PROBATE

Law guide - Probate

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Obtaining probate

What is probate?

'Probate' is the term used when talking about applying for the right to deal with a deceased person's affairs (called 'administering the estate').

When a person dies leaving a will, they are said to have died 'testate'. In this case, one or more 'executors' may be named in the will to deal with the person's affairs after their death.

The executor applies for a 'grant of probate' of the will from the Probate Office or the District Probate Registry. The Grant of Probate is a legal document which confirms that the executors have the authority to deal with the deceased person's assets (property, money and possessions). The executors can use it to show they have the right to access funds, sort out finances, and collect and share out the deceased person's assets as set out in the will.

If a person died without making a will, they are deemed to have died intestate.

A close relative of the deceased can apply to the Probate Office or a District Probate Registry (for applications outside Dublin) to deal with the estate. In this case they commonly apply for a 'Grant of Letters of Administration Intestate '.

If the grant is given, they are known as 'Administrators' of the estate. Like the Grant of Probate, the Grant of Letters of Administration is a legal document which confirms the administrator's authority to deal with the deceased person's assets.

In some cases, for example, where the person who benefits is a child, the law states that more than one person must act as the administrator.

Personal representative (PR)

This is a general term which means executor or administrator.

Grant of representation

This is a general term which includes grants of probate and grants of letters of administration.

When a grant is needed

A grant is almost always needed when the person who dies leaves one or more of the following:

- stocks or shares
- certain insurance policies
- property or land held in their own name or as 'tenants in common'

In most cases above, the bank or relevant institution will need to see the Grant before transferring control of the assets. However, if the estate is small, some organisations, such as insurance companies and building societies, may release the money to you at their discretion.

When a grant may not be needed

A grant may not be needed where the deceased owned everything jointly with someone else and everything passes automatically to the surviving joint owner.

To establish whether the assets can be obtained without a grant, the PR would need to write to each institution informing them of the death and enclosing a photocopy of the death certificate (and Will if there is one).

Grant and inheritance tax

Inheritance Tax is a Self-Assessment tax. The obligation to make a return to the Revenue Commissioners rests with the person who receives the inheritance. An IT38 Return (Inheritance Tax/Gift Tax Return) must be filed when an inheritance either by itself or when aggregated with prior benefits taken by the donee, exceeds 80% of the appropriate tax-free amount. Where the inheritance is received on or after 14 June 2010 and any relief or exemption is claimed, the IT38 must be filed online through ROS, Revenue's online service.

It should be noted that a surviving spouse or civil partner taking any inheritance from their deceased spouse or civil partner will be exempt from paying any inheritance tax. There are a number of other reliefs available including reliefs for agricultural and business property.

Dealing with debts owed to the deceased

What to do about debts owed to the deceased

When someone dies, any money owed to them is counted as part of their 'estate' (everything they own or are owed less anything they owe). It's the responsibility of the PR to collect debts owed to the deceased.

Personal debts owed to the deceased

If the deceased was owed money (for example, for something they sold to someone) and there was an agreement in writing, this may be enforceable by the executor on behalf of the estate. If, however, the arrangement was on a casual basis this may be difficult to prove and it's possible that the debt will not be recoverable.

If you're having difficulty recovering a personal debt owed to a deceased person you should seek independent legal advice.

Business debts owed to the deceased

The legal situation regarding business debts owed to the deceased – including rental and hire purchase agreements - depends on whether the business is a sole proprietorship, a partnership or a company. Sorting out business debts can be complicated, so it is important to get legal advice.

Dealing with a deceased's debt

What happens to debts when someone dies?

When someone dies, any debts they leave are paid out of their 'estate' (the money and property they leave behind).

The estate

A person's estate is made up of their cash (including from insurance), investments, property and possessions.

After someone dies, their estate is handled by one or more executors and/or 'personal representatives (PRs)'. The PRs are often relatives or friends and/or a solicitor.

If the estate is worth above a certain amount, the PR will need special permission from the court - called a grant - to be able to deal with the person's affairs. This includes paying off their debts.

The estate has to pay off any outstanding debts in a set priority order before anything is given to people named in the Will, or until the money runs out.

Debts if you owned a home together

If you jointly owned your home with the deceased person and there is not enough money elsewhere in the estate to pay off the deceased person's debts, there is a chance that your home would have to be sold. Your options to avoid a sale depend on whether you owned it as 'tenants in common' or 'joint tenants'.

Tenants in common

In this case the share belonging to the person who has died becomes part of their estate and goes to whoever is mentioned in their will or those who benefit under the intestacy rules. But if there are outstanding debts these must be paid first from that share. To avoid a sale of the home, you and/or anyone due to inherit the second share will need to try and negotiate with those owed money ('creditors') and find the necessary money.

Joint tenants

In this case the deceased person's share passes automatically to you by survivorship. However, even though it is now in your estate, you cannot ignore the debts

How different debts are paid off

Mortgages

If the mortgage lender required life insurance, this may pay off the full amount of the loan. If there isn't any insurance – or if there were second mortgages not covered by insurance - the property may have to be sold.

Rent arrears

If you're a joint tenant in rented property you must pay off any rent arrears.

Local Property Tax

You are a liable person for local property tax if you own a residential property on the liability (or ownership) date. Anyone still living in the house is responsible for ongoing charges. If the property remains unoccupied, there may be certain exemptions and discounts available. You should contact the relevant authority to obtain details of these.

Hire purchase (HP agreements)

The buyer doesn't own the property until the last payment has been made. But if over one third of the agreement has been paid, the seller needs a court order to get the goods back.

Before returning goods or making payments, check to see if there was a payment protection plan.

Personal loans, credit cards and credit debt

If cards are held jointly, any debts will be the joint holder's responsibility – but check to see if you're covered by a payment protection plan.

Tax debts and overpaid benefits

Any tax owed or overpaid benefits or pension would be paid out of the estate. To prevent benefits overpayments and check if tax is owed contact the relevant office as soon as possible. You'll find contact details on relevant paperwork, or by carrying out searches online.

You should write to the Department of Social Protection quoting the tax number of the deceased to ensure that there is no outstanding money due from the estate of the deceased or to ascertain if there has been an overpayment as there may be a refund due. A letter should be sought from the Department of Social Protection confirming that there is no money due and owing from the estate and a copy of the letter should be kept on file.

