
WHAT DOES THE TERM ADMINISTRATION/PROBATE MEAN?

Probate is the term used to describe the legal process that you must go through to allow someone to look after the affairs of a deceased person.

The Grant is necessary because when someone dies their assets are frozen. To deal with the assets it is necessary to apply to the High Court for authority to do so.

DO YOU HAVE TO TAKE OUT ADMINISTRATION/PROBATE?

No, if there is no property in the estate and the assets are not significant the bank may release funds without production of the Grant if they are provided with an Indemnity.

Financial Institutions 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 applies to credit union accounts, post office accounts or assurance policies.

Another situation where you might not need a Grant is if property is held jointly as joint tenants. If a property is owned with the owners as joint tenants, the will of the Testator will have no bearing, ownership will automatically pass to the surviving owner.

Likewise, if the deceased had an insurance policy or pension the proceeds could be payable to a nominated person/s and not be included in the estate.

It is always worthwhile checking with us to see if a Grant is necessary.

DO YOU HAVE TO HAVE A SOLICITOR DEAL WITH THE APPLICATION?

It is helpful that you seek the advice of a Solicitor to guide you through the process.

This will give you peace of mind that the application is being handled correctly and that any legal/tax issues will be dealt with it.

If you decide to take out a Grant of Probate you will have sole responsibility for the administration of the estate together with completion of the necessary legal documents.

Therefore, before deciding to apply to the Probate Office you must be confident that you have the ability to research and undertake the legal responsibilities associated with administering the estate.

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.

WHEN MUST YOU INSTRUCT A SOLICITOR?

As an example, if the person entitled to take out the Grant is a minor, a ward of court or of unsound mind the Probate Office will insist the application is made via a Solicitor.

Other circumstances include where there is a question over the validity of the will or the original will has been lost.

In some circumstances, individuals will not be permitted to take out a Grant where the beneficiaries or the deceased person were resident outside Ireland.

The Probate Office can refuse to permit an individual to take out the Grant for any other relevant reason.

The material in this article is for general information only and is not legal or professional advice. While every care has been taken, we advise you to seek specific legal advice.

FOR MORE INFORMATION

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