

# A Client's Guide on the Administration of Estates, or "Probate"

Note: This Client Guide has been updated since the Finance Act 2008

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From



## Probate Tax & Trusts Department

*Please remember that legal, and taxation, matters are complex and you should not take any action, or inaction, just from reading one of **Thursfields' Client Guides**. You should discuss this with us first. This Client Guide only applies to estates of those who have died either (A) domiciled in England and/or Wales and/or (B) are resident in England and Wales for Inheritance Tax purposes and reflects Thursfields understanding of the law (in England and/or Wales) as at the date of this edition of this Client Guide.*

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## Administration of Estates

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### 1 What is "Probate"?

"Probate" is the name of the formal document issued by the Probate Registry after someone has died leaving a Will to show that the Will is valid. The Grant of Probate can then be registered with, say, a Bank to encash the deceased's account with the Bank.

However the term "Probate" is often used to cover what is really the process of dealing with (or administering) the assets (or Estate) of someone who has died.

For other technical legal terms often used in the administration of an estate please see the list, or glossary at the end of this Client Guide.

### 2 What can Thursfields do for you?

We will assist you to as small or as large an extent as may require. We can carry out all of the procedures (referred in Section 3 below) in order to administer the Estate.

In order for us to proceed on your behalf we will require from you details of the Estate (both assets and debts) together with all the deceased's private papers, passbooks, statements, accounts, outstanding bills and so on. If you are in any doubt please ask us or bring the item into us.

### 3 What is required to administer an Estate?

At its most simple this requires -

- carrying out the wishes of the deceased in his/her Will **or** if there is no Will carrying out the statutory trusts which apply to the Estate
- the collection of all monies and assets
- the payment of all debts owed by the deceased at his/her death
- the payment of expenses incurred in the process of dealing with the Estate e.g. the funeral account
- the finalisation of the deceased's Income Tax affairs (if required)
- the payment of any legacies (e.g. specific sums of money) left by the deceased
- sometimes transferring assets direct to the person(s) entitled (e.g. the deceased's house or share holdings) and preparing all Deeds/Documents to effect this
- dealing with obtaining any formal documents which allow the Estate to be dealt with:-
  - ◆ the Grant of Probate (where there is a Will)
  - ◆ the Grant of Letters of Administration (where there is no Will)
  - ◆ the above are by far the two most common types of Grant but there are, perhaps confusingly, several other types too
- dealing with any death duties (now known as "**Inheritance Tax**" or "**IHT**") payable by the Estate - see Section 13 below
- dealing with HM Revenue & Customs (HMRC) as to
  - ◆ IHT matters
  - ◆ Income Tax matters (if you want Thursfields to deal with this for you)
    - up to the date of death and
    - during the administration period of the estate
  - ◆ Capital Gains Tax matters
  - ◆ (if you want Thursfields to deal with this for you)
    - up to the date of death and
    - during the administration period of the estate
  - ◆ remember there may well be many tax planning points that Thursfields can advise on these matters to make the PR's task simpler and the tax burden less for the estate and/or the beneficiaries
- advising on any **Deed of Family Arrangement** (also sometimes called a Deed of Variation) that may be

required

- in some cases considering any claims made against the Estate or to be made by the Estate
- dealing with the sale or transfer of any property owned by the deceased
- sometimes lodging statutory notices for creditors on behalf of the Estate (see Section 22 below)
- correspondence with all of the PR's and the beneficiaries entitled in the Estate
- making an interim distribution to the residuary beneficiaries on account of their entitlement in the estate
- preparing Accounts to show how the Estate has been administered and agreeing these with the PR's
- making the final distribution to the residuary beneficiaries of their entitlement in the estate together with their share of any interest earned on the monies held in the estate by **Thursfields**

#### 4 What do you need to bring to Thursfields so that they can start work?

It is difficult to make a comprehensive list as every Estate is different. Many of the items we have listed below may not apply to you.

- However, what you need to bring with you for us may include:-
- the **original** Will if kept at home by the deceased
- the **original** death certificate (as issued by the Registrar of Births and Deaths)
  - ◆ **Note:** Thursfields have become aware that on the 4<sup>th</sup> of January 2001 the Government issued a revised HMSO Guidance Note 7. That Guidance Note appears to be "new" advice to, say, institutions that as Crown Copyright exists in Death Certificates the institutions should only rely on seeing the original Death Certificate (as issued by the Registrar of Births and Deaths). It appears likely therefore that most/all institutions will no longer accept a photocopy of the Death Certificate "certified as a true copy" by Thursfields (what Thursfields would call a certified copy Death Certificate). So in future Thursfields advise that when you are registering a death please obtain an original (Registrars) Death Certificate for each
    - Bank
    - Building Society
    - Insurance Companywith which the deceased had an account or policy
  - ◆ **Note:** Thursfields only usually need the deceased's birth certificate when there are life insurance policies in the estate - we rarely need marriage certificates
- the title deeds of any property owned by the deceased if kept at home
  - ◆ any other documents that should be with the title deeds including
    - planning permission documents
    - building regulation approval notices
    - any statutory notices from the local authority which concern the house
    - guarantees for, say, double glazing or cavity wall insulation
  - ◆ any papers as to any second mortgage or other loan that is also a charge against the house
- if the deceased lived in a flat then we also need to have
  - ◆ receipts for ground rent payments
  - ◆ receipts for service charge payments
  - ◆ all/any correspondence on service charges
  - ◆ all/any correspondence with any managing company
- the last renewal receipts or notices for the buildings and contents insurance
- any rent book (if the deceased was in rented accommodation)
- any cash in the deceased's possession (handbag or wallet) or in his house
- any pension or benefit books (unless you have handed them to the Benefits Agency already)
- any building society passbooks
- National Savings Bank passbooks
- premium savings bond certificates including
  - ◆ the premium savings bond holders card

- savings certificates
  - ◆ the holders card
- SAYE certificates or passbooks
- all/any details as to any cheque account with a bank or building society including
  - ◆ statements
  - ◆ the last used cheque book (unused cheques are sometimes asked to be returned)
  - ◆ any "plastic" card, all of which we/you should return to the bank or building society, including
    - a cheque guarantee card
    - a Switch or Delta card
    - a cash machine card
  - ◆ any deposit account passbook
- any other credit or charge card or store card itself plus copies of the last statement for each such account
- share, stock, gilt, unit trust, investment certificates including
  - ◆ any documents showing that any such certificates were held by a nominee for the deceased
  - ◆ any papers showing the CREST PIN number for any of these investments
  - ◆ any contract notes for all/any sales and of such investments
- the deceased's passport (which we return so that it can be formally cancelled)
- insurance policy documents including
  - ◆ any documents which may have placed an insurance policy in trust
  - ◆ premium receipt books for paying the insurance premiums
- for any car and/or motor bike owned
  - ◆ the deceased's driver's licence (which we return to the DVLC)
  - ◆ car insurance documents
  - ◆ the logbook and MOT certificate
  - ◆ any extended guarantee certificate
  - ◆ any HP or other car loan documentation
- any policy documents and any correspondence for any pension policies of the deceased including
  - ◆ any correspondence and booklets as to any company pension scheme
  - ◆ any receipts for any additional voluntary contributions ("AVC's") made into the company pension scheme or paid into a free standing additional voluntary contribution policy (a "FSAVC")
- any income tax vouchers, certificates (including chargeable event certificates) together with any payslips for salary or pension receipts (these may be needed to complete an Income Tax Return to the date of death)
- copies of the last bills for the house ,for example, gas, electricity, central heating oil, council tax, water rates, TV licence, telephone, mobile phone
- copies of any contracts that the deceased has the benefit of or is subject to, for example, HP agreements, loan agreements, cable TV, satellite TV, catalogue clubs
- any other bills that were owed by the deceased
- Where the deceased was involved in a business we will need
  - Copies of the accounts for the last 2 financial years
  - Confirmation as to the businesses' bank
  - Details as to loans made by the deceased to the business
  - Details as to monies owed by the business to the deceased, for instance, Director's loan account (this may be referred to in the accounts).
  - Any share certificates (if the business is a limited company)
  - Details as to any "personal" guarantees given by the deceased to assist the business.

