PROBATE AND ADMINISTRATION OF ESTATES

When someone dies - Administration of Estates

WHAT PAPERWORK IS NEEDED TO START THE PROCESS?

Probate is the term used to describe the legal process that you must go through to enable someone to deal with the assets of a deceased person.

In order to deal with the assets it is necessary to apply to the High Court for authority to deal with the assets.

There are three types of Grants depending on the circumstances:

1. GRANT OF PROBATE: where a person dies leaving a valid will and appoints an Executor.

2. GRANT OF LETTERS OF ADMINISTRATION: where a person dies without having made a valid will, they are deemed to have died intestate. The Grant issues to the person or persons who were their nearest next of kin at the date of death. The Succession Act 1965 determines who the next of kin is.

3. GRANT OF LETTERS OF ADMINISTRATION WITH WILL ANNEXED: where a person dies having made a valid will and a person other than the executor applies the Grant issues to the persons entitled by law.

The Grant is necessary as when someone dies their assets are frozen.

For example banks, credit unions etc. will freeze the deceased's assets and generally only upon production of a Grant will they release funds.

WHAT PROBLEMS CAN ARISE THAT PEOPLE SHOULD BE AWARE OF?

All the paperwork for the probate application must be completed in the exact format required by the Probate Office.

Incomplete applications or applications which do not comply with the rules will be rejected which will result in delay, extra cost and frustration.

The Executor will have to make a return of all assets and liabilities of the deceased to the Revenue by completing an Inland Revenue Affidavit. This is a very complex and detailed document, even the slightest error will result in it being rejected.

Once the paperwork is completed and the Grant issues the job does not end there. The Administrator must then distribute the estate in accordance with the Will – or the law if there is no will.

Even what can appear as the most straightforward of administrations can have its pitfalls.

For example, Mr Browne was administrator for his brother who passed away. He decided to administer the estate himself. There was no Will. He had two siblings one of whom passed away before his brother. He did not realise that the children of his pre-deceased sibling were entitled to share in their parent's share of the estate until after he had distributed the assets and the children had taken a claim. This is just one example of the complexity of the legal rules in administering assets.

Even what can appear as the most straightforward of Wills can have its pitfalls.

Having spent an extensive amount of time dealing with the administration of the estate he then needed to deal with these issues which had only come to light when his deceased brother's family sought advice. This is just one example of the complexity of the legal rules surrounding the administration of assets.

The Executor will have to make a return of all assets and liabilities on behalf of the deceased to the Revenue by completing an Inland Revenue Affidavit. Very complex.

They will also be required to complete an Oath confirming that they will administer the deceased's estate in accordance with the law. Must 100% correct and precise.

e.g. different names, substitute executors, gross estate (net for fee card)

ARE THERE CIRCUMSTANCES WHERE AN EXECUTOR CANNOT TAKE OUT A GRANT WITHOUT A SOLICITOR?

- Where the person entitled to apply for a Grant of Representation is a Ward of the Court or a person of unsound mind
- Where the person entitled to apply is a minor (a person under the age of 18 years)
- Where there are issues concerning the validity of a will
- Where there are issues among the next of kin regarding the estate
- Where the original will has been lost
- Where a beneficiary of in excess of €20,000 of an estate is non resident in this jurisdiction and the potential applicant for the Grant is also non resident
- Where the deceased dies without making a will (intestate) and was domiciled outside of the Republic of Ireland and leaving assets within this jurisdiction and no Grant of Representation has been extracted in the place of domicile (domicile is a legal term and used to describe the place in which the deceased had their permanent home.
- Where the deceased dies domiciled outside of the Republic of Ireland, leaving a will in a foreign language
- Where the deceased dies domiciled outside of the Republic of Ireland leaving a will which has not been proved in the law of domicile and a person other than the executor intends to apply for a Grant within this jurisdiction

IS IT ALWAYS NECESSARY TO TAKE OUT PROBATE/ADMINISTRATION?

No,

If the assets are not significant generally a bank will release funds without production of the Grant for example if the estate comprises €7,000 a bank would not insist on production of a Grant simply to deal with this and would release to the next of kin if they provided them with an Indemnity.

Banks differ on the amount they will release without a Grant.

People can also nominate a person who will be entitled to take over their account. This usually happens with credit union accounts, post office accounts or assurance policies.

