



## PROBATE

In a time of bereavement and need we are there to help you with not only professional legal advice but also practical assistance in dealing with the estate of a loved one. We offer a sympathetic, courteous and considered approach in what can be a very emotional and distressing time. We help with as much or as little assistance as you feel appropriate. Such assistance will be provided in the most efficient and economical manner at all times.

We have electronic access to a probate case management system and all important work in your case will be carried out by an experienced Solicitor and staff with whom you will have telephone and personal contact throughout the transaction. We can tailor our assistance to meet your individual needs.

At AWG we find that we are often asked many common questions about what happens on a death and with regard to administering the estate of the deceased.

When someone dies authority from the Probate Registry is normally required for the deceased's Personal Representative to administer the estate. The Personal Representative is either an Executor appointed in the deceased's Will or an Administrator if there is no Will. The authority takes the form of a Grant of Representation; sealed copies of which are sent to the companies with which the deceased held investments and they, knowing the person named on the Grant of Representation is the correct person to deal with will release the funds held by them to them.

The main types of Grant of Representation are:-

(a) Probate

Where the deceased left a valid Will appointing an Executor who is able and willing to act in the administration of the estate.

The Executor will usually be expressly appointed by a Testator in their Will. Sometimes however particularly in a homemade Will the appointment will be implied without expressly designating someone to be his Executor. The Testator

will have shown that he intends them to act as such by virtue of the Executor like duties expressly conferred on them by the Will e.g. to pay all my debts.

An Executor's appointment may be limited to a particular property for example my literary Executor, my business Executor.

An appointment by a former spouse or civil partner will fail if the marriage was subsequently dissolved.

The maximum number of Executors to be appointed is four and the minimum is one.

Partnerships or Trust Corporations can also be appointed as Executors.

An Executor who does not want to act can formally renounce his right to probate. If however he does not want to act immediately he may wish to reserve the right to join in the administration of the estate at a later stage if it becomes necessary.

The office of Executor is as a general rule personal to the Executor appointed by the Testator and the Executor cannot assign or transfer his office to anyone else but there are procedures which arise if the Executor dies after the Testator but before taking out a Grant of Probate.

(b) Letters of Administration with Will annexed

Where the deceased has left a valid Will but no Executor is able or willing to act in the administration of the estate. There are rules on who can apply to administer the estate but normally it is the person named in the Will who inherits the residue of the estate after expenses and any gifts have been paid.

(c) Letters of Administration (Sometimes referred to as a Grant of Simple Administration)

Where the deceased has not left a valid Will i.e. is intestate.

There is an order of priority of who can apply for a Grant of Letters of Administration which follows the order of entitlement to the intestate's estate. Please see our brochure on intestacy.

If there is no person with a beneficial interest in the estate the Treasury Solicitor is entitled to a Grant if he is claiming the estate as bona vacantia for the crown.

If the deceased died insolvent and if all persons who are entitled to a Grant under the provisions have been cleared off a Grant may be made to a creditor of the deceased.

Anyone can be appointed an Executor or have the right to take out a Grant of Letters of Administration however the Grant could not be issued to someone who lacked the capacity to act as a Personal Representative at the time of the application. Therefore an infant cannot take out a Grant until he reaches the age of eighteen. Mental disorder could also disqualify an Executor from taking out a Grant.

A Grant may be issued to a person resident outside England and Wales but the Court prefers to have Personal Representatives resident within England and Wales.

At the same time as the application for a Grant of Representation is made an HM Revenue & Customs form needs to be completed and lodged. The documents must be lodged leading to the Grant at any time after the death but no Grant application can be submitted within seven days of the death. The Personal Representatives are required to deliver an account to HM Revenue & Customs giving full details of the deceased's estate for Inheritance Tax purposes. An Account must be delivered within twelve months from the end of the month in which the deceased died or within three months beginning the date when the Applicant commenced acting as Personal Representative. The Grant of Representation will not issue to the Personal Representatives until the Account has been produced at the Probate Registry showing that Inheritance Tax payable on the delivery of the Account has been paid or that no Inheritance Tax is payable. The only exception to this is where the estate satisfies the requirements for an excepted estate.

If you require any further information regarding any of the above please contact us.

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