Checking for insurance to cover debts

Always check carefully to see if the deceased person's debts are covered by:

- death cover for a mortgage
- payment protection cover for personal loans or credit cards

- 'Death in service' from a pension (payment of a lump sum if the person dies before pension age)

Authority to administer the estate

Those appointed to manage the estate must apply to the District Probate Registry (for applications outside of Dublin) or in the Probate Office in Dublin to obtain the necessary written authority to manage the estate. This is generally referred to as obtaining a grant. The Probate Office and/or Registry will issue a document, called a grant of representation, which acts as proof of the person's authority to act. The type of document will differ depending on whether the persons are appointed by Will or, where there is no Will, by the court.

Introduction

The personal representatives (PRs) will be either the deceased's executors (if they have made a Will) or intended administrators.

If the Will is valid and contains an effective appointment of executors of whom one or more is willing and able to prove the deceased's will, they will be given the necessary authority to proceed with the management and administration of the estate. It is called a Grant of Probate and will be issued to the nominated executors.

If there is a valid Will, but there are no persons willing or able to act as executors, then the next persons entitled to act are called 'administrators' who are appointed according to prescribed rules. They will apply for authority to act and will receive a grant of letters of administration with will annexed.

If the deceased left no Will, or no valid Will, the estate will be administered under the rules of intestacy as set out in the Succession Act, 1965. In order to obtain a grant, only one administrator need apply. This is so even if the estate contains land that may be sold during the administration because a receipt for the proceeds of sale from one administrator is sufficient for the purchase. This is in contrast to the position of a trustee. In the case of a trustee, a good receipt for the proceeds of sale of land must be given by at least two trustees (or a trust corporation, for example, a bank).

In the case of administrators (with or without the Will) it will often be sufficient for one to act in the administration of the estate. However, where the will or intestacy creates a life interest or a child interest, two administrators are normally required.

Preliminary steps
Details of assets and liabilities

A PR must first obtain details of the deceased's property and of any debts outstanding at the date of death. This can be achieved by obtaining the building society passbooks, share certificates and details of bank accounts. These documents will give some indication of the value of the assets but are unlikely to produce precise values. More accurate valuations can be obtained by writing to the various institutions holding the deceased's assets and producing the death certificate as evidence of the death where required.

The PRs should also ask the bank whether it holds in safe custody any share certificates or other property owned by the deceased. The bank will require sight of the death certificate. Once these details have been gathered, the PRs will then have some idea of the size of the estate. This is extremely important, particularly where the estate will be subject to Inheritance Tax.

Details of the beneficiaries

The identity of the beneficiaries should be obtained at an early stage. The nature of their entitlement should also be identified, for example, whether they are receiving a specific gift or part of the residue (what is left over). If they are specific legatees, it is important to establish whether the property given by those specific gifts is part of the estate. If they are not, the gift will fail, except in very unusual cases.

If the deceased dies intestate (i.e. without having made a valid Will – see our chapter 'Dying without a Will'), it is necessary to establish which members of the family have survived so that the basis of distribution of the estate can be established in accordance with the Rules of Intestacy .

Missing or unknown beneficiaries

PRs (executors or administrators) are responsible for the administration of the deceased's estate. This function must be performed correctly. Failure by a PR to carry out their duties can give rise to personal liability. PRs may be faced with a problem that persons entitled under the Will or intestacy rules have disappeared or are unknown to them. In addition the PRs may not be sure that they have identified all the deceased's debts and creditors. Steps can be taken to protect the PRs against personal liability and advertising in accordance with the relevant trustee legislation for missing beneficiaries, creditors or other potential claimants may be prudent.

The probate papers

The appropriate oath and tax forms must be prepared in readiness for the application for the grant of representation. The PRs must swear the oath for executors or administrators before the application for the grant can proceed.

The Inland Revenue affidavit must be prepared in duplicate for swearing by the personal representative (this is discussed in more detail in the section on tax forms). The information sets out the liabilities and assets of the deceased’s estate. A sworn copy will be forwarded to the Probate Office along with a certified copy of the will to the Inspector of taxes for the area in which the deceased resided.

Procedure

The majority of probate applications are made through a solicitor. The charges made by solicitors to their clients vary according to a number of factors (including the value of the estate and/or complexity of the case), so it is not possible to give an indication of typical, or average, costs.

The fee payable to the Probate Office is dependent on the value of the estate and the fee scale should be checked to ascertain the relevant fee before submitting an application to the Probate Office. The fees are set out in the Supreme Court and High Court (Fees) Order at Schedule 1 Part 8 in Items 7 and 8, which can be accessed via the www.courts.ie website. In the case of the majority of applications made through solicitors, the main stages involved are:

- The solicitor, meets the client and takes necessary details or the client supplies information.
- The solicitor, etc. writes to the various asset holding institutions and valuers to obtain values for the estate.
- The solicitor, prepares the papers for the client to swear the oath (see below).
- The client swears the oath in front of a practicing solicitor and/or commissioner for oaths.
- The solicitor sends the papers to a Probate Office for processing together with the original Will, fee and CA 24 Form).
- Staff at the Probate Office examine the papers, and a grant of representation is issued and sent to the solicitor once the Registry is satisfied as to the validity of the application.

Just under one third of applications are made by applicants acting in person. The fee payable to the Probate Service when making a personal application is again, dependent on the value of the Estate and the Supreme Court and High Court (Fees) Order at Schedule 1 Part 8 Item 9 sets out the fees payable in this regard and can be accessed via the courts.ie website.

There are five main stages involved in every personal application:

- The applicant can obtain information, guidance and forms from the Probate Office and/or www.courts.ie website. The applicant completes the forms and sends them to the Probate Office together with the original Will if any, an official copy of the death certificate of the deceased and the appropriate fee.
- Staff at the Probate Office examine the application and prepare the necessary papers.
- The applicant attends an appointment at the Probate Registry or Probate Office for interview, and to swear the oath.
- A grant of representation is issued and posted to the applicant once the Probate Registry is satisfied as to the validity of the application.

NB: Every time an application for a grant of representation is re-submitted to the Probate Office or the District Probate Registry, a fee of €40.00 applies.

The Probate Office and/or Registry retains the original Will, as it becomes a public record.

When the grant has been issued, you will receive information concerning your role as the executor or administrator. You will then have the legal right to ask any person or organisation holding the deceased person's money or property to give you access to these assets. These

assets can then be released, sold or transferred as set out in the deceased person's Will or as required by the intestacy rules.

All grants of representation are public records.

The responsibility of the Probate Office ends when the Grant is issued, and they cannot advise you on how to administer the estate. If you have any questions about this, you should seek legal advice.