Another situation where you might not need a Grant is if properly is held jointly as joint tenants.

WHAT HAPPENS IN THE CASE OF PROPERTY THAT IS JOINTLY OWNED?

If a Testator owns property jointly with one or more people the Solicitor will need to establish if the Testator owned that property as joint tenants or tenants in common.

If it is the former i.e. a joint tenancy the will of the Testator will have no bearing on what happens to the property, ownership will automatically pass to the surviving owner.

A very common example of this is the family home – in most cases nowadays when couples by the family home it is in joint names and if that is the case ownership will pass to the survivor on the death of the husband or wife.

If on the other hand the Testator and one or more other people owned that property as tenants in common the Testators share will pass to whatever beneficiaries are named in the will, unless the Testator and his co-owners have what we call a co – ownership agreement which is

a agreement which regulates what happens when one of the owners dies – there is usually a buyout clause for the other owners.

WHO IS RESPONSIBLE FOR TAKING OUT THIS GRANT?

If a person dies leaving a will the Executor is responsible.

If there is no will the law determines who is entitled to take out the Grant.

The legislation that governs this area is the Succession Act of 1965 and the Act sets out very clearly the priority in which people can extract a Grant of Letters of Administration.

To give examples:

1. If a person dies, and is survived by his wife and children, the person that is entitled to take out the grant is the surviving spouse

2. If on the other hand there is no surviving spouse it is children that are next entitled to apply for the Grant.

3. Another quick example is a case of an unmarried person dying survived by his parents and brothers and sisters. In that case either or both of his parents can apply for the Grant.

STEPS THAT MUST BE TAKEN IN ORDER TO APPLY FOR THE GRANT OF PROBATE/ADMINISTRATION?

In most cases you will find that the will is held by the Solicitor that acted for the Deceased person and the Executors will have knowledge of it.

It is advisable for anyone who makes a will to let either the Executor or a family member know where the original will is kept.

What you will generally find is that the Executor will make contact with the Solicitor to inform them that the Testator has passed away.

The Solicitor will make arrangements for the Executors to call to his/her office at which stage the Will will be read.

SHOULD THE EXECUTORS BRING ANYTHING WITH THEM TO THIS MEETING?

Yes!

The Executors should bring with them a copy of the Death Certificate. It is always helpful to bring all paperwork for bank accounts, assets, insurance policies, pensions etc.

WHAT WILL HAPPEN AFTER THAT MEETING?

Essentially the Executors and the Solicitors will be on a fact finding mission.

In order to apply for the Grant of Probate/Administration the Executor and the Solicitor first need to supply a list of assets and liabilities of the Testator to the Revenue Commissioners. This is done by way of Affidavit and on a form called the Inland Revenue Affidavit.

So once the will has been read the Solicitor and the Executor will need to establish what assets the Testator owned, their value and any debts owing by the Testator in order to complete the Inland Revenue Affidavit.

This Affidavit also requires details of the beneficiaries so it is usually the point where you would write to the beneficiaries to inform them of their entitlements under the will and obtain the information from them that will be required by the Revenue Commissioners in order to process the Inland Revenue Affidavit.

HOW LONG DOES THIS PROCESS TAKE?

It largely depends on the size of the estate. If the Testator owned a lot of properties and perhaps owned property abroad and also had

multiple bank accounts and life insurance policies it can take some time to gather all of this information.

The Executors job can be made easier if a person making a will thinks to leave a brief summary of their assets with the will – this will enable the Executor and the Solicitor to start the process a lot quicker by knowing where and what to look for. In some cases the Executor and Solicitor will have no idea what assets the Testator owned and they have to trawl through "the shoe box" at home in order to get clues as to where to start looking.

Once the Executor and Solicitor are satisfied that they have located all of the assets and the Inland Revenue is complete it is sent to the Revenue Commissioners and after processing the form they will issue what is known as the Certificate for the High Court. This if you like is the go ahead to make the application to the Probate Office.

AND WHILE ALL OF THIS PAPERWORK IS BEING ATTENDED TO ARE THERE ANY PRACTICAL STEPS THAT THE EXECUTOR SHOULD BE TAKING?

Yes!

The Executor also has a duty to protect the assets of the deceased.

The Executor needs to make sure that any property belonging to the Testator is secure. In the case of a house for example the Testator should make sure that valuables are removed and that the house is adequately insured.