If you are in any doubt whether we need to see something it is better for you to bring it in with you. If we do not need it we will return it you straight away.

## 5 What is the role of the Personal Representatives (PR's)?

PR's is a generic term for any person who acts in the administration of an Estate whether as an Executor(rix) or as an Administrator(rix). The PR's role is to carry out the terms of the Will or to carry out the statutory trusts that apply if you die without leaving a Will.

## 6 General Outline of the work you may require Thursfields to do in the Administration of an Estate

In very general terms the work required is as follows:-

### 6.1 Taking your instructions

Usually at our first meeting we would take your instructions as to what you would wish us to do, and not to do. We will do as much or as little as you want. We will advise you from our experience where we feel that "cutting corners" may cost more in the long run than it may save in the short term. We would usually agree a plan of action for the estate. These matters are confirmed in our Letters of Instruction to you.

### 6.2 Initial fact finding

This sometimes is completed whilst we take your instructions. Usually after receiving your instructions and the documents of the deceased, see **Section 3** above, we need to check with each institution as to the balances on accounts, debts owing and so on, to prepare an initial list of the assets and debts in the estate. This is needed even more so since the 1<sup>st</sup> of November 2004 as part of the process of obtaining any Grant means that some Form has to be completed for the HMRC, **See Section 6.4** below.

### 6.3 Informing the beneficiaries

We would inform all the beneficiaries as their entitlement in the estate. We would also try and establish exactly how to keep them all informed as to how the estate is progressing.

### 6.4 Obtaining the Grant of Probate or Grant of Letters of Administration ("the Grant") and completing the correct Form for the HMRC (IHT 205 or IHT 200)

In simpler estates, since the 1<sup>st</sup> of November 2004, we have to complete a Form IHT 205 for the HMRC. The HMRC calls this form a **Return of Estate Information Form**. It is four (4) pages long. We will need the information from you in order to complete the IHT 205. We will discuss with you what is needed to complete this form. Please note that in having to complete the IHT 205 does delay matters and increases the work we have to do for you. The Guidance Notes issued by the HMRC to explain how to complete the IHT 205 explain in much greater detail what they expect from the PR's to complete the IHT 205. All of this inevitably increases the minimum amount of work that we have to do in any estate.

In a more complex estate we have to complete an HMRC Account on IHT 200 (for more details as to the IHT 200 **see section 16 below**). An IHT 200 is required where there is IHT to pay or the estate is one that does not fall within the HMRC's definition of a simpler estate where an IHT 205 can be completed. We have not set out here all these "rules and regulations" if you want to know more then please contact Thursfields.

**Note:** The HMRC **expect** the fullest enquiries to be made so that:-

- (A) The correct Form (whether this is the IHT 205 or IHT 200) is completed by the PR's, and
- (B) The Form is accurate with no omissions or inaccuracies and preferably with no "estimates". So the HMRC would expect that all gifts (for IHT) are included.
- (C) All the values of any assets have been ascertained in accordance with the correct statutory principles - see **Section 6.5** below.

If the Revenue do not accept that this has happened then they will always consider whether a penalty will be imposed on the PR's, and so on the estate (see **Section 19** below). A penalty will be expensive and Thursfields advice is that it is much better to get this right "first time". At the very least it will increase the costs of the administration and may delay the estate's completion as Thursfields will have further correspondence with the HMRC to deal with on such matters.

So the time taken to deal with these matters and so to complete the correct form also will mean that the Grant will be much harder to obtain quickly. This is in marked contrast to the position up to the 30<sup>th</sup> of October 2004.

If we are lucky when we see you for our first meeting in the estate we will collect from you all of the information needed to complete the IHT 205, or IHT 200. A second meeting is needed for the PR's to swear the documents required to obtain the Grant however this cannot really be done until the IHT 205 or IHT 200 is ready.

### **6.5 Valuing assets, in general, in the estate**

The HMRC are increasingly reminding everyone that the statutory principles are set out in **Section 160** of the **Inheritance Tax Act 1984**. Section 160 makes it clear that the value of property for IHT purposes is **"the price which the property might reasonably be expected to fetch if sold in the open market"**.

The HMRC would say that there is no such thing as a *"probate valuation"*. The HMRC would say this is often a low valuation.

The HMRC in a bad case will consider whether this means that if IHT is payable such a case falls within their Penalty "rules" (see **Section 19** below).

In the guidance notes for the IHT 205 the HMRC have said that where an estate is over £200,000 they would expect the PR's to obtain written valuations of all assets (including house contents, see **Section 8** below). Whilst those written valuations may not have to be lodged with the IHT 205 the HMRC would expect to see those written valuations if they made enquiries of Thursfields on behalf of the PR's. So having to obtain written valuations in many more cases will increase the costs of administration and this may cause delays, as well.

### **6.6 Dealing with the estate once the Grant is received**

It will take therefore sometimes take some time before the probate papers can be completed. Once the probate papers are lodged with the Probate Registry it will take at least 2 weeks before the Probate Registry issues the Grant. However if IHT is payable when the Grant is applied for the Grant will only issue within about 2 weeks after the IHT has been paid. It can take longer than you may think for the funds to be obtained and paid to the HMRC to pay the IHT.

When we have the Grant we can send a copy to each institution where the deceased had assets to encash or transfer as may be required. With the first monies paid to us we can pay the debts, including the funeral account. Once all the assets have been dealt with, debts paid, all taxes dealt with, legacies (if any) paid then the estate can be finished. If it is likely that the estate cannot be finished for some time (for example because an Income Tax return is required) then a payment on account (an interim payment) will be made to the residuary beneficiaries. Where tax is payable we would usually wait until we receive a clearance certificate or letter from the tax authorities.

### **6.7 Paying the beneficiaries**

We will discuss with you whether Interim Distributions of cash are required. If any assets are to be transferred direct this will be completed as soon as this can be arranged.

### **6.8 Estate Accounts**

We will prepare Estate Accounts to show you how the estate has been completed, how all the monies have been accounted for and so on. The Estate Accounts are approved by the PR's. Once approved, the final cash payments, with any interest, can be made.

### **6.9 Tax Deduction Certificates (on From R185)**

We can prepare, if you ask us, to the Tax Deduction Certificates on Form R185 (these are to show what income tax has been paid on each beneficiary's share of the income in the estate). If we do not prepare the R185's the PR's are under a duty to prepare these themselves. If we are to prepare these then we will need all the relevant information from the PR's, so this can cause problems if you want to deal with the estate yourselves but then want us to prepare the Forms R185.

## 7 Property (House) Valuations?

The HMRC (Capital Taxes) have stressed again that for IHT purposes property (house) valuations must be on "**an open market value**". This is a statutory requirement under **Section 160** of the **Inheritance Tax Act 1984**, see **Section 6.5** above.

Your Valuer must therefore consider in arriving at the open market valuation all relevant factors, which would include any development potential. If instruct your Valuer direct then you must ask them to explain in their valuation how any important factors are included in their valuation. So it would be helpful if your Valuer explains how this has been included, and how this has affected their valuation, or not as the case may be.

If your Valuer gives their valuation by way of a range of values, if so you will need to ask them to explain in their valuation why this was necessary.

The HMRC stated in their Tax Bulletin for February 2003 that they had agreed a new **Guidance Note (GN21)** with the **Royal Institution of Chartered Surveyors (RICS)** (to be issued by RICS), which gives advice on valuations for the purposes of Capital Gains Tax (CGT) and Inheritance Tax (IHT). **GN21** forms part of the RICS "**Appraisal and Valuation Manual**", which is commonly known as "**The Red Book**".

