



MDW SOLICITORS LTD

# 5 THE FIVE MAJOR PITFALLS OF A "DIY" PROBATE

Some people think they do not need a solicitor when it comes to administering the estate of a loved one. However, before you decide to take on the job of executor yourself, make sure you are aware of these five important factors in dealing with Probate.

## WHAT DOES AN EXECUTOR OR ADMINISTRATOR DO?

An executor or estate administrator must ascertain what the assets of the estate are. This might sound simple, but it is actually a complicated and lengthy process.

Once this is complete, the executor must then pay any outstanding taxes or debts by completing the relevant tax forms. If the value of the estate is higher than the nil rate tax band this could mean the completion and submission to HMRC of over 20 different forms.

Finally, an executor must distribute the estate in accordance with the Will. This could be quite straightforward, but if the person died with no Will in place, it can become much more complex for everyone involved. The estate must then be distributed in accordance with the legal intestacy rules, which might not be what the beneficiaries were expecting.

## THE FIVE PITFALLS OF DEALING WITH PROBATE YOURSELF

### 1 UNDERESTIMATING THE LENGTH OF TIME AN ESTATE TAKES TO ADMINISTER AND HOW MUCH TIME THE EXECUTOR HAS TO DEDICATE IN ORDER TO ADMINISTER THE ESTATE

Administering an estate can take months and sometimes even years. Once you accept the responsibility of executing the estate it is a job for life. You can't simply resign or decide to step down once you have started carrying out your duties. Are you able to tie yourself down to be an executor/administrator for that length of time? You need to understand what your duties will be from the start. Be aware that you will also need to deal with any future claims that may arise even after you think that your job is done. Is the considerable number of hours that you will have to put into administering the estate really the best use of your time?

### 2 NOT UNDERSTANDING THE SIGNIFICANCE OF LIFETIME GIFTS

Do you know if the deceased made any gifts within the last seven years before they died? How can you find out and be totally sure? Many people don't realise that a tax on gifts is due and if you do not pay the tax through the estate then as executor you are personally liable to pay it. Do you want to take on that financial responsibility? For example, if the deceased died after having given a gift to a grandchild two years before and you don't take that gift into account then the estate will not be administered correctly. This will have several consequences, usually including a personal impact on you as the executor.

### **3 NOT HAVING THE EXPERTISE TO DEAL WITH SELF-ASSESSMENT TAX FORMS**

Did the deceased do a self-assessment tax return? If they did, it is now your responsibility to complete the final tax return to the date of death and pay the tax on time in order to avoid a penalty charge. If you do not, then you again become personally liable not just for the tax owed but for any fines for late submission and payment as well. Not only is this an extremely complex area to understand, but it is also an activity that takes an enormous length of time.

### **4 NOT UNDERSTANDING WHAT TO DO WITH AN INVALID OR MISPLACED WILL**

Would you know what to do if the deceased did have a Will, but it has become either misplaced or is no longer valid? Are you able to provide the necessary affidavit evidence to the probate Court? What might seem like a straightforward process to manage can quickly end up in a complex court issue. Do you have the right legal training to take on that responsibility?

### **5 NOT REALISING THAT YOU ARE PERSONALLY LIABLE IF THINGS GO WRONG**

Dealing with probate is a complex process and can be highly confusing if you are tackling it for the first time. Unfortunately, there is no room for error. You are personally liable to ensure that all debts are paid. If you miss a debt and do not take precautions, you could end up personally owing a lot of money. You are also personally liable for any incorrect distributions, not to mention your personal liability if you inadvertently cause a loss to the estate. For example, if you allow a house to be sold too cheaply due to the desire for a quick sale, then the beneficiaries can take issue with that. You can be personally responsible for the difference in price. Solicitors have professional Indemnity insurance to ensure they are protected should a situation like that ever arise. Do you have the same protection?

#### **ABOUT THE AUTHOR**

Debra Williamson is a highly experienced solicitor who qualified in 1993 and specialises in dealing with Probate. She provides advice on all matters from the most basic of issues to the most complex areas and is happy to make a home visit if that is your preference.

Debra opened MDW Solicitors in June 2019 with her husband Andrew, after spending 18 years in a large corporate firm where she was employed as a Partner/Director. Debra and Andrew now pride themselves on running a legal firm with family at its' heart. The practice often deals with cases on a fixed fee basis so that clients know exactly what they will pay at the outset. They pride themselves on giving each client as much time as necessary to ensure that they understand everything they need to. They provide a friendly, expert service that has value for money at the forefront of its objectives. A new legal approach in changing times, ensuring that you are in control of your future on every level.

#### **WHAT TO DO NEXT**

Hopefully, you are now more aware of how complicated and stressful administering an estate can be, particularly at a difficult time when you are likely to be grieving for your loved one.

We offer a free 15-minute probate review session where we can help you identify any potential pitfalls that may apply to your particular situation and advise how you can safely address these issues before they arise.



To book this free session please email [debrawilliamson@mdwsolicitors.com](mailto:debrawilliamson@mdwsolicitors.com) or call 01753 299466 and ask for Debra, who specialises in Probate.

  
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