Applications by the executor or administrator

Where the executor or the administrator in the case makes an application where there is a Will, it is important to check that the will is valid in all respects. Legal advice should be sought if there is any doubt as to whether:

- The Will is the last Will of the testator.
- The Will has not been validly revoked.
- The Will has been executed in accordance with the provisions of the Wills Act 1837.
- It contains an attestation clause that indicates that the Will was executed in accordance with the requirements of the Wills Act 1837.

Where the registrar is satisfied with all of the documentation lodged by the executor or administrator, they will issue the original grant signed and sealed with the court seal. However, there may be circumstances where the registrar requires further evidence and this may have to be supplied by way of affidavit.

Usually this occurs where there is no attestation clause, or the clause is defective or there is doubt as to whether the Will has been properly executed. In such circumstances, the registrar will require evidence by affidavit of due execution. One or both of the witnesses to the Will can give this evidence.

If there is doubt as to the mental capacity of the testator, an affidavit from a doctor may be necessary in order to satisfy the registrar that the testator had the necessary mental capacity.

Where a will has been lost, it is presumed that the testator destroyed the Will with the intention of revoking it.

However, if the Will has been lost or accidentally destroyed, probate may be obtained with a copy of the will. A copy of the Will may have been kept in a solicitor's file. However, in order to obtain probate in these circumstances, an application would have to be made to the registrar. The application would be supported by affidavit evidence from the applicant for the grant of probate setting out clearly the circumstances surrounding the existence of the Will following death of the testator (someone who makes a Will) or facts which rebut the presumption that the will was revoked by destruction and the accuracy of the reconstruction or copy as appropriate. The registrar may also require evidence of due execution of the original Will by way of affidavit.

Tax forms

One of the first steps towards obtaining the grant of representation is preparation of the appropriate tax form and calculation of any tax payable. This is done by filing in a CA24 Inland Revenue affidavit. Independent tax advice should be sought before filling in a CA24 and full disclosure of the deceased's assets and liabilities must be submitted in the CA24.

The following procedure applies:

1. The affidavit must be prepared and sworn in duplicate.
2. Both affidavits must be submitted directly to the Probate Office/District Probate Registry. Once probate has been issued, the Revenue Commissioners receive all relevant data directly from the Probate Office.
3. The Probate Office/District Probate Registry checks the Inland Revenue affidavit in so far as the probate element of the process is concerned. All the tax details are a matter for the Revenue Commissioners.

Assets which may pass without grant

Where the assets in the estate are of such a type that they may be cashed without the production of a grant, or the assets do not pass through the hands of the PRs or the assets to be cashed do not form part of the deceased's estate, a grant may not be required.

Payments can be made to persons appearing to be beneficially entitled to the assets without formal proof of title. This facility is restricted in that it is not available if the value of the asset exceeds a certain sum which varies between institutions. The payments are usually made at the discretion of the institutions concerned. It is not possible for the executors to insist that payments should be made.

Subject to these points, payments can be made in respect of, for example money in National Savings Bank accounts, National Savings Certificates, Premium Bonds, and money in Building Societies and friendly societies.

Recoverable property such as furniture, clothing, jewellery and cars can normally be sold without the PRs having to prove to the buyer that they are entitled to sell such items. Occasionally, a grant will be required to prove entitlement, for example, if the deceased's jewellery is deposited at a bank.

Normally the PRs do not require a grant before taking custody of any cash funds in the deceased's possession as opposed to funds deposited in a bank or other account.

Assets not passing through the PR's hands

On death, any interest in property held by the deceased as a joint tenant in equity with another (whether it is an interest in land or other personal property) passes by survivorship to the surviving joint tenant. As it does not pass via the PRs, any grant is irrelevant.

The survivor has access to the property and can prove title to the whole of it merely by producing the deceased's death certificate. Since it is common for married couples to own property jointly, there are many occasions where a grant is not required for this reason. The property passes to the surviving spouse/civil partner independent of any grant.

Property not forming part of the estate

Where the deceased insures their own life so that the policy and its proceeds are held in trust for another, no grant is required. On the death of the deceased the policy money is payable to the trustees of the policy on production of the death certificate and the proceeds do not form part of the deceased's estate.

As the deceased had no beneficial interest in the policy or its proceeds, no Inheritance Tax will be payable on the proceeds. Such a policy is particularly advantageous as the proceeds make tax-free provision for dependants of the deceased and can be collected immediately following death.

If the deceased has entered into a discretionary scheme such as a pension fund, then any payments made by the pension fund trustees are made to the beneficiaries on production of the death certificate. Once again, a grant is not required since the pension benefits do not form part of the deceased's estate. It is another method of making tax-free provision for the dependants, and such provision can be collected immediately following the death.

Oaths

Every application for a grant of representation must be supported by the correct oath.

Although the oath may differ in detail, the common purpose is to give the probate registry details of the deceased, the basis of the applicant's claim to take the grant, an undertaking that the applicant will administer the estate correctly and in the case of oaths for executors and administrators (with Will annexed), to identify and exhibit the Will and any codicils (documents that alter existing Wills).

The procedure

Unless the correct oath is accurately completed and submitted to the probate registry or office, no grant of representation will be issued.

Before the oath is submitted to the probate registry, the PRs must swear the truth of its contents. Where the application is being made through a solicitor, notary or barrister, this must be done before a commissioner for oaths or an independent solicitor holding a current practising certificate. In the case of personal applications, the oath is sworn before the interviewing officer.

Oath for executors

The oath for executors will lead to a grant of probate. This is the written authority given to those appointed in the Will who are willing and able to assist in the management and

administration of the estate. The executors are solely entitled to a grant of probate where the Will has appointed them. One executor may obtain a grant and act alone with any other executors choosing to either reserve his rights to probate or renounce his entitlement to probate.

A person appointed as an executor by the Will, but who, at the testator's (someone who makes a will) death, is suffering from mental incapacity may not act as an executor or apply for a grant.

Child executors

A child under the age of 18 can be named as an executor. However, at the date of the testator's death, a child will not be in a position to act as the executor or to apply for a grant. Probate will be granted to the adult executors. The rights of a child to take up a position later can be reserved. If the administration of the estate has not been completed by the time the minor reaches 18 years they can then apply for authority to act as an executor.

Where a child is the only executor appointed by the Will or where the adult executors are not able or willing to act, the testator's estate cannot be left un-administered until the executor reaches 18. The probate registry will most likely authorise the parent or guardian to act in the meantime. When the child reaches 18, they may then apply for authority to act in the estate.