GN21 gives advice to members of the RICS on the meaning of "**market value**", as defined in **Section 272 of the Taxation of Chargeable Gains Act 1992** and **Section 160 of the Inheritance Tax Act 1984**. This basis of valuation may sometimes differ from the '**open market value**' basis or other bases of valuation which are used in company accounts. The contents of GN21 have been approved by the Valuation Office Agency (VOA).

In the past, the HMRC say, difficulties have sometimes arisen when private sector surveyors have provided their clients with advice on CGT and IHT valuations "*in accordance with the Red Book*" but on an incorrect basis. In future, all valuations carried out by a member of the RICS for CGT or IHT purposes will normally be on the basis set out in GN21. It should be noted that it is not mandatory for members of the RICS to adopt the basis set out in GN21 if they are instructed to adopt a different basis by their clients. However, if a valuation has not been carried out in accordance with GN21 then this should normally be stated in the Valuer's report to their client.

## 8 House Contents (or household goods or personal chattels) Valuations?

HMRC's guidance on this area was last issued in their IHT Newsletter for December 2004. So this was updated at the time that the IHT 205 was introduced (as above).

HMRC's position is now that they will from the 1<sup>st</sup> of January 2005 be paying more attention than before to the values included for household and personal goods. The HMRC have indicated that they will open an "**enquiry**" and will ask us on behalf of the PR's for more information to satisfy themselves that all of the goods have been included and that all the household goods have all been valued on the statutory basis, see **Section 6.6** above.

So the HMRC may ask:-

- *For evidence of the instructions given to Valuers (so a copy of any instruction letter)*
- *About the steps taken by PR's to satisfy themselves that the valuation is on the statutory basis (as above)*
- *For photographs and further details of specific items*
- *To inspect and photograph items which have not been sold.*

Where the HMRC considers that PR's or their Valuers have been negligent they will consider whether a penalty is appropriate, see above and below.

Areas that the HMRC say cause them particular difficulty include:-

- *Where it is unclear on what basis a valuation has been made. Valuations for insurance purposes or for "probate" may provide a starting point but do not necessarily represent the open market value. Some valuations do not show on what basis they have been made at all.*
- *Where the PR's has made an estimated valuation themselves. The HMRC would welcome as full an explanation as possible of the basis on which the value has been arrived. This should include mention of what comparisons have been made.*
- *Where the goods have been described as having no value. The HMRC would expect a full explanation of the circumstances and the basis on which that conclusion has been reached.*
- *Where there is a car but insufficient details are given. The HMRC may need to seek further information if the make, exact model and year of registration are not given. The HMRC would also like to know the registration number even if it is considered that there is no separate value for it.*
- *Where a Valuer has provided a range of values and the PR's has included values from the bottom of the range. Whilst the decision to do this rests with the PR's, there is a general expectation that the most likely price goods would fetch on the open market would be nearer the middle of the range.*
- *Where goods are jointly owned and the questions on the supplementary form D4 are not completely answered or answered at all. This is less an issue where the property is owned jointly by spouses but in other instances the HMRC needs to know on what facts PR's have established the joint ownership.*
- *Where circumstances indicate there has been a sale at an undervalue or a forced sale. The HMRC expects the value to be adjusted to represent the open market value or a reasoned explanation why the sale value should be taken as such.*
- *Where the estate includes property situate abroad, for example a holiday home, and there is no mention of household and personal goods there. It is possible that the contents are included in the valuation of the property but unless this is explicit the HMRC may seek clarification. It is also possible that the Valuer may not have valued on the statutory basis (as above) which especially may well be the case for a Valuer in a different country.*

In all of these circumstances there is an increased likelihood that the HMRC will want to open an "enquiry" and ask for further information or seek an explanation of the value offered. The HMRC may also want to ask what steps the PR's have taken to ensure that all of the goods have been accounted for.

As the HMRC are asking these questions Thursfields in turn will be asking these questions of the PR's.

## **9 Debts due from the Estate - general reminders**

We cannot pay any debts due from the Estate, for example, accounts for the funeral account, Gas, Electricity and the Telephone until we have received any monies in the Estate. This will usually only be after the Grant of Representation has been obtained. We do not have any monies to use until then.

Once the Grant of Representation is available then the cash assets in the estate can then be encashed. The monies realised can then be used to pay the debts.

### **9.1 Council Tax**

If the house is still occupied by a widow(er) then (s)he will be entitled to a 25% discount from the Council Tax because the house is occupied by one person. If the house is not lived in from the date of death then there is no liability to Council Tax from the date of death until six months after the date the Grant is issued and Council Tax is then due until the house is sold subject to a 50% discount as the house is unoccupied.

### **9.2 Water Rates**

There was a time until recently when water rates would not be charge from the date of death until the property was sold. Now there seems to have been a change of policy by the Severn Trent Water Authority. Water rates will continue to be payable until the house is sold unless the water supply to the house is cut off. There are no discounts against water rates (as for the Council Tax).

### 9.3 Gas, Electricity and Telephone accounts

The suppliers of these types of supplies will continue to supply the house. They usually prefer, once they have been notified of the deceased's death, to have the Personal Representatives sign new agreements for the supply. They will not render a final account until they are asked to do so. You must be cautious as to what is said to these suppliers as you would not want the supply to be cut off too early due to any misunderstanding!

### 9.4 Mobile telephone accounts

These often specify that notice has to be given to terminate the contract. This may be as much as 90 days. If the deceased had a mobile telephone account which no one wishes to take over then notice to the supplier should be given as soon as possible.

### 9.5 TV Licence

If the original TV Licence is given to us then we can apply for a refund of the unused part of the licence. Remember that for someone over 75 they do not now have to pay for a TV Licence.

### 10 Car Insurance - a reminder

It is often thought that when some one dies that you can move their car on their insurance. This is not correct. When they die any "permission" they may have given you will cease. For the same reason you will not be able to drive their car under your own insurance as it is no longer with their consent. It is important that you arrange with either the deceased's insurance company, or your own, that insurance cover is extended to ensure that you are covered. It may be that a cover note will need to be issued to you. Lack of car insurance is, of course, a criminal offence.

### 11 Probate Court Fees

If we have to apply for a Grant then the Probate Registry make a charge for issuing a Grant. The Probate Court Fees are an expense of administering the estate. There is no difference in their fees whether there is a Will, or not. As part of the "Woolf" reforms of civil litigation the fees for the Probate Registry have also been amended from the 26<sup>th</sup> of April 1999. At the lower end they have risen, in percentage terms, considerably but at the top end they have fallen, in percentage terms, considerably. The "new" fees are set out in the table below.

