

3 potential pitfalls of “Do It Yourself” Probate

The purpose of this article is not to put client’s off undertaking “Do It Yourself” Probate but merely to make clients aware of the potential difficulties they may face when dealing with estate administration.

The first of the potential “pitfalls” to mention is centered around Inheritance Tax. If Inheritance Tax is due on an estate then the detailed Inland Revenue account IHT400 has to be completed, signed by the Executors and submitted to HM Revenue and Customs for their approval. One potential mistake some Executors make, is that following submission of the IHT400 (Taxable estates Inland Revenue form), a receipt is given to allow for an application for the Grant of Probate to move forward. Unfortunately, it is often assumed that this means that HM Revenue and Customs have “signed off” the forms and are happy with the contents, however, HM Revenue and Customs actually reserve the right to go back through the forms with a fine tooth comb until they are completely satisfied with the information provided. This may include a District Valuer being instructed to ascertain whether the value of a property given in the forms is accurate, requesting hard copies of valuations of assets or asking for further documents in respect of Trusts etc. All of these requests have to be complied with in an efficient manner and until HM Revenue and Customs have provided a “Clearance Certificate” for the Inheritance Tax paid, the estate assets should not be distributed. If an Executor has distributed the funds and then it becomes apparent that further Inheritance Tax is due, this can lead to a very awkward situation for which the Executor could be liable.

Some Executors are also unaware that if Inheritance Tax is payable on an estate, unless this is paid within 6 months of the date of death, interest begins to accrue on the amount due. Even if an installment of the Inheritance Tax due has been paid, interest will continue to accrue on the outstanding amount until the balance is paid in full.

Another potential issue is where incorrect allowances are claimed accidentally by the Executor which is not flagged up until HM Revenue and Customs consider the forms in full. This could lead to further Inheritance Tax being due with interest on the balance which should have been paid originally.

The second potential “pitfall” is Capital Gains Tax and Income Tax. Although most Executors are aware as to whether Inheritance Tax is payable on an estate, they often fail to consider whether there are any Capital Gains Tax or Income Tax implications. Any income received during the administration period of an estate being dealt with, if over £500, should be voluntarily taxed and a payment made to the Inland Revenue. When an asset is sold or en-cashed following the Grant of Probate, if the asset made a gain (so was sold for more than the Probate value) there could potentially be Capital Gains Tax payable on the gain. The calculation of Capital Gains Tax can often be complex and require assistance from an Accountant or a Solicitor.

The third and final “pitfall” worth mentioning is the potential for Contentious issues to arise. This can be in the form of family members who wish to contest the Will believing that they have not been properly provided for, to Executors being held liable should they have administered the estate incorrectly. Quite often, these issues are unavoidable and result in having to approach a Solicitor for advice and assistance in resolving the issue.

Although the above pitfalls look daunting, the issues can be resolved with the assistance of a Solicitor or avoided entirely if advice is sought from the outset if any of these issues are likely to arise.

For any further information on estate administration and obtaining Probate, please contact our Private Client Department on 01384 371 622.

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