Ex-spouse/civil partner executors

If the testator appointed their spouse or civil partner as an executor and the marriage/civil partnership subsequently ended in divorce/dissolution, the appointment will fail unless the testator has shown a contrary intention in the Will. If the spouse/civil partner was one of several executors, the others may apply for the grant of probate to the exclusion of the spouse/civil partner. If the spouse/civil partner was the sole executor, application should be made for a grant of letters of administration with will annexed. In either case, the oath should state the fact and the date of the divorce.

Giving up the right

Any person appointed as an executor may give up their right to take the grant provided that they have not got involved in the administration of the estate already. This is called intermeddling. This occurs when the executor has performed some task that an executor might do, for example, notifying the deceased's bank of the death. Acts of common humanity, such as arranging the funeral do not amount to intermeddling. Once an executor has intermeddled, they must take the grant. Where a person appointed in the will or by intestacy decides that they do not wish to act, they must notify the probate registry in writing. The person giving up their right must sign the notification and the signature must be witnessed.

Oath for administrators

This oath is required if the deceased has died totally intestate (without having left a valid Will, see the chapter 'Dying without a Will'). The persons entitled to the grant, save for some exceptions to the rule, and their order of priority are the following:

- surviving husband or wife or civil partner
- the children of the deceased followed by the grandchildren
- the father and mother of the deceased
- brothers and sisters followed by nieces and nephews
- half brothers and sisters followed by their children
- grandparents
- uncles and aunts followed by their children and thereafter half uncles and aunts followed by their children

Should there be no person available or entitled to a grant, the acting solicitor shall be entitled to a grant and will act on behalf of the State.

Finally, if all persons entitled to a grant under the above provisions of this rule have been cleared off, a grant may be made to a creditor of the deceased.

Oath for administrators with Will annexed

The oath in support of this application differs where there is a valid Will, but there is no executor willing and able to apply for a grant of probate. This may occur where the Will fails to appoint the executor, the appointment was of the testator's spouse/civil partner and has failed as a result of the testator's divorce, the executor has died before the testator or the executor has died after the testator but before taking the grant or the executor has given up their right to the appointment.

In these circumstances, the order of priority of the persons entitled to grants of letters of administration with Will annexed is governed by specific rules. The probate registrar will look to certain categories of beneficiaries, their personal representatives, and even creditors of the deceased.

When applying for a grant, the person must explain why there is no applicant ranking higher than them. This is called clearing off. A person in a lower ranked category may only apply if there is nobody in a higher category willing and able to take the grant.

A child cannot act as an administrator. Their parent or guardian may apply for the grant for their use and benefit on their behalf. The grant is limited until the child reaches the age of 18.

If there are several people entitled to act as administrators the grant can only be given to a maximum of four persons. No rights can be reserved to anyone.

If there is a valid Will, but no executor, and the will does not dispose of all the estate, the appropriate grant is still letters of administration with Will annexed. The property not disposed of by the Will is distributed according to the intestacy rules (see our chapter 'Dying without a Will').

Where the Will or intestacy rules create a life interest or pass property to a child the court normally requires a minimum of two administrators to apply for the grant.

In the same way as an executor can give up their right to a grant of probate, an administrator is also entitled to a give up their right to a grant of letters of administration with Will annexed. An administrator does not lose that right by intermeddling.

Post death changes

A person is entitled to reject a gift outright which is known as a disclaimer. In order to qualify as a disclaimer, the beneficiary must refuse to take any benefit from the inheritance. Where a gift under a Will is disclaimed no liability to tax will arise and no disposition will be regarded as having been made for CAT purposes as a result. For more information on disclaimers see our chapter on 'Disclaiming a gift'.

Managing the estate

When someone dies testate having left a valid Will, it is necessary to ensure that their estate is administered in accordance with the terms of their Will. Often this is a relatively simple process, but in certain circumstances, there are a multitude of possibilities that can arise, from trust funds to situations where a beneficiary wants to refuse a gift left to them.

In addition there are other issues that need to be considered such as tax, debts, and funeral expenses.

Managing the estate

Following a death, the estate will have to be managed either by a person or persons appointed in the Will for that purpose (known as executors), or appointed by the court, where there is no Will. A general term for both of these roles is 'personal representative' or 'PRs'. Those appointed will be involved in collecting the assets of the deceased, paying the estate debts and expenses and ensuring that the assets are distributed to the beneficiaries.

Duties of the personal representatives

It is the duty of the personal representatives (PRs) to collect and get in all the property of the deceased and administer it according to law. This duty includes paying the deceased's debts without delay and taking reasonable care in preserving the deceased's estate.

A PR who accepts office and acts in the administration of the estate is personally liable for loss to the estate resulting from any breach of duty they commit as PR. This can occur where the PR fails to preserve the value of the asset or administer the estate properly.

If a PR's co-representative fails to safeguard the assets and it results in loss to the estate, that loss is not automatically attributable to the PR who was not involved. The PR may be liable if they fail to prevent a co-representative from committing a breach of duty particularly if they knew of the situation or should reasonably have known of it.

Where the PR has acted honestly and reasonably and the court is of the view that the PR ought fairly to be excused for the breach, it can excuse the PR from liability.

Powers of the personal representatives

Executors and administrators are given certain powers by law to enable them to properly administer the estate. The powers that are granted to them must be used in full for the benefit of the beneficiaries.

If a person dies intestate (without having left a valid Will – see our chapter 'Dying without a Will'), the administrators have specific powers. However, where the testator (someone who makes a Will) has left a Will, there may be additional powers expressed in the Will.

The powers available as a matter of law to the PRs during the administration period include:

Power to employ agents

In addition, they will not be liable for the default of the agent, provided the agent was employed in good faith. This power is very often used where the PRs require the assistance of an estate agent or a stockbroker, accountant etc. These people are called upon to perform specific functions. For example, the estate agent is instructed to sell the house or flat forming part of the estate.

Delegation by power of attorney

The Personal Representatives are permitted to grant a power of attorney to some other person to act on their behalf. Such powers can only be granted for a maximum of twelve months.

A power of attorney is granted where the authority to act in the estate has been obtained, but the Personal Representative is not available, due to a temporary absence, to deal with a particular aspect of administration.

Reimbursement for expenses

PRs are entitled to reimburse themselves for reasonable expenses incurred in the execution of their duties. A personal representative who acts in a professional capacity is entitled to receive reasonable remuneration out of the estate for any services that he provides to or on behalf of the estate (even if they are services which are capable of being provided by a lay personal representative) if each of the other personal representatives has agreed in writing that he may be remunerated for his services.

