

# probate

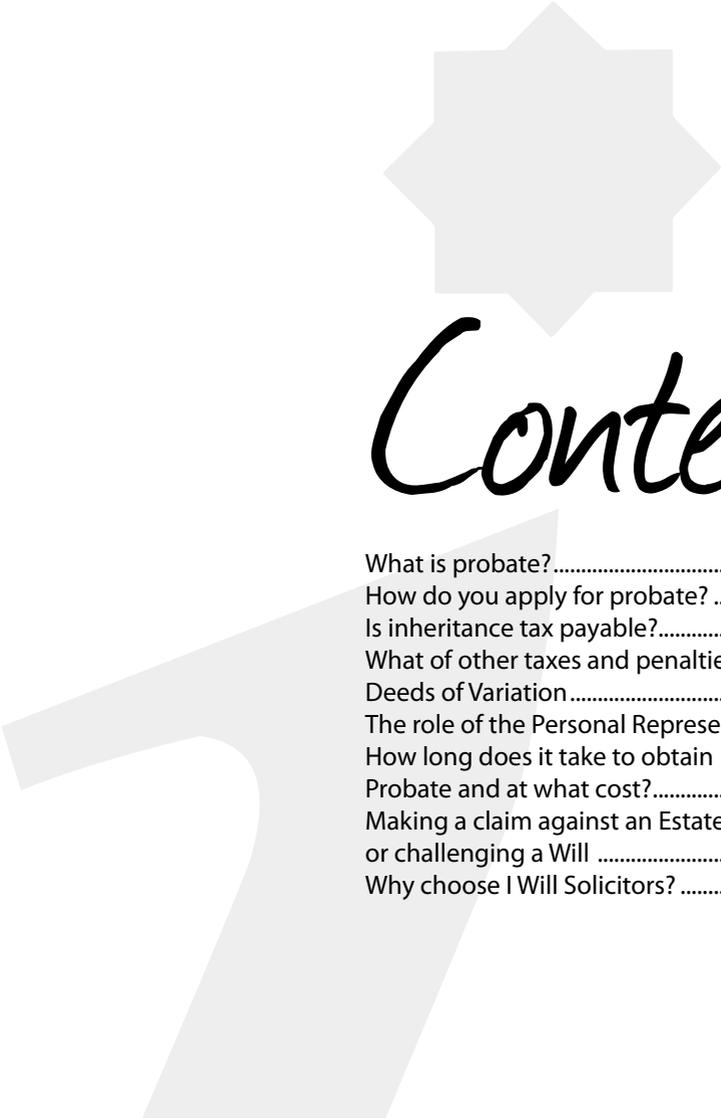
& ESTATE ADMINISTRATION



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# What is PROBATE?

Probate (or more correctly 'Probate of the Will') is the official document (issued by the High Court) that gives the executors of a Will the legal authority to deal with the property and affairs of the deceased person, (known as the "estate" of the deceased). Where there is no Will the process of applying for Probate is termed applying for a "Grant of Letters of Administration", and the persons responsible for dealing with, or 'administering', the estate are termed administrators, as opposed to executors. Collectively, administrators and executors are known as "personal representatives", the PR's.



# How do you APPLY FOR PROBATE?

Although it is possible to personally apply for Probate, we always advise personal representatives to seek the professional advice of a qualified solicitor, (who is also a member of the Society of Estate and Trust Practitioners). By obtaining professional advice PR's firstly protect their own position, but they can also ensure that the estate is administered correctly and efficiently. The experienced Probate practitioner will take instructions from the PR's to enable them to prepare the requisite Probate Court and HM Revenue and Customs papers. After these papers have been submitted and approved, the Probate Court usually issue the Grant of Probate without requiring the PR's to attend a personal hearing. In preparing the papers details of the assets and liabilities of the estate are required and, if the estate is taxable, the tax liability is also calculated.

# Is Inheritance

## TAX PAYABLE?

Inheritance tax is usually only payable if the estate of the deceased, (including any gifts made within the seven years preceding death), exceeds the nil rate band inheritance tax threshold. The threshold is currently £650,000 for married couples who have what is known as a "transferable allowance", but only £325,000 for all other persons. If tax is payable, it must be paid within six months of death to avoid incurring penalties and interest charges. Further, the transferable allowance is not automatically available but rather it must be claimed. We have experience in negotiating with HM Revenue & Customs in order to mitigate the tax liability.



