FAQS

-PROBATE-

Q: WHAT TO DO AFTER SOMEONE PASSED AWAY

A: You first need to register the deceased's death, obtain the death certificate, plan their funeral, and submit an application to the Court. If the deceased has a Will, the executor named in the will can apply for probate, which he/she will have the authority to do so from the day the deceased passed away. If there is no valid will, it is a bit more complicated. Family members will need to submit an application to the Probate Registry for a grant of representation.

Q: WHAT IS A GRANT OF REPRESENTATION?

A: 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. The grant gives legal authority to prove that the executor or administrator (the personal representative) can administer the estate. There are two common types of grants of representation: (a) a grant of probate, which is used where the deceased left a valid will appointing executors who are able and willing to prove the will; (b) a grant of letters of administration, which is used when the deceased died without a valid will.

Q: WHAT DO YOU NEED TO DO BEFORE APPLYING FOR A GRANT?

A: Executors/administrators first need to identify assets and liabilities and ascertain the value of the estate, this might include checking how much is left in the bank account(s) or checking whether there is anything valuable left in the deceased's safe. If the deceased owned properties, the value of the properties needs to be ascertained. They would also need to acquire information on the amount of outstanding liabilities as of the date of death, any credit card bills etc. If the total amount of the estate is over the nil rate band (£325,000 for 22/23), the executor/administrator should deliver an account to HMRC giving full details of the deceased's estate and pay the relevant inheritance tax. The executor/administrator also will need to submit an application for the grant of representation.

Q: WHAT DO YOU NEED TO DO AFTER OBTAINING THE GRANT? IS A GRANT NECESSARY?

A: The grant application involves filling in an application form, you would also have to submit the original death certificate and the original Will. After the grant is issued by the Court, you would have to repay all the debts owed by the deceased before distributing the estate to the beneficiaries. If there is a Will, the estate can be distributed according to the testator's wishes. If there is no will, you would have to administer the estate according to the intestacy rules. It is necessary to apply for a grant if there are real properties in the estate, or if the deceased had a large amount of cash in his bank account(s), or if he had stocks and shares. That is because in order to deal with these assets, organisations such as the banks, the Land Registry and companies etc would need to see the original grant issued by the Court.

Q: DOES INHERITANCE TAX NEED TO BE PAID BEFORE THE APPLICATION FOR A GRANT OF REPRESENTATION?

A: Before you submit an application for probate, you would first need to declare and pay the inheritance tax due. In practice, after HMRC confirms the IHT has been paid in full, HMRC will issue the IHT receipt to the Probate Registry directly (not to the payee). Once the Probate Registry has the record of the IHT receipt, it can proceed with the relevant probate application. Therefore, in order to obtain the grant, the personal representatives will have to pay any IHT due on the delivery of the IHT account.

Q: IS IT CORRECT TO THINK OF INHERITANCE TAX AS A DEATH TAX?

A: Most people understand inheritance tax to be a tax on the deceased's estate (property, money and belongings), but this is not entirely true. The value transferred for IHT purposes is measured by the "loss to donor" principle, which means if an individual gives away an asset, the value of his overall estate is reduced. The amount of this reduction is the " loss to donor ". For inheritance tax purposes, a "chargeable transfer" is not only a transfer on death, but also applies to lifetime gifts. In effect, when an individual dies, he is deemed to have made a chargeable transfer of the amount equivalent to the value of all his assets at the date of death. If a gift is made during an individual's lifetime, the value transferred by that gift may also be subject to inheritance tax, as there would be a loss to the transferor of the estate as a result of such an actual disposal. Of course, there is no inheritance tax involved in arm's length transactions, i.e. where a sale is made without any "gratuitous intent". Expenditure on the maintenance of an individual's family is also not considered to be a transfer of value for inheritance tax purposes.

Q: WHAT ARE POTENTIALLY EXEMPT TRANSFERS?

A: Potentially exempt transfers are deemed to be exempt while the donor is alive. All gifts between individuals are generally potentially exempt transfers, whereas a gift to a corporation is not a potentially exempt transfer. A potentially exempt transfer will not give rise to an inheritance tax charge while the donor is alive. If the donor survives for 7 years from the date of the gift, then the potentially exempt transfer will be fully exempt. If the donor dies within 7 years of the transfer of the gift, it becomes a chargeable transfer. It is important to note that if the transferor retains any interest in the assets after giving them away, regardless of when the gift is made, it does not qualify as a potentially exempt transfer, which is known as a gift with reservation of benefit.

Q: INHERITANCE TAX NIL-RATE BAND

A: The nil rate band is the maximum amount on which an estate is not subject to inheritance tax. Everyone is entitled to a tax-free nil rate band, which is £325,000 in the tax year 22/23. The portion of an estate that does not exceed the nil rate band threshold is charged at a rate of 0%. Any part of the estate above the threshold is subject to a rate of 40%.

Q: WHAT SHOULD I DO IF MY RELATIVE PASSES AWAY WITHOUT LEAVING ME ANY INHERITANCE IN THE WILL?

A: Testators are free to dispose of their estate, but they have to satisfy the test of testamentary capacity, and they have to comply with the formal requirements for making a Will, etc. They can choose to not make a Will, in which case their estate will be distributed according to the rules of intestacy. The Inheritance (Provision for Family and Dependants) Act 1975 gives the Court the power to change how the deceased's estate will be distributed so that the deceased's family and dependants will be able to get a certain amount from the estate. The effect of the said legislation is that the testator will not be able to disregard the need of someone who is dependent on him. However, the purpose behind the legislation is not to reward disappointed beneficiaries but to ensure that the reasonable needs of dependents are met.

Q: WHAT ARE THE CONDITIONS FOR MAKING A CLAIM UNDER THE INHERITANCE (PROVISION FOR SURVIVORS AND DEPENDANTS) ACT 1975

A: The first requirement is that the deceased had to be domiciled in England and Wales at the date of death. There are also strict time limits on the application as it must be brought within six months of the date of the grant of representation. If six months have passed, it can only be brought with the permission of the Court. The applicant can be the deceased's spouse or civil partner, the ex-spouse who has not remarried; a cohabitant who has lived with the deceased for at least 2 years; a child of the deceased or a person who was considered a child by the deceased during his or her lifetime; a person who was wholly or mainly dependent on the deceased immediately prior to his death. An applicant may apply to the Court for reasonable financial support in respect of the deceased's estate.

Q: WHAT ARE THE FACTORS THE COURT MUST CONSIDER IN AN INHERITANCE ACT CLAIM?

A: The Court must first consider two questions: (a) Whether reasonable financial provision has been made for the applicant under the Will or the intestacy rules and (b) if not, what order should be made for financial provision from an estate. The Inheritance (Provision for Family and Dependants) Act 1975 gives a list of factors for the Court to consider, this includes the financial resources and needs that the applicant has or is likely to have in the foreseeable future; the financial resources and needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future; the financial resources and needs which any other applicant has or is likely to have in the foreseeable future; any obligations and responsibilities which the deceased had towards any applicant or any beneficiary of the estate of the deceased; the size and nature of the net estate of the deceased; any physical or mental disability of any applicant or any beneficiary of the estate of the deceased; or any other matter the Court may consider relevant, including the conduct of the applicant or any other person.

Q: HOW MUCH DO YOUR CHANGE FOR THE APPLICATION FOR A GRANT REPRESENTATION?

A: Depending on the complexity of the estate, our fees start from £2,000 to around £5,000+VAT.