Power to appoint trustees of a child beneficiary's property

Where a child is absolutely entitled to property, the PRs may appoint a trust corporation (a bank) or more commonly two or more persons to be trustees of the property for the child. If the PRs transfer the property to the trustees, they may obtain a signed receipt and that will release the PRs from their responsibilities.

Power to postpone distribution

The PRs are not bound to distribute the estate of the deceased to the beneficiaries before the expiry of one year after the death of the testator, although historically, the expiry of the first year after death has been a significant cut-off point. This does not apply to payment of the estate debts. The debts must be paid promptly and therefore the PRs usually commence payment of the estate debts within the first year.

PRs are in a position of trust and therefore must act with the utmost good faith. A sole PR can sell land and give a valid receipt. If there is more than one PR they must all join in the contract for the sale of land as well as the purchase deed. However, where property is held on trust, two trustees or a trust corporation is required in order to give a valid receipt following the sale of land.

Collecting the deceased's assets

The PRs have a duty and responsibility to collect the property of the deceased and to administer in accordance with law. This involves taking stock of the assets in the estate and considering what steps should be taken to protect them.

In order to collect the property, the PRs are generally required to produce their grant of representation to whoever may be holding the asset. The PRs will usually have obtained office copies on the grant and will send the bank, building society, or relevant institution the office copy together with a request for payment.

Certain property does not fall under the direct control of the PRs. This includes property passing by survivorship, an insurance policy where the deceased has nominated a beneficiary, a pension scheme where the lump sum is payable at the discretion of the trustees under the pension scheme, and nominated property.

In all the above cases, the assets do not fall into the estate and under the control of the PRs. However, this does not mean that the assets fall outside the estate for Inheritance Tax or capital gains tax purposes.

Distributing gifts

Once provision has been made for the payment of debts and expenses, the PRs must consider payment of gifts.

Construction of the Will

Where there is a Will, the provisions must be examined closely to correctly identify the beneficiaries, the nature and extent of their entitlement (whether the gift is subject to the beneficiary reaching a certain age) and the property they are to receive.

Identity of the beneficiaries

If a beneficiary cannot be identified, the gift may well fail. PRs may find themselves in difficulties if they distribute property in ignorance of the existence of a person who may be entitled to a gift.

Adopted children

The PRs and the trustees (in the case of a trust) will not be under a duty before transferring property to enquire whether any adoption has taken place or not. They will not be liable to any such person if they had not received notice of the position prior to the transfer of the property.

Illegitimate children

In the case of illegitimate children, the PR or trustee does not have the same protection. PRs will have to be more cautious in making enquiries of the testator's (someone who makes a

will) relatives and known beneficiaries. There may also be merit in advertising in the Law Society Gazette and a local newspaper in the area where the deceased owned property. As further protection the PRs can consider taking out insurance.

Lost beneficiaries

Where a beneficiary cannot be found, the PRs cannot ignore their existence. They must advertise for information in a newspaper circulating in the area where the person was last located. They must also consider an application to court for an order permitting them to distribute the assets and as further security they should consider insurance cover.

Specific gifts

Once the PRs are satisfied that there is no need for specific gifts to be used for payment of estate debts or expenses, they should consider payment to the beneficiaries or the trustees if a trust arises. In the case of land, a specific document called an assent is used to transfer the land to the beneficiary and stock transfer forms are completed to transfer company shares.

The transfer of a specific gift takes effect from the date of death of the testator. Where the property produced income, for example, dividends, the beneficiary will be entitled to the dividends. If there are any costs involved in the transfer of the gift (insurance or transport) the beneficiary is responsible for those costs. If the PRs have paid out these expenses on the beneficiary's behalf, they must be refunded.

Cash gifts

As with specific gifts, cash gifts are paid once the PRs are satisfied that they will not be required for payment of the estate debts and expenses. Only in the event of there being insufficient funds available to cover expenses will the cash gifts be utilised for that purpose. While dealing with the handing over of specific and cash gifts the PRs can also consider interim payments to beneficiaries who are entitled to what is left (the residue). They must ensure, however, that adequate provision is made for payment of debts and expenses, the cash gifts and any tax liability.

Time for payment of cash gifts

The general rule is that a cash gift is payable at the end of the 'executor' year, that is one year after the testator's death.

Funeral & other expenses

After the PRs have collected the monies in the deceased's accounts from the banks and building societies they should begin to pay the deceased's outstanding debts and funeral account. Administration expenses, for example, estate agent and valuer’s fees will arise during the course of administration and will have to be settled from time to time.

Great care must be taken when it is necessary to sell assets in order to pay the debts and expenses. A reasonable starting point is the Will and/or codicil (a document that alters an existing Will). There may be express provision to pay the funeral and testamentary expenses from the residue of the estate (the residue being that which is left after payment of specific gifts).

In the absence of a Will or express direction, the PRs must follow the statutory rules which are contained in the Succession Act 1965. Notwithstanding the fact that the PRs have powers to sell assets forming part of the residue, it is good practice to consult with the residuary beneficiaries to establish their views on the matter.

Before selling assets, the PRs should consider whether there is a liability to capital gains tax (CGT) and whether any exemptions or relief applies. If an asset is sold at a higher value than the value placed on the asset at the death of the testator, and the gain exceeds their annual allowance (equal to the same amount as individuals for the year of death and the two years of assessment following) CGT will be payable. The tax thresholds should be checked in this regard and the relevant threshold should be used for each Beneficiary depending on their class or relationship to the testator/deceased. The tax threshold change on a yearly basis and can be accessed via the Revenue Commissioner's website, www.revenue.ie.

Reasonable funeral expenses are payable from the deceased's estate. Testamentary and administration expenses are not specifically defined but will most likely include costs of obtaining the grant, costs of collecting and preserving the assets, administration costs - for example valuer's fees - and any taxes outstanding.

The PRs must give notice of the intended distribution of the estate requiring any person interested to send in particulars of their claim whether as a creditor or beneficiary. The notice should appear in the Law Society Gazette and a local newspaper circulating in the district in which land owned by the deceased is situated.

Such other notices, elsewhere in the Republic Ireland**,** as are appropriate should also be given. Each notice must require any person interested to send in particulars of their claim within the time specified in the notice. The time should not be less than two months from the date of the notice. Therefore it is advisable to advertise as early as possible after obtaining the grant of representation.

The PRs should also make searches that any responsible purchaser of land would make in the Registry of Deeds and/or Land Registry, The purpose of these searches is to reveal the existence of any liability in relation to the deceased's ownership of an interest in land, for example, a second mortgage and/or judgment mortgage on title.

