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DO I NEED GRANT OF REPRESENTATION - INFORMATION FOR CLIENTS Walsh West Private Client Legal 2021

Do I need grant of representation?

What is a grant of representation?

A 'grant of representation' is the generic term for the legal order issued by the probate court in the estate of a deceased person in England and Wales. In Scotland a grant equivalent is called a 'confirmation'.

The grant gives legal authority to prove that the executor or administrator (the personal representative) can administer the estate, undertaking tasks such as signing sale contracts or transferring documents for property, closing bank accounts and selling shares.

What types of grant of representation are there?

The two most common types of grant of representation are a 'grant of probate' and a 'grant of letters of administration':

1. A **grant of probate** is issued when a person has left a will naming an executor (executrix if female) who proves the will through the probate court.
2. A **grant of letters of administration** is issued when a person has not left a will and the person entitled under the rules of intestacy seeks authority to administer the estate.

When do I need a grant of representation?

Although a grant gives a personal representative the authority to administer the estate, there are certain instances where action can be taken without a grant:

1. Assets passing to the personal representative

Under the Administration of Estates (Small Payments) Act 1965 (and Schedule 7 to the Building Societies Act 1986) the following can be paid out without a grant providing they have a maximum value of £5,000:



- bank and building society accounts, national savings products, friendly society and industrial and provident society deposit accounts
- arrears of salary, wages and superannuation benefits where the deceased was an employee of a central or local government department
- pensions where the deceased was a member of the police, fire authority, air force or army

It should be noted that the legislative figure is £5,000 but for some banks and building societies this figure can be higher depending on their own internal regulations and requirements. Payment is at their discretion and they can insist on seeing a grant.

If a grant is required, it may be possible to release assets before the grant is received to settle the funeral director's account and to pay any initial inheritance tax due on the probate application. These funds are generally released directly to the funeral director or HMRC and not to the personal representative. They can include:

- personal assets such as personal effects, household property and cars. If these are not being sold, then they may need to be valued for inheritance tax purposes before being distributed in accordance with the will, letter of wishes or intestacy rules
- cash

2. Assets not passing to the personal representative

1. Nominated assets – where the deceased has nominated a beneficiary of the asset with an institution, the asset will pass to them after sight of the death certificate.
2. Some jointly-owned assets – each owner has an indivisible share which passes automatically to the surviving owner(s). Care should be taken with property to check whether it is held as beneficial joint tenants which will pass automatically by survivorship or as tenants-in-common whereby the deceased's equitable share will pass under the terms of their will or intestacy which will require a grant.
3. Gifts in anticipation of death (donatio mortis causa) - these are gifts which are made by an individual immediately before they die and are subject to four conditions. The deceased must have believed he was going to die soon, have made the gift on the condition that he died, have parted with the gift in some way, and the gift must be capable of being given away.

3. Assets which do not form part of the estate

1. Life insurance policies held in trust – these pay direct to the trustees of the policy.
2. Death in service benefit from an employer – this is usually a payment to either beneficiaries named by the deceased on a letter of wishes or at the discretion of the employers.



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3. Lump sum pension benefits - this is usually a payment to either beneficiaries named by the deceased on a letter of wishes or at the discretion of the pension company.

Do I need a grant of representation?

Administering the estate without a grant of representation may be possible in some circumstances and may save time and money, but it may also be beneficial to obtain a grant in any case to prove the deceased's last will. It should be noted that claims issued under the Inheritance (Provision for Family and Dependants) Act 1975 must be made within six months from the date of issue of the grant, and this is a key reason for a personal representatives to obtain one.

For initial advice about Estate Planning including Lasting Powers of Attorney, Wills, Trusts and Probate; call our team on 0203 488 7503, 01992 236 110 or contact us by email at welcome@walshwestcca.com or via our website www.walshwestcca.com and we will help you.