course of treatment that is to be taken by caregivers. Living Wills cannot necessarily be enforced by law.

**Matrimonial Home**

The place where a husband and wife live.

**Minor**

A person under the age of 18.

**Moveable Property**

Any property that is not immovable e.g. personal chattels.

**Next of Kin**

The nearest blood relative of the deceased.

**Nil Rate Band Allowance**

The amount that can be passed to beneficiaries without paying Inheritance Tax.

**Nominated Property**

Assets that can be given to a beneficiary outside of a Will or estate.

**Notary Public**

A legal officer appointed to deal with legal documents for international use.

**Oath**

A pledge to tell the truth often calling upon God as a witness.

**Pecuniary Legacy**

A gift of money.

### **Personal Chattels**

Any personal and domestic items owned by a testator/testatrix excluding business assets.

### **Personal Representative**

A person entitled to deal with the deceased's estate.

### **Post Mortem**

A medical examination of the body to determine the cause of death.

### **Potentially Exempt Transfer**

A gift made during ones lifetime that is exempt from Inheritance Tax if the donor lives for seven years after making the gift.

### **Power of Attorney**

Authorisation to act on someone else's behalf.

### **Power Reserved**

Where a named executor on the Will declines to act but reserves the right to do so at a later date.

### **Predeceased**

Someone who dies before the person who has made the Will.

### **Probate**

Probate is an official form that gives the executors of a Will the right to deal with the deceased's assets and property. It acts as proof that the executors have the authority they need to handle the estate of the deceased person. This legal procedure must be undertaken to establish that a Will and codicil are genuine and valid.

### **Probate Registry**

A court within the family division of the High Court. Responsible for making sure that the Will is valid and the applicant is entitled to handle the estate of the deceased.

### **Pro Rata**

Proportionately.

### **Proving the Will**

Making the application for probate to the Probate Registry.

**Realisation**

Converting estate assets into cash.

**Registrar**

The person who registers the death. Every death must be registered by the Registrar of Births, Deaths and Marriages.

**Renouncing Probate**

Where a named Executor in a Will signs a legal document cancelling his appointment from the start of the administration period.

**Residuary Beneficiary**

Any person entitled to receive the whole or a share of any residue of the estate, under the terms of the Will or on intestacy.

**Residuary Estate**

What is left of the estate after all liabilities and expenses have been paid.

**Residue**

What's left after the money legacies, specific gifts, funeral expenses, Inheritance Tax, and all other expenses.

**Revocation**

When the testator decides to change their Will completely and invalidates the previous one.

**Satisfaction**

Settling a debt or obligation.

**Settlor**

A person who has set up a trust.

**Severance**

The action of splitting the ownership of a property. Usually done so that joint tenants can become tenants in common and leave their share of the property to someone other than the other tenant.

**Social Fund**

Part of the Social Security system which may provide help with the cost of a funeral.

## **Specific Legacy**

Specific gifts left to specific people.

## **Tenant for Life**

Property that is owned by 2 or more people. Joint tenants are usually husband and wife and in the event of the death of one tenant, the other automatically becomes the owner of the whole property. In these situations it is not possible for a tenant to make a gift of their share of the property to someone else as it is not theirs to give.

## **Tenants in Common**

Property is owned jointly but each joint owner has a distinct share forming part of their estate on death which does not pass automatically to the surviving tenant.

## **Testament**

Another name for a Will.

## **Testate**

Dying leaving a Will.

## **Testator**

The person who sets out his wishes and requests as to how their estate should be divided in the form of a Will.

## **Testatrix**

A female testator.

## **Trust**

An arrangement set up by Will or deed with Trustees being appointed and given money or assets to hold and manage for the defined beneficiaries.

## **Trustee**

Someone who is given the legal responsibility to holds any assets until nominated beneficiaries meet certain criteria set out in the deceased's Will e.g. until a beneficiary reaches the age of 18. Trustees normally have powers to distribute monies and have full power to sell and invest.

## **Will**

A form of instructions indicating how someone wishes to dispose of their assets on death.

**Witnesses**

The persons who must be present to see the testator sign the Will. They must also sign the Will themselves and should not be beneficiaries of the Will.