When the time limit in the notice has expired, the PRs may distribute the deceased's estate taking into account only those claims of which they have actual knowledge, or that are discovered from the advertisement. Although the PRs will no longer be responsible for a debt that subsequently arises, a creditor to whom money is owed can still approach the beneficiaries.

Completing administration

Once the PRs have paid the debts and funeral expenses and any specific gifts given by the Will they can consider the distribution of the rest of estate in accordance with the Will or the Rules of Intestacy as set out in the Succession Act, 1965. (See 'Dying without a Will').

Transferring assets to beneficiaries

Having dealt with the estate debts and expenses, the specific and cash gifts, and payment of tax, the PRs will be in a position to dispose of the remaining assets to residuary beneficiaries, being those beneficiaries entitled to what is left. In doing so they must remember to take into account any interim payments made on account of a beneficiary's entitlement.

If the beneficiaries are adults and are immediately entitled to the property, there is no difficulty in the assets being transferred. However, if there is a condition attached, for example age, the property cannot be transferred. This would arise in the context of a Trust or a conditional legacy i.e. a legacy contingent on an event.

Beneficiaries under the age of 18 years cannot take a transfer of assets. The property must remain in trust until they reach the age of majority. The PRs have a further option and can transfer the property to two trustees or a trust corporation to hold until the child reaches majority. Invariably the PRs will appoint the parents where possible.

Moveable property can be transferred to the beneficiary by delivery. No formalities are required. The title of property is said to pass by means of an assent.

In the case of Savings Certificates, special withdrawal or transfer forms will have to be completed and company shares will require the completion of stock transfer forms.

PRs transfer land to a beneficiary by means of an assent. This form of assent must be in writing, signed by the PRs and it must name the person in whose favour it is made. The beneficiary can then register their right to the land with the Land Registry

Estate account

The final step in the administration of the estate is likely to be the preparation of the estate administration accounts for the residuary beneficiaries. The purpose of the accounts is to show all the assets of the estate, the payment of debts, administration expenses and gifts, income accrued, payments on account made and legacies paid and the balance remaining for the residuary beneficiaries. The balance will normally be represented by a combination of assets transferred to the beneficiaries in kind or cash. Approval of the accounts is shown by signature of the beneficiaries on the accounts. Their signature will also release the PRs from further liability to the beneficiaries in the absence of fraud or failure to disclose assets.

Family and dependants left out of Will

Where a person dies a surviving spouse/civil partner, any child of the family and certain cohabitants or other dependants, may apply to court in certain circumstances and request reasonable financial provision to be made for them from the estate, where the deceased's Will or the distribution of his/her estate on intestacy (see the chapter 'Dying without a Will') does not make such reasonable financial provision.

When deciding to make a Will, it is important to consider whether a particular person should be excluded who may ultimately have a claim against the estate. Depending on the circumstances, it may be advisable to leave a gift to the particular person concerned. It is good practice for the testator (someone who makes a will) to leave a letter with the Will explaining why a particular person has been ignored or left a relatively small gift. This will not avoid a claim but it may, in some cases, assist the court in arriving at a decision as to whether a beneficiary is entitled to any provision.

A right to claim

An application must be brought within six months of the date of issue of the grant of representation to the deceased's estate. The court does have discretion to extend this time limit.

Who can claim?

Claims can be made by a surviving spouse/civil partner, a former spouse/civil partner who has not remarried/entered into a new civil partnership, a child of the deceased, any person (other than a child of the deceased) whom the deceased treated as a child of the family in relation to a marriage or civil partnership to which the deceased was a party, any person who lived in the same household as the deceased for the two years up to the death of the deceased as if they were the deceased's husband, wife or civil partner and any person who, immediately before the death of the deceased, was being maintained by the deceased.

Grounds for a claim

The only ground for a claim is that reasonable financial provision has not been made. The Courts determine whether the testator failed in their moral duty to make proper provision for a person.

In respect of all categories, there are certain common guidelines that must be borne in mind when considering an application to the court for provision. These include, among others, the financial resources and needs of the applicant, the deceased's moral obligations towards the applicant or beneficiary, the size and nature of the estate, the physical or mental disability of any applicant or beneficiary, and anything else which may be relevant.

The court will take into account all the facts as at the date of the hearing and will have regard to the financial resources and needs of the applicant, their earning capacity, and financial obligations and responsibilities.

Surviving spouse/civil partner

In order to qualify as a surviving spouse, the person must be married to the deceased at the date of death. If the surviving spouse was married at the date of death but has since remarried when the application is actually heard, this is a factor that will be taken into account by the court in deciding whether an order should be made. (Equivalent provisions apply in relation to civil partners.) A spouse who remarries may have waived their succession rights to their former spouses' estate, by signing a Deed of Separation, entering into a Judicial Separation and/or obtaining a Decree of Divorce.

The court will consider what financial provision would be reasonable in the circumstances for the spouse/civil partner in determining whether the deceased's Will and/or the intestacy (partial or total lack of a valid Will – see the chapter 'Dying without a Will') has made reasonable financial provision for the spouse/civil partner.

In addition to the common guidelines, the court will also take into account certain special guidelines. They include the age of the applicant and duration of the marriage/civil partnership, and the contribution made by the applicant to the welfare of the family such as looking after the home. The court will also consider what the applicant might have received if the marriage/civil partnership had ended in divorce/dissolution rather than terminated by death.

Former spouse/civil partner

The category is limited to a former spouse/civil partner who has not remarried/entered into a new civil partnership at any time prior to the hearing.

It is important to examine the divorce (dissolution in the case of a civil partnership) documentation, as very often a clause is included in a settlement agreement or consent order precluding a party to the marriage/civil partnership from bringing a claim in the event of a death. If such an order was made, the court cannot consider an application by the former spouse/civil partner.

The court will consider all the circumstances to establish whether reasonable financial provision should have been made for the applicant. What constitutes reasonable maintenance is difficult to define. It is more than mere subsistence but is unlikely to extend to a level covering everything that a person might want.

In addition to the common guidelines a court will also take into account special guidelines such as the age of the applicant, duration of the former marriage/civil partnership, and the contribution made by the applicant to the welfare of the family including looking after the home.

Where the court accepts that provision should have been made for the former spouse/civil partner, it will usually order periodic payments from the deceased's estate. The periodic payments will cease if the applicant remarries/enters into a new civil partnership.

Application by qualified cohabitant

A qualified cohabitant is defined by section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 as being an adult who was in a relationship of cohabitation with another adult who, immediately before the time that relationship ended, whether through death or otherwise, was living with the other adult as a couple for a period of 2 years or more, in the case where they are the parents of one or more dependent children, and of 5 years or more in any other case. An application may be made by a qualified cohabitant of the deceased irrespective of whether the partner was being maintained by the deceased.