Table of Probate Court Fees. (last revised from 4 <sup>th</sup> January 2005)		
	Size of The Estate	Fee Payable
Net estate up to ...>>>	£5,000	No Fee
Net estate over ...>>> <i>NB: This is, perhaps, the main change in these fees and it means that this "new" flat fee applies to all estates over £5,000. It replaces a fee scale that increased with the size of the estate. The fee for a personal application is £130</i>	£5,000	£40
<b>But</b> if you should apply personally for a Grant then where the Net Estate is over ...>>>	£5,000	£80
A/ For each sealed office copy of the Grant, when supplied at the same time as the Grant, the fee is =  (NB: the fee is £5 for the first copy when <u>not</u> supplied at the same time)	<i>This is not relevant here</i>	£1 per copy
B/ For a duplicate or second or subsequent	<i>This is not relevant</i>	£15

Table of Probate Court Fees. (last revised from 4 <sup>th</sup> January 2005)		
grant (including one following a revoked grant) in respect of the same deceased person, other than a grant preceded only by a grant limited to settled land, to trust property, or to part of the estate	<i>here</i>	
C/ For lodging, or extending, a Caveat	<i>This is not relevant here</i>	£15
D/ For a standing search	<i>This is not relevant here</i>	£5
E/ If any document has to settled, or agreed, with the Probate Registry then the fees is =	<i>This is not relevant here</i>	£10
F/ On inspection of any will or other document retained by the registry (in the presence of an officer of the registry)	<i>This is not relevant here</i>	£15
<b>Plus</b> there will be a Commissioner's Fee to "swear" the Probate Papers which is <b>£5</b> for each PR and <b>£2</b> for the Will and a further <b>£2</b> for each Codicil		

## 12 Was the deceased on Income Support and/or Pension Credit?

When someone dies the Department of Works & Pensions has a last chance to check that Income Support and/or Pension credit was claimed correctly. If there has been an overpayment then the Department has a statutory right to reclaim the overpayment (see **Section 71** of the **Social Security Administration Act 1992**). Often by an oversight, perhaps, capital has been understated. The Department has established a special section to handle these matters, which is called the **Recovery from Estates Section**.

Where the deceased was receiving Income Support and/or Pension Credit Thursfields will proceed as follows, unless you tell us to the contrary, namely:-

- We will write to the Recovery from Estates Section to obtain a formal clearance (that is that everything is in order and no overpayment has been made)
- This will mean that Thursfields will have to provide to the Recovery from Estates Section the following information (there is a statutory right to request this information - see **Section 126** of the **Social Security Administration Act 1992**)
  - ◆ the deceased's full name
  - ◆ the deceased's date of death
  - ◆ the deceased's National Insurance Number
  - ◆ the deceased's date of birth
  - ◆ the deceased's last address
  - ◆ details as to all the assets and debts of the deceased at the date of his death (which would include answering all/any questions that may be raised by the Recovery from Estates Section as a result which may include providing copies of passbooks or bank statements and so on)

Thursfields recommend that it is better in these estates to know, one way or the other, what is the position.

## 13 How is a house is transferred to a beneficiary? or retained in the names of the PR's?

Where a property is transferred to a beneficiary, or retained by the PR's, this will carried out by a Deed which is called an "**Assent**". The Grant of Probate, or Letters of Administration is a link in the legal title of the property to show that the Personal Representatives have the authority to complete the Assent.

### 13.1 What Land Registry fees are payable when a house is then dealt with when the legal title of the property is not yet registered?

New rules were introduced by the Land Registry on the **1<sup>st</sup> of April 1998**. Under these rules if the legal title

to the property was unregistered then the completion of the Assent means that the legal title will be subject to the compulsory registration rules. This will mean that in addition to **Thursfields** fees for carrying out the legal work there will also be a Land Registry fee as well. We have set out in the Table below what these Land Registry fees will be and please note that these fees are based on the current value of the property when the Assent is completed.

Land Registry Fees (their Scale 1) (from 1 <sup>st</sup> March 2004)			
Value or amount (£)			Fee (£)
£0	to	£50,000	£40
£50,001	to	£80,000	£60
£80,001	to	£100,000	£100
£100,001	to	£200,000	£150
£200,001	to	£500,000	£220
£500,001	to	£1,000,000	£420
£1,000,001	and over		£700

### 13.2 What Land Registry fees are payable when a house is then dealt with when the legal title of the property is already registered?

If the legal title of the property is already registered then the Assent will have to be sent to the Land Registry to complete the transfer process. This will mean that in addition to **Thursfields** fees for carrying out the legal work there will also be a Land Registry fee as well. We have set out in the Table below what these Land Registry fees will be and please note that these fees are based on the current value of the property when the Assent is completed. You will see that these fees are less than those charged in the circumstances shown under **paragraph 11.1** above.

Land Registry Fees (their Scale 2) (not changed from 1 <sup>st</sup> March 2003)			
Value or amount (£)			Fee (£)
£0	to	£100,000	£40
£100,001	to	£200,000	£50
£200,001	to	£500,000	£70
£500,001	to	£1,000,000	£100
£1,000,001	and over		£200

### 14 What is Inheritance Tax or "IHT"

This is the name of the tax (or death duties) that may be payable from your Estate. IHT used to be known as "Estate Duty". Estate Duty was introduced in 1896 and lasted until 1974 when Estate Duty was replaced by "Capital Transfer Tax" or "CTT". Dennis Healey brought in CTT for the then Labour Government. When CTT was introduced it started on an Estate of more than **£15,000**. The then rates for CTT was payable in "bands" so for example on the band from £100,000 to £120,000 at the rate of CTT in that band was at 50% and in the band from £120,000.00 to £150,000 the rate was then at 55%. The then top rate of CTT was **75%** on Estates over £2,000,000.

Nigel Lawson for the, then, Conservative Government replaced CTT with IHT from the **15th of March 1988**.

IHT (like CTT) is a "**gift tax**" and can "**catch**" gifts you make in your lifetime and may be due on assets in your Estate on your death. From the **6th April 2004** IHT was payable on your Estate if your Estate was more than **£263,000** (increased from £255,000 by the 2004 Budget). The rate of IHT is at **40%** on the whole of the balance above £263,000. So for example, if your Estate is valued at £288,000 then the balance above £250,000 is some £15,000. IHT is due at 40% on this £15,000 which is **£6,000** (i.e. 40% of £15,000).

Because IHT is a "**gift tax**" the Revenue insist that enquiries are made as to whether the deceased had

made any gifts within **seven** years of his/her death as those gifts might go to increase the liability of the Estate to IHT. Depending on the details revealed it may be necessary to go back more than seven years. If errors are made because information is not provided then the HMRC have the power to impose penalties!!

There are special IHT reliefs for business and agriculture and for gifts to charity. If you need advice on IHT then please arrange to see us so that we can advise you in detail.

For information in greater detail about how IHT works please see Thursfields Client Guide on **Inheritance Tax**.

#### 14.1 Historical Inheritance Tax Threshold (or Nil Rate Band) data

Date of IHT event on or between	Nil Rate Band (or Tax Threshold)	So two (2) Nil Rate Bands (or Tax Thresholds) amount to...
6 April 1990 and 5 April 1991	£128,000	£256,000
6 April 1991 and 9 March 1992	£140,000	£280,000
10 March 1992 and 5 April 1995	£150,000	£300,000
6 April 1995 and 5 April 1996	£154,000	£358,000
6 April 1996 and 5 April 1997	£200,000	£400,000
6 April 1997 and 5 April 1998	£215,000	£430,000
6 April 1998 and 5 April 1999	£223,000	£446,000
6 April 1999 and 5 April 2000	£231,000	£462,000
6 April 2000 and 5 April 2001	£234,000	£468,000
6 April 2001 and 5 April 2002	£242,000	£484,000
6 April 2002 and 5 April 2003	£250,000	£500,000
6 April 2003 and 5 April 2004	£255,000	£510,000
6 April 2004 and 5 April 2005	£263,000	£526,000
6 April 2005 and 5 April 2006	£275,000	£550,000
6 April 2006 and 5 April 2007	£285,000	£570,000
6 April 2007 and 5 April 2008	£300,000	£600,000
6 April 2008 and 5 April 2009	£312,000	£624,000
<b><i>The 2007 Budget proposed increased rates for future Tax Years as follows:-</i></b>		
<i>6 April 2009 and 5 April 2010</i>	<i>£325,000</i>	<i>£650,000</i>
<i>6 April 2010 and 5 April 2011</i>	<i>£350,000</i>	<i>£700,000</i>

#### 14.2 The Spousal Nil Rate Band Transfer (for second deaths (of a couple or registered civil partners) on or after the 9<sup>th</sup> of October 2007) (first deaths being on the 8<sup>th</sup> of October 2007 or any date before)

The Pre Budget Report 2007 on the 9<sup>th</sup> of October 2007 proposed the Spousal Nil Rate Band Transfer system. This is a new relief for IHT where for married couples, or civil partners, the second of them dies on or after the 9<sup>th</sup> of October 2007. This proposal was confirmed by the Finance Act 2008 which received Royal Assent on the 18<sup>th</sup> of July 2008.