WHAT HAPPENS THEN?

The Solicitor will prepare the Application for the Probate Office. The Executor will have further papers to complete with their Solicitor, including what is known as the Oath of Executor.

The Oath must be signed by the Executor and in that document they confirm to the High Court – which is the office responsible for Probate/Administration matters – that they will administer the estate

in accordance with the will of the Testator. The Executor is making a substantial commitment in this document and the significance should not be underestimated.

Once the application is submitted the papers will be considered by the Probate Office and if everything is in order the Grant of Probate/Administration will issue.

AND WHAT CAN THE EXECUTOR DO ONCE THE GRANT OF PROBATE/ADMINISTRATION ISSUES?

Once the Grant of Probate/Administration issues the Executor is entitled to gather in all of the property of the Testator and distribute it in accordance with the directions in the Will. So for example money in the Testators bank account can be withdrawn, shares can be sold and title to property (e.g. houses) can be transferred to the beneficiaries or sold depending on the instructions in the will.

AND TO RETURN TO A SITUATION WHERE SOMEONE DIES INTESTATE ARE THE STEPS MORE OR LESS THE SAME?

They are more or less the same; the Inland Revenue must be compiled in the same way.

When someone died intestate there is a further requirement to get a Bond – which is like an insurance policy- once the Inland Revenue Affidavit had been certified by the Revenue Commissioners.

Apart from that the process is the same.

FOR MORE INFORMATION

Tel: 052- 612 43 44

Address: Jervis House,
Parnell Street,
Clonmel,
Co Tipperary

Email: info@lynchsolicitors.ie

Website: www.lynchsolicitors.ie

www.twitter.com/LynchSolicitors www.facebook.com/LynchSolicitors www.linkedin.com/company

ATTENTION

The material contained in this article is provided for general information purposes only. We advise you to seek specific advice from us about any legal decision or course of action.

BEREAVEMENT LEGAL ISSUES

PROBATE

Probate is a legal process that allows a person to deal with a deceased person's assets -
property, money and all other possessions – after their death. In order to deal with a deceased
person's assets, a Grant of Representation is required.

GRANT OF REPRESENTATION

There are three types of Grant of Representation depending not only on whether or not the
deceased made a Will but also whether or not the Will made is completely valid.

1. **Grant of Probate** – this type of Grant is required where a valid Will has been made.

2. **Grant of Administration Intestate** – this type of Grant is required where the deceased never made a Will

3. **Grant of Administration with Will Annexed** – this type of Grant is required where the deceased made a Will but where there is an issue with some aspect of the Will.

In certain circumstances a Grant of Administration may not be required i.e. where the deceased did not own property and where the value their other assets do not exceed a certain amount.

THE PROCESS

1. Determine whether or not the deceased had made a Will

2. If the deceased has made a Will, it will state who the deceased wished to act as Executor – an Executor is the name for the person who deals with the persons assets where there is a Will.

    - If the Executors named in the Will have passed away or do not wish to Act then an Administrator will be appointed in their place. This is one of the main circumstances in which a Grant of Administration with Will Annexed is required. There are strict rules as to who can be appointed as an administrator.

3. Ascertain the entire assets and liabilities of the deceased. Remember that in some cases where property is owned jointly by the deceased and another person it may be the case that this property is no longer owned by the deceased on their death as it may pass to the other joint owner under what is known as the principle of survivorship.

4. Submit application to the Probate office for a Grant of Probate/ Grant of Administration. This application usually takes approximately 12 weeks but can take longer.

5. Once a Grant is issued the estate can then be dealt with. Funds can be withdrawn from bank accounts and properties can be sold or transferred.

6. Once all assets are gathered debts and liabilities will be discharged and the inheritance of beneficiaries will be distributed to them.

7. Estate Accounts must then be drafted setting out the details of the administration of the deceased assets.

FOR MORE INFORMATION

Tel: 052- 612 43 44

Address: Jervis House,
Parnell Street,
Clonmel,
Co Tipperary

Email: info@lynchsolicitors.ie

Website: www.lynchsolicitors.ie

www.twitter.com/LynchSolicitors www.facebook.com/LynchSolicitors www.linkedin.com/company

ATTENTION

The material contained in this article is provided for general information purposes only. We advise you to seek specific advice from us about any legal decision or course of action.