This applies to same-sex couples/civil partners as well as heterosexual couples.

Although the qualified cohabitant may bring a claim without having to prove maintenance by the deceased, reasonable financial provision may only be awarded to the extent that it is required for the partner's maintenance. The court will consider all the circumstances in respect of each application and can make awards such as periodic payments, a lump sum payment, or transfer of property.

Generally, any award by the court will affect the amount to be paid to other beneficiaries. That amount will be reduced and where one is dealing with a larger estate, it may affect the payment of Inheritance Tax. If there is a payment, for example, to a surviving spouse, the payment is exempt from tax and the overall liability for Inheritance Tax will decrease. However, an award made to a child will decrease the amount payable to the surviving spouse and liability for Inheritance Tax will increase.

Application by a child of the deceased

Section 117 of the Succession Act 1965 states as follows: -

Where, on application by or on behalf of a child of a testator, the court is of opinion that the testator has failed in his moral duty to make proper provision for the child in accordance with his means, whether by his Will or otherwise, the court may order that such provision shall be made for the child out of the estate as the court thinks just.

A child includes illegitimate, adopted and unborn children. There is no age restriction and in itself, marriage will not affect a claim. Once again reasonable financial provision may only be awarded to the extent required for the child's maintenance. An adult child who is quite capable of working and looking after him/herself is unlikely to succeed in a claim.

Section 117 (2) of the Succession Act 1965 states that the he court shall consider the application from the point of view of a prudent and just parent, taking into account the position of each of the children of the testator and any other circumstances which the court may consider of assistance in arriving at a decision that will be as fair as possible to the child to whom the application relates and to the other children.

Following an amendment by the Family Law (Divorce) Act, 1996 there is a time limit of six months in which to make such applications, from the first taking out of representation of a

deceased's estate. The costs of Section 117 applications can often come out of the deceased's Estate and therefore can reduce the value of gifts going to other Beneficiaries, benefiting under the deceased's estate.

The common guidelines apply and in addition the court will consider the manner in which the applicant was being, or might expect to be, educated or trained.

Application by a person treated as a child of the family

A stepchild can make an application under this category. The applicant must show that the deceased took on a parental role, which is more than showing affection and kindness.

Adults may apply under this category even if they are over the age of 18 when the deceased married their parent. As with the previous category, the test is whether reasonable financial provision for their maintenance has been made. The court is unlikely to entertain such an application where the person is able bodied and capable of looking after themselves.

Section 117 (2) of the Succession Act 1965 states that the court shall consider the application from the point of view of a prudent and just parent, taking into account the position of each of the children of the testator and any other circumstances which the court may consider of assistance in arriving at a decision that will be as fair as possible to the child to whom the application relates and to the other children.

A time limit of twelve months applies to such applications, from the first taking out of representation of a deceased's estate. The costs of Section 117 applications can often come out of the deceased's estate and therefore can reduce the value of gifts going to other Beneficiaries, benefiting under the deceased's estate.

Once again, the court considers the common guidelines as well as certain special guidelines. They include:

- The manner in which the applicant was being, or might expect to be, educated or trained.
- The extent of responsibility assumed by the deceased towards the applicant.
- Whether the deceased knew the child was not their own.
- Whether anyone else is legally responsible for the maintenance of the applicant and if so,
- Whether the natural parent pays maintenance under an existing court order.

Dying without a Will

A person who dies without making a Will or without making a valid Will, dies intestate. The property belonging to such a person is inherited according to a strict set of rules commonly known as the Rule of Intestacy, which is governed by the Succession Act 1965. Instead of the property going to who might have been the testator's chosen beneficiaries, it is left to other relatives in a particular order.

Total intestacy

If a person dies without leaving a valid Will, they are said to die intestate. This occurs when the deceased never made a Will at all, revoked their Will and did not execute a new Will or because their Will was held to be invalid. When a person dies intestate, the Rules of Intestacy contained in Part VI of the Succession Act 1965 take effect.

Partial intestacy

A person dies partially intestate if they leave a valid Will, but the Will fails to dispose of all of the assets in their Estate

If, as is usual, the Will contains a valid residuary gift, a partial intestacy is avoided. A residuary gift is one which ensures that all the property which has not been specifically dealt with in the Will (the residue) passes to chosen beneficiaries nominated by the person making the Will (the testator).

Who gets the estate on intestacy?

The right of a person to benefit on intestacy depends on their relationship with the deceased.

Section 67 (1) of the Succession Act states, that if a spouse dies leaving no children, the surviving spouse takes the whole estate.

Section 67 (2) of the Act further states that if a spouse dies leaving a spouse and children, the surviving spouse is entitled to two thirds of the deceased's estate and the remaining one third of the estate is divided equally or *per stirpes,* i.e. does not inherit in an individual capacity but as a member of a group.

If all the children are in equal degree of relationship to the deceased the distribution shall be in equal shares among them; if they are not, it shall be *per stirpes.* Per stirpes means taking by right of representation; the group or class receives by representation and in equal shares what their deceased parent would have been entitled to receive.

For example, if one of your children predecease you and is the parent of three grandchildren, then the surviving child will receive a 1/2 share and each grandchild will receive a 1/6 share (in other words, the deceased child's 1/2 share will be divided equally among the three children who have survived the deceased child: 1/2 divided by 3 = 1/6 each).

Example: If a deceased dies intestate, leaving a spouse and three children, the three children shall be entitled to a share of the remaining one third i.e. a one ninth share of one third of the deceased's estate.

Spouses and civil partners

Under the intestacy rules, a spouse is the person to whom the deceased was married at their death whether or not they were living together, or in the case of civil partners, were joined in a civil partnership under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Where the parties were divorced or are judicially separated the spouse will not benefit under the rules. The same applies where civil partners have dissolved their partnership.

Spouse/civil partner only

Where the intestate (someone who dies without having made a valid will) leaves a surviving spouse or civil partner but no children, parent, brother or sister, or children of a deceased's brother or sister, the whole estate, however large, passes to the spouse or civil partner absolutely.

More distant relatives such as half brothers and sisters, grandparents and cousins are not entitled to any part of the estate.

Children

Children who benefit under the rules include all direct descendants of the deceased. That is children, grandchildren, great grandchildren etc. As mentioned above where the intestate dies leaving a spouse and children, the children take their one third share equally.

