

ESTATE & TAX PLANNING

April 2020



What happens if I do not apply for probate?

When a person dies, probate is the process of administering their estate by organising their assets, money and possessions and then distributing them as per the terms of a will or in line with the rules of intestacy.

To be able to start probate, an executor (the person who takes legal responsibility for carrying out the instructions of a will) must apply for a Grant of Probate. A Grant will give an executor the legal authority to deal with the deceased's property until all taxes are paid and inheritance has been passed on.

If a person died intestate (where there is no will), a Grant of Probate cannot be applied for, but instead the estate will be administered through a Grant of Administration.

A person who has been named as an executor can choose to 'renounce' the right to accept the role.

Not every estate will require probate. If there is no property and only a small amount of money, with a total value usually less than £5,000, probate is not normally needed. Each bank or financial institution will have different value limits on when they would require a grant of probate.

Probate will also not be required for property that is owned jointly as joint tenants, as this passes through the right of survivorship, meaning the surviving owner automatically has the property pass to them.

Probate will be required however when there is property that is owned jointly but as 'tenants in common' or there is a larger estate that needs distributing.

If you do not apply for probate, then the deceased's estate cannot be dealt with. The estate cannot be assessed or distributed, leaving assets and accounts frozen and in a state of limbo.

If you do not apply for probate, as either an executor or administrator then generally the deceased's estate cannot be accessed or transferred. As explained, probate may not be needed for smaller estates or for property owned as joint tenants, but it is always best to seek professional advice before distributing any estate.

How to get a house and its contents valued for probate

How to calculate the value of a property and its contents for probate

Probate is the legal process where you manage a deceased person's possessions and allocate their money, assets and belongings once they have passed away – this is known as their 'Estate'.

From the outset of probate it will be essential to calculate the total value of the Estate to find out if inheritance tax is required to be paid.

More often than not, one of the largest assets that a person will own is their home and all their belongings inside. So, how do you work out how much everything is worth in readiness for probate?

Valuing a property and assets throughout the Probate process

One of the most crucial parts of the Probate process is valuing the deceased's home and possessions. Throughout the administration of the Estate, you will need to keep a log of how much money is being transferred into and going out of the Estate in order that you can pay in total remaining debts owed and work out how much inheritance remains to give to the beneficiaries who are entitled to it.

When making these calculations it makes it clearer in terms of inheritance tax (IHT) and whether the Estate is liable for it or not. If the estate is accountable for tax, you will be able to calculate how much. You will then need to pass all the information to HM Revenue & Customs.

How to calculate the value of property during probate

If the Estate is liable for IHT, it would be prudent to seek a valuation from a Chartered Surveyor as they are skilled and experienced in providing valuations specifically for IHT so are much more likely to be approved and acknowledged by the HMRC.

How to Get a Property Valuation in Probate

To ensure the accuracy of a property valuation, the District Valuer Service (DVS) of HMRC would need to check and examine the valuation presented to them. If the DVS think the valuation is wrong, they will contest it and ask for additional evidence to back up the valuation given.

If Executor(s) of an Estate negligently obtain a property valuation they could be at risk of being fined. Equally, if Executor(s) found the valuation sent to HMRC was too low, they will have to contact the HMRC in writing to advise them of the correct value.

If the deceased person's property was jointly owned with someone else, known as 'Joint Tenants', then the property value will need to be split down the middle to find out what the deceased owned.

However, if the property was owned jointly with someone else as what is known as 'tenants in common', then the value will need to be worked out along the lines of what proportion of the property the deceased owned e.g. 60/40 split between owners.

Working out the value of the house belongings

The first stage when valuing the contents of a house is to make a list of items which you think might be worth something e.g. cars, jewellery and furniture. For specialist antique items it is advisable to seek a professional valuation who have the expertise and specialise in valuing these items.

FREE WEBINAR ESTATE PLANNING AND FAMILY LAW

Hosted by: Ms Joy .A. Douglas (Solicitor-Advocate at **Hillary Cooper Law**) and **Mr David Frederick** (Managing Partner at **Marcus Bishop Associates**)

Amidst this current crisis parents, families and couples are being forced to re-assess and re-evaluate their property, assets and estates to ensure it goes to the right people - their loved ones.

This webinar will explore a range of relevant issues to consider when making such plans such as; wills & last testament, inheritance tax law and grants of probates, executors obligations, beneficiaries to an estate; lasting powers of attorney as well as family law matters such as cohabitation agreements, pre-nups and post-nups, divorce and division of matrimonial assets etc.

So, if these issues really matter to you and you have a lot of questions that need to be answered, **this webinar will be an 'all you need to know' session.**

This webinar will take place at 12:00 - 13:30pm on Friday 1st May 2020.

To sign up to the webinar email:

legal_admin@hillarycooperlaw.co.uk

If you would like to discuss your Estate & Tax Planning, call David on 020 8670 0917 or email him at: david@marcus-bishop-associates.co.uk.