

Why it is advisable to obtain professional legal advice when dealing with estate administration?

In the most straightforward of cases, the Personal Representative of an estate (i.e. the executor of a Will or the administrator if there is no valid appointment of an executor) may be able to administer a deceased's estate without professional input. It has always been possible for Personal Representatives to make a personal application to the probate registry but is it advisable?

Personal Representatives are personally liable for any acts or omissions conducted by them in relation to the administration of an estate. This can and should be a daunting prospect for anybody appointed in the role of a Personal Representative.

In the majority of cases, it is advisable to engage a solicitor from the outset of the estate administration so that they can identify and address any immediate legal issues that may be involved.

There are a number of complexities which can arise during the administration of an estate and it is important for these to be identified and dealt with as soon as possible.

Traps for the unwary:


Domicile – Identifying the deceased's domicile is critical as it will confirm the tax regime applicable to the deceased's estate.

Intestacy – Identifying who is entitled to a deceased's estate where there is no Will will dictate not only who benefits from the deceased's assets but also who has authority to deal with the deceased's affairs. It is not automatic that a deceased's spouse will inherit the whole of the estate. There is no provision for cohabitants to benefit from a deceased partner's estate on their death.

Assets outside the UK – If the deceased owned property and assets outside the UK, it will be necessary to ascertain whether they left a will in that country. It will also be necessary to identify the relevant law which applies to the distribution of those assets.

Tax – Care should be taken in identifying the values of the deceased's assets and liabilities and preparing the Inheritance Tax account for the estate. Calculating the Inheritance Tax due on a deceased's estate can be a complex process and advice should be sought to avoid any penalties for late payment or non-disclosure of relevant assets. Personal Representatives are personally liable for any unpaid inheritance tax.

Business Assets – If the deceased had an interest in a business, input will undoubtedly be required to assist with the mechanics of transferring that interest to the intended beneficiaries. It is also possible that Inheritance Tax reliefs may be available to offset against the value of business assets as part of the application to HMRC.



Trusts – If the deceased’s will includes one or more will trusts, additional steps will need to be undertaken by the executor (who may also be the trustee) to set up the trust. There will then be ongoing administration of the trusts, and depending on the nature of the property held, it is almost certain that the executor/trustee will need to instruct a solicitor and an accountant to prepare tax returns and trust accounts.

Minor beneficiaries – If the deceased’s will includes one or more minor beneficiaries, additional steps will need to be undertaken by the executor in relation to that child’s entitlement. It is not always possible or sensible to discharge a legacy to a minor child by obtaining receipt from that child’s parents or legal guardian.

Estate liabilities and creditors – Personal Representatives can be held personally liable if they distribute an estate prior to paying any estate liabilities. Even unknown creditors can seek recovery of debts of a deceased from their Personal Representatives.

Validity of the Will – It is possible for third parties to challenge the formal validity of a will, most commonly where there are allegations that the deceased lacked the necessary testamentary capacity when their will was executed, or there may be allegations of undue influence. If there is any suggestion of the will being challenged, the executors should consult a solicitor as soon as possible.

Claims against the estate – There are certain categories of people who will automatically qualify to bring a claim under the Inheritance Provision for Family and Dependents Act 1975. Defending such claims can be costly and time consuming and Personal Representatives need to be fully appraised of their duties and obligations in such circumstances where this is a relevant consideration.

The role of a Personal Representative is complex and onerous and the responsibility of acting in this capacity should be taken seriously. Getting it wrong could be costly for you personally even if you are not a beneficiary of the estate.

The Wills, Trusts and Estates team at Weightmans LLP is able to advise and assist Personal Representatives in administering an estate or to provide advice regarding particular aspects of estate administration. Contact any member of the team for reliable and trusted advice.

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