Adopted children/children born out of wedlock

Adopted children have the same rights as a natural born child of the adoptive parent. It should be noted, however, that once an adoption order is made that an adopted child ceases to be treated as a child of his natural parent(s). The Status of Children Act provides that any relationship between child and parent will be adduced irrespective of the marital status of the parents. Thus, the rules of intestacy are applied regardless of whether or not a particular individual's parents were married to each other.

No Spouse/civil partner or Issue

Where there is no spouse or issue, each parent takes a one-half share or, if only one parent is alive, that parent takes the full share.

No Spouse/civil partner, issue or parent

Where a person dies leaving no surviving spouse/civil partner, issue or parent, all brothers and sisters take equally and the children of a predeceased brother or sister take per stirpes. The Succession Act also provides that where a person dies leaving no surviving spouse/civil partner, issue or parent, nor brother or sister, all nephews and nieces take equally.

Shares of next of kin

Where the intestate is not survived by a spouse, issue, parents, brother, sister, nephew or niece his/her estate will be distributed among his/her next of kin.

Next-of-Kin is based on a blood relationship to the intestate. The degrees of blood relationship are ascertained by counting upwards to the nearest common ancestor and the downwards from the ancestor to the relative. Where a direct lineal ancestor and any other relative are so ascertained to be within the same degree of blood relationship to the intestate, the other relative shall be preferred to the exclusion of the direct lineal ancestor.

Relatives of the half-blood

Relatives of the half-blood shall be treated as, and shall succeed equally with, relatives of the whole blood in the same degree.

Summary

The following is a summary of how the residuary estate is divided where there is no surviving spouse/civil partner. The residuary estate is divided between the relatives in the highest category in the following list, however large the estate:

- their children, subject to the property being placed in trust, but if none, to
- their parents, equally if both alive, but if none, to
- their brothers and sisters (whether of whole or half-blood) subject to the property being placed in trust, but if none, to
- their nephews or nieces (whether of whole or half-blood) subject to the property being placed in trust, but if none, to
- their grandparents equally if more than one, but if none, to
- their uncles and aunts (whether of whole or half-blood) subject to the property being placed in trust, but if none, to
- their great grandparents, but if none, to
- their other next-of-kin of nearest degree (whether of whole or half-blood)

Each category other than parents and grandparents takes subject to the property being placed in trust. This means that children under the age of 18 take the interest subject to reaching the age of 18 or marrying earlier. Children of a deceased relative may take that relative's share.

The statutory trusts

Apart from the spouse, parents and grandparents, each category of relative takes subject to the term of a trust. The trusts contain three main provisions:

- **The class of beneficiaries:** The residuary estate is held on trust in equal shares for those relatives in the relevant category who are living at the intestate's death. The term living includes a person who is conceived but not born at the intestate's death.
- **The contingency:** The interest of the beneficiaries is subject to reaching the age of 18 or getting married, whichever is earlier.
- **The substitution:** If a member of the category has died before the intestate leaving a child or children, the child or children take their deceased parent's share, if more than one in equal shares, subject to reaching the age of 18 or getting married whichever is earlier.

This means that if John's two children Jason and Mary are entitled on John's intestacy to €1,000 in equal shares and Jason dies before John leaving two children, Barry and Pam, the amount of €500 will go to Mary. John's grandchildren, Barry and Pam will receive €250 each.

Applying trusts for descendants

The primary beneficiaries are the children of the intestate who are living at the death of the testator. Grandchildren are included only by substitution, which is where a child has died before the intestate.

The interests of the children are subject to them reaching the age of 18 or marrying under that age. If a child dies after the intestate, but before they reach 18 or marry, their share is distributed as if they had pre-deceased the intestate.

Any children of the deceased child (i.e. grandchildren of the deceased) who are living at the intestate's death take their deceased parents' share equally between them, subject to them reaching the age of 18 or earlier marriage. Great grandchildren will be included only if their parent had also pre-deceased the intestate.

Whilst money is being held for children before they reach 18, the trustees have powers to advance income and capital to the children.

Changing your Will

Overview

A Will can be changed at any time, but you and your witnesses must sign or initial the Will in the margin of the page beside the changes. It is also possible to change your Will by using a memorandum signed by you or your witnesses clearly referring to the changes.

A codicil gives you an opportunity to make minor alterations to your will without the need to draft a completely new Will. It should be remembered that a codicil is an independent document in itself. If you subsequently cancel your Will, you might not cancel your codicil automatically.

If you wish to cancel changes made by way of a codicil, you must make it clear in making your new Will or prepare a new codicil if the changes are of a minor nature.

Codicils

A codicil is similar to a Will, but generally it is supplemental to a Will that has been previously made. The codicil is subject to the same formal requirements as the Will.

For all practical purposes, codicils are used to make straightforward additions or amendments to an existing Will. These include the change of an executor, a change to a specific gift or the addition of a beneficiary and any other minor alterations that may be required. Where it is necessary to make more fundamental changes to the Will, it is advisable to consider making a new Will.

A codicil can exist independently of any Will. If the testator cancels a Will, but does not cancel a codicil that was made subsequent to the Will, it may result in there being inconsistencies that should be avoided. For this reason, the revocation clause in a subsequent Will should express a clear intention to revoke all former Wills and testamentary dispositions (i.e. documents that are Wills or alter existing Wills (e.g. codicils) or are part of existing Wills).

Types of codicils

There are many different situations which can arise where you might want to make alterations to your Will using a codicil. Some of these are described below:

- to appoint a substitute executor on death of executor
- to make an additional gift to an existing beneficiary
- when an executor no longer wishes to act as an executor
- to cancel a gift made in your Will to a beneficiary

Disclaiming a gift

The outright rejection by the beneficiary of a gift of property is called a disclaimer. It is possible to disclaim a benefit under a Will and also an entitlement on intestacy. To qualify as a disclaimer, the beneficiary must refuse any inheritance before accepting any benefit from it. For example, after the beneficiary has lived in a house left to them, or after they receive a dividend from shares, they cannot disclaim the property. If a beneficiary is given more than one benefit under a Will he is free to disclaim some or all of the benefit. If the beneficiary takes a single benefit he cannot decide to retain one part of the gift and reject the other part.

The beneficiary has no control over the asset once it is disclaimed. The Will may say what happens if a gift is disclaimed. The disclaimer of an interest under a Will means that any gift will automatically pass to the person next entitled under the Will or under the rules of intestacy.

As mentioned earlier, there are no tax implications for the beneficiary who gives up the benefit. The person who takes the disclaimed benefit is treated for tax purposes as receiving it from the deceased.