

## **Obtaining up to £50,000 without a Grant of Probate: a step too far?**

The headlines that have been dominating the private client legal world in recent months relate to the proposed increase in probate fees that has caused fairly widespread controversy and outrage. The “will they or won’t they” saga continues in this regard but some practitioners and individuals have already begun considering how assets can be owned in someone’s lifetime so that their estate can be distributed without a Grant of Probate being required.

Any asset owned on a joint beneficial basis passes automatically to the surviving owner just on the production of a death certificate. Individuals can also exploit the massive increase that there has been recently in the amounts of money that can be obtained from a sole account without production of a Grant of Probate. Traditionally, if an estate was worth less than £5,000, it was accepted that it was disproportionate to require a Grant of Probate to be obtained. This was known as the “small estates exemption”. Now, you can claim as much as £50,000 from some financial institutions just on the production of a death certificate. This will undoubtedly be helpful for many people who may otherwise face financial hardship if they cannot obtain a loved one’s money quickly and easily after they have passed away. As a contentious probate solicitor though, I have already seen significant problems caused by this increase and I worry that some of the protection afforded to executors and beneficiaries by the Grant of Probate process has been eroded by the significant amounts of money that can now be obtained by, it seems, anyone just on the production of a death certificate.

A Grant of Probate confers authority on the executor(s) named in a Will or on the Administrators entitled to deal with the estate under the Rules of Intestacy. A Grant of Probate cannot be obtained until inheritance tax has been paid/tax clearance obtained so the process ensures that, in theory, the tax liability is properly dealt with fairly soon after death. Once a Grant has been obtained, anyone can apply to obtain a copy of the Grant and the accompanying Will (if there is one). This enables individuals who may have an interest in an estate to see who the executors are, what the size of the estate has been sworn at and what the terms of the Will are. If a Grant of Probate is never obtained, individuals who may have an interest in the estate may never find out these crucial details and could lose out as a result.

A caveat can be entered against an estate to prevent a Grant of Probate from being extracted. A caveat can be entered when there are serious concerns about the validity of a Will or the suitability of the executors/Personal Representatives to act in the estate administration. The reason why it is so important to enter a caveat if an individual has one or both of these concerns is that a Grant of Probate is required before the vast majority of assets in an estate can be distributed. This enables the individual to carry out investigations into the validity of the Will or open a dialogue with the executors named in the Will to try to resolve the dispute safe in the knowledge that the estate will be frozen pending a resolution. A caveat and the blocking of a Grant of Probate will not prevent someone emptying a bank account or multiple bank accounts if the bank only requires a death certificate for sums up to £50,000.

I have seen situations where a child has registered the death of a parent and immediately gone to the bank, closed the account and transferred the funds into their own sole account. Sometimes, this has happened within days of the death before their siblings or anyone else has even started thinking about the estate administration. The other siblings then have to force the person holding the money to distribute the money in accordance with the Rules of Intestacy/terms of the Will. I have seen situations where the person that has emptied the bank account is not even someone who is an executor/Personal Representative or beneficiary of the estate. The executor or Personal Representatives then need to liaise with the holder of the money to recover it which is obviously easier said than done. This can be made even more difficult if there are not actually any liquid funds left in the estate after the withdrawal from the bank account in question. For example, someone may pass away owning a property in their sole name, bonds of £70,000 and a bank account of £45,000. A Grant of Probate will be required to deal with the property and the bonds. If the bank account is cleared out improperly after death, the executors are potentially left with no money to pay the funeral or other immediate estate liabilities such as necessary outgoings on the property or conveyancing disbursements.

It is an extremely emotional time in the days after a loved one passes away and for the vast majority of people, thoughts are only on registering the death and organising the funeral. Individuals need to be aware though that if they think there could be a friend or family member with an underhand agenda, they should act swiftly before damage is done. They should seriously consider making a quick visit to the bank to freeze the account pending a Grant of Probate being obtained. If they are too late and an account has already been closed and emptied, those affected should obtain urgent, independent legal advice from a contentious probate solicitor. They should also consider reporting the issue to the police as a criminal offence may have been committed. The longer that time passes before action is taken, the harder it may be to recover the funds or the more damage may end up being done.

Our Contentious Trusts and Probate Team at Meridian Private Client LLP are experienced at dealing with all manner of inheritance disputes. Our contact details are set out below:

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