In essence as we understand it this will work as follows:-

**(A) On the first death** (and the date of death for this first death is **not** important) you will need to ascertain whether the then Nil Rate Band (NRB) was used in that first estate. This will need to be worked out as a percentage.

*Example 1* = So if H leaves 50% of his estate to W and 50% to his children then you have 50% to use on the second death (the unused percentage).

*Example 2* = If H leaves all of his estate to W then you have 100% to use on the second death.

Gifts which have Business Property Relief or Agricultural Property Relief or gifts to charity will need to be taken into account as part of the new Spousal Nil Rate Band Transfer system.

**(B) On the second spouse/civil partner's death which has to be on or after the 9<sup>th</sup> of October 2007 say the NRB was then £312,000 you will have to set against the second estate 100% of the NRB from the second estate PLUS a second sum which is the carried forward percentage from the 1st estate.**

*Example 1 = So in this example this was 50% of unused NRB in the first estate. So you would have another 50% of the NRB (currently of £312,000 - after 6<sup>th</sup> April 2008). So the second estate would have £468,000 (£312,000 + £156,000) to set against it*

*Example 2 = So in this second example this was 100% of unused NRB in the second estate. So the second estate would have another 100% of the NRB (currently of £312,000). So the second estate would have £624,000 (£312,000 + £312,000) to set against it.*

#### **14.3 The Spousal Nil Rate Band Transfer is claimed by using HMRC's Form IHT 216**

Where the second spouse, or civil partner, dies **on or after the 9<sup>th</sup> of October 2007** in order to claim the Spousal Nil Rate Band Transfer HMRC has devised an additional form which must be completed in order that this can be claimed. This is the Form IHT 216.

In order that Thursfields can complete the Form IHT 216 we will require from you the following:-

- a copy of the marriage certificate or civil partnership certificate
- a copy of the Death Certificate of the first spouse or civil partner to die
- the national insurance number (or NIC number) of the first spouse or civil partner to die
- a sealed office copy Grant of Representation (usually the Grant of Probate) of the first spouse or civil partner to die
- a copy of the will or intestacy details for the estate of the first spouse or civil partner to die
- a copy of any Deed(s) of Variation (or Deeds of Family Arrangement) which had been completed for the estate of the first spouse or civil partner to die
- a copy of any calculation as to the Nil Rate Band percentage used or unused for the estate of the first spouse or civil partner to die
- a copy of any inland revenue account (that is form IHT 200 or IHT 205 or any earlier form) for the estate of the first spouse or civil partner to die
- a copy of any other relevant correspondence with HMRC and any reference given for IHT purposes for that estate by HMRC (such a reference is usually not given by HMRC when an IHT 205 is lodged) for the estate of the first spouse or civil partner to die
- a copy of any schedule for any lifetime gifts or lifetime trusts made by the first deceased which affected the IHT calculations in that first estate
- a copy of the estate accounts for the estate of the first spouse or civil partner to die

Most of these details are required by HMRC but a few are so that Thursfields can properly advise you about this.

#### **15 Do you always have to fill in an HMRC Account (IRA) (IHT 200) in an estate? (for IHT purposes)**

Simply speaking an IHT 200 is only required in more complex estates. The position for simpler Estates is that a Return of Estate Information Form, the IHT 205, will be required, **see Section 6.4** for more detail about the difference between the IHT 200 and the IHT 205. Thursfields will advise which of these will be required in your estate.

An IHT 200 **must** be lodged where the deceased had

- an interest in a single trust which at the deceased's death (the single trust) was worth more than £100,000, or
- an interest in more than one trust (regardless of values in those trusts), or
- had overseas assets that total more than £75,000, or
- had made lifetime gifts that, due to the death, are no longer exempt from IHT, unless those gifts are worth less than £100,000, or
- had retained a gift with reservation of benefit (see Thursfields Client Guide on IHT for more information about gifts with a reservation of benefit), or
- at a time when the deceased was in poor health or terminally ill change their pension scheme or

personal pension policy so as to either dispose of the benefits payable, or make any changes to the benefits to which they were entitled.

These rules also apply if you make a personal application for a Grant.

### **16 I have heard that the HMRC have introduced a "self assessment" type HMRC Account (the IHT 200) for use in an estate. What does this mean?**

The HMRC introduced the "new" (but then heavily revised) IHT 200 on the 14<sup>th</sup> of February 2000 and they have been used after the 2<sup>nd</sup> of May 2000.

The IHT 200 has eight (8) pages and then there are additional Forms (or Schedules) for

- calculating the IHT (self assessment style) that is due - 4 pages = This Form is called the "IHT worksheet"
- the Will (if there is one) - single page = Form D1
- as to domicile outside the UK - a double sided sheet = Form D2
- gifts and other transfers of value - a double sided sheet = Form D3
- a form to deal with normal gifts of expenditure relief - a single page = Form D3a
- joint and nominated property - a double sided sheet = Form D4
- assets held in trust (settled property) - a double sided sheet = Form D5
- pensions - single page = Form D6
- stocks and shares - a double sided sheet = Form D7
- debts due to the estate - single page = Form D8
- life assurance and annuities - a double sided sheet = Form D9
- household goods and personal effects - single page = Form D10
- interest in another estate - single page = Form D11
- land buildings and interest in land - a double sided sheet = Form D12
- agricultural relief - a double sided sheet = Form D13
- business relief, business interests or partnerships - a double sided sheet = Form D14
- foreign assets - a double sided sheet = Form D15
- debts owed by the estate - single page = Form D5
- a continuation sheet - a double sided sheet = Form D17
- a probate summary form - single page = Form D18
- a form for the HMRC to confirm that there is, in fact, no IHT to pay = Form D19
- a form to request an institution to pay (in full or in part) the IHT due on the lodgement of the IHT 200 - single page = Form D20
- a form to request a reference for the estate from the HMRC - single page = Form D21
- a checklist - single page

You can see that the HMRC are now expecting to have much more detail, and information for any such estate (see also our comments on such matters in **Section 6.4** and **Section 6.5** above). This will inevitably mean, as we have already said, that estates will, first, take longer to obtain the Grant, and, secondly, will be more expensive to administer as more work will be required to complete the IHT 200.

So for example the Checklist referred to in the list of new forms, as above, asks whether we have included (if appropriate) the following:-

- any professional valuation of stocks and shares
- any professional valuation of household goods and personal effects
- any professional valuation of land
- a copy of the Will (if there is one)
- a copy of any insurance policy (and annuity) where the deceased was paying the premiums for the benefit of someone else
- a copy of any trust deed, if the trustees are paying tax at the same time as you apply for the Grant
- any evidence of the money owed to the deceased, including loan agreements and related trusts or policies and any evidence of debts being released
- a copy of any joint life insurance policy or policy on the life of another

- a copy of any structural survey and/or correspondence with the loss adjuster about structurally damaged property
- a plan of the property and a copy of the lease or agreement for letting if you are claiming agricultural relief
- a copy of the partnership agreement and the last two years' accounts if you are claiming business relief
- any written evidence of debts to close friends or family

Whilst a professional valuation may not be obtained (for the first three items listed) much of the rest of this list is either new, or goes into much more detail than was required before. It will mean that Thursfields will have to ask you for the information to complete the IHT 200 forms properly. The HMRC's notes state that **"You should make full enquiries so you can show the figures you give and the statements you make are right"**.

