

The Problems with Probate

Probate – the action of gathering in and distributing the assets of an estate – can be difficult, time consuming and expensive. Richard Sumner of Babbé discusses some of the frequently encountered problems and offers a few pointers on how best to overcome them.

A Jersey bank account, an Isle of Man insurance bond, shares and investments in a sole name and a property in France or Spain – just some (or sometimes all) of the situations that be may be encountered by the executor of the estate of a person who died resident in Guernsey.

These may not seem like problems – after all, there is a certain amount of pride in knowing that you will be leaving assets to spouses and family that will ease their way in the future – but, unfortunately, there can be hidden snags in them all.

Remember also, that probate must be placed in the context of a time of bereavement and, possibly, a need for assets to be transferred to a spouse as quickly as possible – for example, access to a bank account.

The first and most simple piece of advice

If you are a married couple, ensure that your assets are all in joint names. By doing this the need to obtain a Grant of Representaion (which we call a Grant of Probate when a person has left a Will and Letters of Administration when there is no Will) is not usually necessary because assets pass by survivorship. Usually, just presenting the death certificate to the relevant institution is enough.

However, it is not always that simple. Sometimes an asset has been overlooked, each spouse may have maintained inherited funds in his or her sole name or, and this is when probate will be needed, it is the last surviving spouse who has died and the children need to collect in the assets and distribute them according to the terms of the Will.

Yet these are just everyday assets, you may say - bank accounts, shares, insurance bonds - so where and how do the problems arise and how can they be avoided?

Keep an up to date list of assets and debts

This may sound obvious, but one of the major problems executors encounter is finding what are the assets of the estate and where the relevant documents can be found.

The straightforward solution to this is to update the list annually when you complete your tax return. You need to list your assets at that time, so keep a copy with your Will.

The benefit of this is the time saved when the executor has to swing into action. The time taken and the expense of an executor having to trawl through piles of papers, and interview family members can be quite considerable. It also creates certainty as to the extent of the assets.

Bank accounts outside Guernsey

A number of Guernsey residents have bank accounts abroad. Typically, Jersey, the UK and Europe. In the case of the latter it is often because there is a house or apartment there as well. But whatever the reason, you should initially ask yourself the question of why you need to maintain a bank account outside Guernsey and, if you don't need to, move everything back.

The reason is simple – your executor will have to apply separately to each jurisdiction for a Grant in order to gain access to the asset and move it back to Guernsey.

The cost of doing this can be very high because, in the UK for example, the executor will first need to prove to Her

Majesty's Revenue and Customs that there is no liability to Inheritance Tax in the UK. This involves proving that the deceased was resident outside the UK which, in turn, means preparing and submitting a resumé of the deceased's life history. Rest assured - the larger the asset the more interested the Revenue will be!

Insurance bonds

If an executor finds an insurance bond in the bottom drawer then it may well have been issued from the Isle of Man. No problem in itself, but a problem to the executor becomes it means the deceased has died with an estate in the IOM and, guess what, the executor then has to go to the time and expense of obtaining a Grant in the IOM. Currently, this can take up to eight weeks.

A solution may be found by seeking professional advice and considering multiple ownership or an assignment as appropriate.

Shares held in a sole name

Remember the privatisations in the UK in the 1980's? A good number of people applied for shares in their own names and are still sitting on them. It is amazing how frequently they still turn up, but they illustrate a more general point. To change ownership of shares held in a sole name requires a Grant, (quite likely an English Grant) that will have to be submitted to the company secretary, completion of stock transfer forms, sending off the certificate and so on.....another time-consuming situation that can easily be avoided by registering shareholdings in joint names. In the case of large holdings of shares, suitable professional advice should be taken to avoid exposure to liability to UK Inheritance Tax.

Check the probate requirements of banks and companies

It is particularly important for families to know that a grant of probate is not always required, particularly if the value of the estate is less than £10,000. This is because banks, insurance companies and companies generally, have their own small estates procedures and may only require a copy of the death certificate and the Will. This saves a great deal of time and cost.

And one final point...

One final point that some people overlook – even if the deceased was a Guernsey resident, in order to obtain a Guernsey grant of probate, there has to be an asset in Guernsey!

Key points

- Spouses should ensure that assets are in joint names
- If your estate may be complicated an experienced professional can ensure matters are dealt with much more quickly, so appoint an Advocate such as Babbé to be your executor
- Keep an up to date list of assets and debts (doing this at the time of your tax return is the easiest way)
- Centralise as many of your assets in Guernsey as possible
- Register shareholdings in joint names.

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This paper is intended as a general review and aide memoire. It does not create a retainer or lawyer-client relationship and does not provide comprehensive or specific legal advice concerning the matters contained within it. This paper should not be relied upon as giving or providing advice on any individual case.