## What of other TAXES AND PENALTIES?

Within the course of the administration of the estate, capital gains tax, income tax and sometimes stamp duty also need to be considered in addition to inheritance tax. There are a number of opportunities and reliefs to utilise so that the tax liability is mitigated, especially where the estate consists of property or stocks and shares. These reliefs are often time critical and hence it is important that professional advice is obtained as soon as practical. As mentioned, interest also begins to accrue within six months of death if there is an inheritance tax liability which has not been paid.

# Deeds

## OF VARIATION

It is also possible to vary a Will, (or the intestacy provisions), in order to mitigate a potential tax liability or to provide for a different distribution of the deceased's estate. The variation is not dependent on applying for Probate and may be done before or after Probate has been obtained, (often for tax reasons it is preferable for the variation to occur before Probate is obtained). Again, there are some very critical dates and it is best to obtain advice sooner rather than later.



## The role of the PERSONAL REPRESENTATIVES

It is the PRs duty to ensure that the estate of the deceased is administered in accordance with the law. If the PRs fail to do this they can be held to account by the Probate Court and personally liable for any wrong doing. The task of acting as PR should therefore not be taken lightly and we always recommend that professional advice is sought. By acting on the advice of a qualified solicitor the PRs can often be free of personal liability. As well as being liable for acting incorrectly, PRs can also be personally liable for any of the debts of the deceased, and again for this reason we strongly advise that the PRs obtain professional advice.

# How long

## DOES IT TAKE TO OBTAIN PROBATE AND AT WHAT COST?

These are the sixty four thousand dollar questions. However, it is impossible to give accurate estimates until one knows what the estate and Will/intestacy provisions provide. Clearly an estate valued at £1million consisting of all the money being held in one bank account and with only one beneficiary will be easier and quicker and hence less costly to administer than an estate worth £100,000, consisting of numerous assets with a disputed Will and feuding beneficiaries. However, as a very broad guide, all else remaining equal estates should not cost more than 2.5% of the gross value to administer, and will rarely cost less than 1%. We have a flexible approach to our charges and are happy to charge on a time basis, on a percentage basis or simply at an agreed fixed fee.



# Making a claim

## AGAINST AN ESTATE OR CHALLENGING A WILL

Under English law one has the complete freedom to leave his estate to whomever he pleases. However, this freedom is curtailed by provisions within the Inheritance (Provision for Family Dependents) Act 1975. The 1975 Act allows disgruntled beneficiaries to make a claim against the estate on the basis that they should have received something, (or more), from the estate than they have done. To make a claim can be difficult and procedural. We can advise you as to whether you have a basis to make a valid claim or on whether the Will can be challenged on any other ground, such as the testator lacking the necessary capacity to effect a Will, or because the Will may not be valid as the formalities of the Wills Act 1837 were not complied with.

# Why choose I WILL SOLICITORS?

We always recommend that you instruct qualified solicitors who have considerable experience in dealing with the administration of estates. By doing so the estate is likely to be administered more quickly and efficiently than it otherwise would, and your position as PR is unlikely to attract any personal liability. The costs of the professional advice are often recovered due to the benefits of specialist taxation knowledge that can be applied during the course of the administration.

I Will Solicitors specialise in Wills, Inheritance Tax Planning, Estate Administration (also known as Probate), Trusts and Court of Protection work. Unlike many practices these are our core areas of expertise and not only do we have qualified lawyers of many years' experience, our lawyers are also qualified members of the Society of Trust and Estate Practitioners, (STEP). STEP is the principal professional body for estate practitioners worldwide and we strongly recommend you look out for the initials T.E.P within your adviser's credentials.



This fact sheet has been prepared to highlight some of the key issues relating to Probate and Estate Administration. It is intended as general guidance only and is correct as at May 2012.

Should you require any specific legal advice,

**Please contact:**

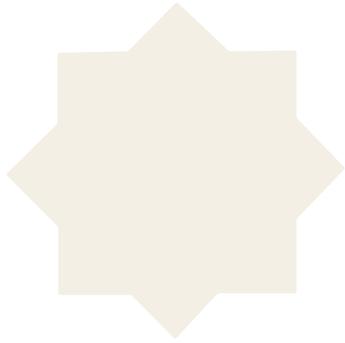
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