The HMRC now expect that with the IHT 200 that the HMRC will receive **all** the information they require at the **beginning** of an estate rather than in stages later (which was more often the usual case with the "old" IHT 200 so prior to 2000). This in turn is a cause of further delay in obtaining a Grant because it will, usually, mean that it takes longer to obtain all the information to prepare the IHT 200, and supplementary forms, fully.

#### **17 When must an IHT 200 or IHT 205 be lodged and, where necessary, the IHT 216?**

In general, where you need to fill in an IHT 200 or IHT 205 form, and where necessary the IHT 216, you must send it in within 12 months of the end of the month in which the death occurred whether or not tax actually becomes payable. If no grant of representation or confirmation has been obtained within the twelve month period, any person to whom the assets in the estate passes may be required to deliver an account form.

The **2004 Budget** introduced a new penalty of up to **£3,000** for failure to submit an IRA or to notify the HMRC if a disposition on death is varied, within 12 months of the account or the notification being due.

#### **18 What if a mistake is made in the IHT 200 or IHT 205 and, where necessary, the IHT 216?**

If you find that the details you have supplied us with are wrong or incomplete you must tell us immediately, so that we can tell the HMRC.

The HMRC say that it is important that you provide a full and correct account (and an additional account, if necessary), because you can incur penalties for

- failure to deliver an account or late delivery of an account
- incorrect accounts submitted fraudulently or negligently
- supporting information or documents submitted fraudulently or negligently
- unreasonable delay in notifying the HMRC of further assets or correct values, which come to light after an account has been delivered

#### **19 What penalties can the HMRC impose (for IHT matters)? And is this new?**

If an IRA is not delivered within 12 months then a £100 penalty, plus a maximum penalty of £60 for each day until the account is delivered, can be imposed. If the IRA is more than 18 months late then the £100 penalty can be increased to £200.

The **2004 Budget** also proposed "to fix the penalty charge for the late delivery of an IRA at **£100** unless the IHT is less than that amount or there is a reasonable excuse".

The HMRC have said that when they find out that any account, information or document supplied to them is incorrect they will look to see if the Personal Representatives have acted **carefully and reasonably**. If the correction to the IHT results in more IHT being payable, then they have indicated if this means that the IHT increase by more than an additional £1,000 they will look to see if a penalty is appropriate. If the HMRC then believe that the accounts, information or document was incorrect because of fraud or negligence of the

people liable to pay the tax, they will seek a penalty.

The HMRC will consider, apparently, whether the Penalty Rules should be used where the value of an asset changes by more than £2,500. Please bear in mind what we have explained as to property (house) Valuations in **Section 7** or Contents Valuations in **Section 8** above. So, if your Valuer advises a value that has to be increased by £2,500 then these Penalty Rules might be applied!

The maximum penalty is **100%** of the additional IHT arising from the correction **plus** £3,000 for fraud, or **plus** £1,500 for negligence. In practice the HMRC will reduce the penalty to take into account mitigating factors like:-

- full and voluntary disclosure
- co-operation
- gravity (so whether it is less serious)

However when you read the HMRC's booklet (**IHT13** on IHT Penalties) you will see that the maximum discount on such a penalty is 65% of the additional IHT due. So this means that where a penalty is imposed the least that you will pay will be:-

- the fixed fee (as above) of, say, £1,500 for negligence, **and**
- at least a penalty of 35% of the additional IHT due

So, in effect, this will mean that not only will the additional IHT be due (on the value of the increased assets in the estate) but also the penalties will increase that sum by more than one third (1/3) as well.

These powers are more complete than they have been. In some ways they are similar to other HMRC powers for instance the fixed £100 penalty for lodging an income tax return late. The HMRC have made it clear that they believe that on IHT matters they have been not vigilant enough and are looking at IHT estates much more critically than before to ensure that the correct amount of IHT is paid.

## **20 What about lifetime gifts in estates? What needs to be included in the IHT 200 and where necessary the IHT 216,? And how do I find details of assets?**

The HMRC's advice is that the PR's must include all assets forming part of the deceased's estate and all gifts made within seven (7) years of death. The HMRC expect the PR's to make a thorough search through the deceased's papers so that you can complete an account as accurately as possible. Please remember that, whilst certain types of investment income are not liable for income tax, the assets producing the income are chargeable to IHT. Remember also that often gifts have been made by the deceased to the PR's and the HMRC will not be very sympathetic if the PR's do not own up to gifts made to them.

Bank statements and building society passbooks, covering the seven years up to death, may provide information about any gifts having been made.

The HMRC expect PR's to make enquiries of (and this list is not meant to be exhaustive):

- any solicitor or accountant who dealt with the deceased's affairs
- the deceased's close family (especially to discover gifts)
- anyone named in the will who might know about the deceased's affairs
- any close business associates of the deceased
- the deceased's bank(s), stockbrokers or other financial advisors.

When making enquiries with the deceased's bank(s), the PR's should also enquire about investment documents, cash or other assets that might have been lodged with the bank for safe keeping.

If the deceased had an interest in a Trust, the HMRC expect enquiries to be made of the Trustees. Even though the PR's may not be liable for tax on the Trust property, they need to include a value for the trust fund as it has an impact on the tax payable by them and is part of the deceased's estate.

Remember also that the HMRC will, for IHT purposes, also look at the information shown in the

deceased's Income Tax Returns. So, for example, they will know if there have been matters revealed for Capital Gains Tax (CGT) purposes (which means that capital assets have been disposed of) and they may well ask questions as to what happened to any monies realised from such a disposal (in case those monies have been used to make gifts).

Please also remember that if we have to complete a IHT 216 then we also will need details of the lifetime gifts that had to be taken into account in that first estate - see **Section 14.3** above.

## 21 Thursfields' policy on IHT matters

Thursfields believe in operating a policy of **full and frank disclosure** to the HMRC on behalf of clients. In estates, where Thursfields are instructed, this includes:-

- making full enquiries to complete the IHT 200 or IHT 205 and, where necessary, the IHT 216
- completing, and lodging, the IHT 200 or IHT 205 and, where necessary, the IHT 216
- notifying the HMRC of all/any alterations and adjustments to the IHT 200 or IHT 205 and/or the IHT position of the estate once discovered
- applying for an IHT clearance certificate once the IHT has been finalised (in estates which are liable to IHT)

In this way Thursfields hope that the cost to the estate, of tax, penalties, interest and professional fees can be kept to a minimum.

Thursfields will give to each of the PR's a copy of the IHT 200 or IHT 205 and, where necessary, the IHT 216 as lodged with the HMRC, and on request will provide a copy of the IHT 200 or IHT 205 and, where necessary, the IHT 216 to a Residuary Beneficiary.

*Thursfields' Clients must be aware that if they do not notify Thursfields immediately of any errors, or omissions, or mistakes (however they may have arisen) in the IHT 200 or IHT 205 and, where necessary, the IHT 216 then Thursfields cannot be responsible for any penalty that the HMRC may impose (see above). Thursfields can only prepare the returns to HMRC based on the information given by you to us.*

## 22 I do not want the Papers to publish anything about the Estate.

The information that the local/national papers obtain comes from the Grant of Probate (or whatever) itself, which is a public document.

If there is a Will a copy of the Will is also part of that public document and so open to public inspection. So any member of the public may also obtain a copy. Inspection of such a public document can be made at the Probate Registry which issued the Grant or at Somerset House in London.

The only exception to such public rights of access is for "Royal" Wills (since 1837 apparently). We believe that the various Press organisations are asked by the various newspaper groups to let them have details of Estates taken from the Grants. It is then up to the Local Press as to whether they will publish or not.

We do not, we repeat do not, provide these details to the Local Press. As there are so many local Papers it is always quite possible that details will be published. We know that publishing these details can cause distress, or other problems. The subject of whether these details should be public is something that has been frequently debated in Parliament. However, the Grant remains a public document.

## 23 What are the "Statutory Notices"?

These Notices are under **Section 27** of the **Trustee Act 1925** (as amended). That Section says that such a notice must be placed in a local newspaper and in the London Gazette. If they are necessary we will advise you.

A "Section 27 Notice" is an advertisement asking for notice of any debt owed by the deceased. If the PR's do not receive notice of any debts then Section 27 gives the PR's protection against any later claim for debts owed by the deceased.

We usually recommend that these Notices are made where the deceased was involved in a business, or was in receipt of Income Support, or the PR's are themselves involved in business.

## 24 What is the Unclaimed Asset Register ("UAR")

The UAR is a unique electronic database which holds information on the owners of unclaimed:-

- Life policies
- Personal pensions
- Occupational pensions
- Dividends
- Unit Trusts

This information is provided to the UAR by a large number of financial institutions and the records on the UAR have a current estimated value of £5,000,000. Membership of the UAR is not compulsory for such institutions but this seems to be the best way of checking on these matters. As you will appreciate this is a way of tracing if there are any "lost or forgotten" financial assets.

A search of the UAR means that the UAR will check their database to see if there is a match with their records. This search is completed immediately. A second search is made a year later (in case anything further is notified to the UAR within that year).

Thursfields are members of the UAR. Each search currently costs £18.00. Thursfields will make a search of the UAR in every estate they are instructed to act in, unless you tell us specifically not to.

## 25 Why search the County Court Judgment Registry ("CCJR")?

A CCJ is a "County Court Judgment". This will usually be issued where court proceedings have been taken to recover a debt. In order to be aware of any judgements against the deceased it is necessary to make a search of the CCJR. Each search currently costs £8.00. Thursfields will make a search of the CCJR in every estate they are instructed to act in, unless you tell us specifically not to.

## 26 Other challenges against the Estate?

We are often asked about challenges against an Estate. In general these are more difficult than, say, the Press might lead you to believe. If you are worried about this then please read **Thursfields'** Client Guide on **Challenges to an Estate**.

### 26.1 Claims Under the Inheritance (Provision for Family and Dependents) Act 1975 ("the 1975 Act")

In some circumstances a claim can be brought against an estate under the 1975 Act.

A claim under the 1975 Act does not make a Will invalid. So this is not a challenge to the Will itself. If the Court makes an order under the 1975 Act then the provisions of the Will remain but they are affected by the terms of the Court order.

#### 26.1.1 Possible claimants under the 1975 Act

A claim can only be made under the 1975 Act by the following:-

- a surviving husband/wife who has **not** remarried
- by a child of the deceased
- by "children of the family" of the deceased
- by a cohabitee who has lived in the same household as the deceased as husband or wife for two years ending with the death of the deceased
- by someone who was being directly or indirectly maintained by the deceased (eg a former spouse who has not been married or a mistress or elderly parents living in a property owned by the deceased)

The **Civil Partnership Act 2004**, which comes into effect on the 5<sup>th</sup> of December 2005, will extend the above categories to include a "civil partner" being able to make a claim.

### 26.1.2 What the Court has to decide under a 1975 Act Claim

In Thursfields' view, very briefly, what the Court has to decide is:-

- Whether any provision made by the deceased in his Will or under the statutory trusts applying if the Testator had not left a Will would mean that the benefit to the person bringing a claim was unreasonable. This may mean that the Court will have to decide if no benefit was reasonable.
- If the Court decides that it was unreasonable then they can make an award for "**reasonable financial provision**". The 1975 Act lays down what the Court needs to take into account.

If there is an existing court order arising from a divorce with payments still being made when the deceased died then invariably under this Act the court will, in effect, order that those payments continue. Often this will be made by a "lump sum payment" being made out of the estate of a size that would enable the same level of income to continue to be paid.

It is possible in the Final Order in a divorce for the parties to agree that they will not bring a claim under the 1975 Act on the death of either party. This is now a common agreement in a divorce.

If the deceased owned a house or flat and someone was living with him then often the court, under this Act, will usually allow that occupation to continue for the rest of that person's lifetime.

As this is a complicated area we suggest you seek our specific advice about any possible difficulties under the 1975 Act.

### 26.1.3 Time limits for claims under the 1975 Act

The 1975 Act says that any claim must be made within six (6) months of the date of the Grant of Probate (or whatever Grant is issued). The Court has a discretion to extend this period.

If there is a possibility of a claim under the 1975 Act then Thursfields would advise that the PR's wait until this six month period has expired before the estate is distributed. Otherwise the PR's might leave themselves open to a claim against them, personally. Please bear in mind that even if the proceedings are issued within six months the obligation under the Civil Court Rules is for those proceedings to be actually served (or handed/posted) to the PR's within four (4) months of the date they are actually issued.

### 27 Is a Grant always required?

No, it is not necessary to obtain a Grant for a small Estate.

If the total assets (in the estate) are under **£5,000** then under the **Administration of Estates (Small Payments) Act 1965** with the agreement of the organisation concerned, for example a Building Society, the "special" procedures under the 1965 Act can be used. This means that an application for a Grant of Probate or of a Grant of Letters of Administration need not be obtained in order, say, to encash (or transfer) the building society account. An organisation agreeing to adopt the 1965 Act procedures usually require a Statutory Declaration. Each organisation has their own requirements, and forms, under the 1965 Act. If the 1965 Act is used then this will be dealt with organisation by organisation.

**Thursfields** have recently become aware that some organisations are, in practice, operating a higher limit than £5,000 even though, strictly, this has no statutory basis.

In some cases **Thursfields** find that in order to comply with the separate requirements of each organisation, it can still mean that it is easier, faster and often cheaper to obtain a Grant in the first place. This will usually be our advice when the estate includes a number of assets or there are stock and share holdings.

### 28 Do I have to employ a Solicitor?

No, you do not have to employ a Solicitor.

You are of course entitled to undertake this work yourself. Indeed the Registrar of Births & Deaths will ask if you need any leaflets when you register the death with them. The Registrar will usually give you a booklet

concerning a Personal Application for the Grant of Probate. However Thursfields have found that many clients:-

- are surprised at the amount of correspondence that is required to deal with all of the deceased's affairs, and/or
- are perhaps in a state of shock and are grateful for someone to take the burden of looking after matters, and/or
- are often rather bewildered and inexperienced as to what they can do and what is required, and/or
- worried that an IHT 205, at least needs to be completed in the estate

## 29 What are Thursfields' charges?

Thursfields charges are based largely on the time it takes to carry out the work in the Estate that you have requested. The more there is to do, the more our charges will be, the less there to do the less our charges will be. This reflects the various complications in an Estate. Some Estates have many assets which may have to be split before transferring them to the beneficiaries. Our charges are, of course, within the provisions of the Solicitors Remuneration Order.

We will agree with you, usually at our first meeting, the basis of our charges in an Estate. This will be confirmed to you in our **Letter of Instruction**.

In simpler Estates we present our account for work incurred at the completion of the administration of the Estate. More complicated Estates often take longer to complete for many reasons. We would present an interim account about six months after the Grant has been obtained. By that time a lot of the work in the Estate has been undertaken. Further accounts will then be submitted each six months from that time until the Estate can be completed. We will try to make available at the same time Interim Estate Accounts or advise you when such will be available. Further interim accounts may be necessary with a final account at the end of the administration of the Estate.

## 30 What work will Thursfields not do, if we instruct you?

Obviously when someone dies this is the last chance to look at their affairs. If the matters, set out below, are looked into thoroughly then this will inevitably increase the costs of the administration of the estate. So Thursfields will not carry out this work unless you specifically request, in writing, Thursfields to carry out this work.

These matters include:-

### 30.1 Checking Bank Accounts

Thursfields will not check through statements and/or cheque books and/or paying books to check that all withdrawals and credits up to the date of death were correctly dealt with.

### 30.2 Checking Building Society Accounts

Thursfields will not check through passbooks and/or statements to check that all withdrawals and credits up to the date of death were correctly dealt with.

### 30.3 Checking State Benefits

Thursfields will not check any order books and/or letters and/or refunds to check that all payments (received and/or paid) were correctly calculated - but note **Section 11** as to Income Benefits above.

### 30.4 Checking Care and/or Nursing Home fees

Thursfields will not check through statements and/or other letters to check that the amounts the deceased had been paying, before their death, were correctly calculated.

### 30.5 Checking as to possible Claims against the estate

Thursfields will advise in appropriate cases where Section 27 Statutory Advertisements **should** be made (see **Section 22** above). However this will not stop a claim against the estate under the **Inheritance**

**(Provision for Family and Dependents) Act 1975** - See **Section 23.1** above. Thursfields will not make enquiries as to whether there is a possible claimant, or claimants, under the 1975 Act. If after you have read this Client Guide you decide that such advice is required, and/or work is needed, then you must specifically request, in writing, Thursfields to do so.

### 31 Making your Will.

We often find that, when someone has been closely involved in the administration of an Estate, this often prompts them to think about reviewing their own Will or about making a Will if they have not made one yet. We can help you in this process. Please see our Client Guide on **Making your Will**.

### 32 Further Reading.

Thursfields suggest you also may wish to read:-

- Thursfields **Client Guide** called **Inheritance Tax**. This Client Guide goes into more detail as to IHT generally.

You may wish to visit the Government Web Site for HM Revenue & Customs at [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

### 33 *An explanation of legal words and/or terms commonly used in Wills and/or Probate matters.*

- **Accumulation and Maintenance Trust (or an "A & M" Trust)** - A specific type of Trust where income can be saved, rather than being paid out, so "accumulated" OR income (and/or capital) can be used (paid) for "education, maintenance or benefit" of the beneficiaries. For example only, "*monies are to be held for X until he is 25 years of age when he shall be entitled to them absolutely*".
- **Administrator(s)** - The person(s) responsible for dealing with the Estate of an Intestate. This will usually be a relative. A lady who is acting as an Administrator is more correctly called a **Administratrix**. When two or more ladies act in this capacity together they are referred to as **Administratrices**.
- **Assent** - The correct name for the Deed which transfers the legal title of a property (i.e. a house) to the person(s) entitled in the Estate.
- **Bare Trust** - A simple kind of Trust, sometimes even a verbal trust. For example only, "*Executors agreeing that they hold property in an estate absolutely for the beneficiaries X and Y (in effect the Executors then hold that property as Trustees). So when that asset is sold then the sale is made for X and Y personally*". So this can be important, for example, for Capital Gains Tax reasons.
- **Beneficiary** - The name used for a person or organisation (e.g. a charity) who is to a benefit from an Estate.
- **Bequest** - Strictly used for a specific gift of a property e.g. a house.
- **Civil Partner & Civil Partnership** - The **Civil Partnership Act 2004** defines these terms for formal same sex relationships. The **Civil Partnership Act 2004** came into force on the **5<sup>th</sup> of December 2005**
- **Codicil** - A document made after a Will has been completed adding to or altering or amending the terms of the Will itself. A Codicil and the Will have to be read together to see the full wishes of the Testator.
- **Discretionary Trust** - A specific type of Trust where income and/or capital can be saved, or paid out, as the Trustees decide for the beneficiaries. For example only, "*monies are to be held for X and Y and Z but the income can be saved or paid out between them equally or unequally and the capital can be invested and/or paid out to them equally or unequally*".
- **Estate** - All your assets at the time of your death.
- **Executor(s)** - The person(s) appointed by you who are responsible for carrying out the instructions in the Will. A lady who is acting as an Executor is more correctly called an **Executrix**. When two or more ladies act in this capacity together they are referred to as **Executrices**.
- **Guardian(s) (testamentary)** - The person(s) you appoint in your Will to look after your child(ren) under 18 on a day to day basis as if they were their parents.
- **Interest in Possession Trust** - The term used for a **Life Interest** Trust under the IHT legislation.

- **Intestate** - When a person who dies without leaving a valid Will he/she is said to have died Intestate. Your Estate will then be distributed according to statutory rules known as the rules or laws of **Intestacy**.
- **Joint Tenants** - Where two, or more, people own a property (this could be any asset and includes a "building" type property) then when one of them dies his/her share in the property (usually this is an equal share) passes (automatically under English Law) to the survivors the moment before he/she dies. This is a kind of legal fiction. **Note:** Compare and contrast the term **Tenants in Common** below (which operates in the reverse way).
- **Legacy** - The name for a gift of a particular item in a Will e.g.
  - ◆ a sum of money (i.e. a **pecuniary** legacy)
  - ◆ or an item e.g. jewellery (i.e. a **specific** legacy)
- **Legatee** - The name used for a person or organisation who is left a legacy in a Will.
- **Letters of Administration (Grant of)** - Strictly the name for the document which authorises the Administrators to administer the Estate of an Intestate.
- **Life Interest Trust** - A specific type of trust where income must be paid to the **life tenant** and when the life tenant dies the assets pass to the beneficiaries specified. For example only, "*monies are to be held for X who can use them for his lifetime and/or can have the income from them for his lifetime and when X dies they shall belong to Y*".
- **Nil Rate Band** - The amount, for a person, that is exempt from paying IHT on lifetime gifts or on death (see above).
- **Nil Rate Band Trust (NRDT)** - A Discretionary Trust included in your Will, which is equal to, or less than, the Nil Rate Band for IHT.
- **Personal Chattels** - This is a legal definition for household goods and personal effects without having to list all these separately. The term includes your car.
- **Personal Representative(s)** - This is a generic term for any person who acts in the administration of an Estate whether as an Executor(rix) or as an Administrator(rix).
- **Probate (Grant of)** - Strictly the name for the document which authorises the Executors to administer an Estate when the deceased left a Will.
- **Residuary Legacy** - The gift of all or part of the residue of your Estate.
- **Residue** - The remaining assets in an Estate after all of the debts, tax costs and legacies have been paid.
- **Settlor** - The correct name for a person who created a Trust (usually used for a Trust created in your lifetime).
- **Spouse** - Your husband or wife.
- **Tax Threshold** - Another name for the Nil Rate Band.
- **Tenants in Common** - Where two, or more, people own a property (this can only a "building" type property - so this does not include a cash asset) then when one of them dies his/her share in the property (which may be an equal share but this also be an unequal share) passes not to the survivors **but** instead passes under the terms of his/her Will (which may, or may not, leave this property to the survivors). **Note:** Compare and contrast the term **Joint Tenants** above (which operates in the reverse way).
- **Testator** - The correct name for a man who has made a Will (and Codicil - if any).
- **Testatrix** - The correct name for a lady who has made a Will (and Codicil - if any).
- **Trust** - Is the name for a binding obligation undertaken by people (that is to say the Trustees) for various (specified) assets on such terms, or conditions, stated by the Settlor (or Testator if in a Will) for a specified beneficiary or beneficiaries.
- **Trust Corporation** - A Trustee who is a company e.g. a Trustee Company of a Bank.
- **Trust Deed** - The name for a document (or deed) which establishes the Trust (usually used for a Trust created in your lifetime).
- **Trust Fund** - The generic term sometimes used for all the Trust Assets.

- **Trustee(s)** - If the Will leaves someone's benefit(s) "**on trust**", e.g. until someone is 21, then when the Estate has been completed the Executor(s) become Trustees until the trust is complete, e.g. when the person is 21. You cannot have more than four (4) Trustees.
  - **Will** - A document containing a person's wishes on their death. This must comply with the statutory requirements for it to be a "Will".
  - **Will Trust** - A "Will" which contains a Trust (usually on on-going trust).
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