

AN EXPLANATION OF TERMS USED RELATING TO THE PRIVATE CLIENT DEPARTMENT

MATTERS RELATING TO LIFETIME

Powers of Attorney/Court of Protection

There are several different types of Power of Attorney (POA) where a person can appoint one or more individuals to act on their behalf in property/financial or health/welfare matters as an attorney. The type of POA that is relevant in each case will differ depending on the reason for the POA.

If a person loses capacity to deal with their own affairs then someone may have to apply to the Court of Protection to be appointed as a deputy for them. This process is complicated, costly and can take many months to finalise. Also the person who applies to be the deputy may not be who the incapable person would have chosen.

It's cheaper, and would provide individuals and their families with peace of mind, if a POA could be made setting out the wishes of the individual relating to who should deal with their affairs if they are unable to. This can cover situations of mental or physical incapacity. Also some people use them while living or travelling abroad so they have broader uses than just in cases of incapacity.

POAs changed in 2007 so now the process of making the new lasting powers of attorney (LPA) can take a couple of months to set up so the earlier this is done the better.

Enduring powers of attorney still exist and are valid if made prior to 1st October 2007.

MATTERS RELATING TO DEATH

Wills

These are legal documents where individuals set out their wishes about who should deal with their estate (executors and trustees) and who should benefit from their estate (beneficiaries). As the will appoints executors then on death these people are automatically in charge of the estate. Sometimes a Grant of Probate (GOP) is also required however.

There are rules governing the validity of wills so it's always important to have professional advice when making a will. Some home-made wills are satisfactory but by appointing a solicitor to draft a will they can also advise about various related matters such as the possibility of certain individuals making a claim against the estate/challenging the will after the death.

Wills can be revoked by marriage after the will is complete or partially revoked by divorce or the death of people named in the will so it's always best to review a will on any change of circumstances to include financial circumstances.

Grant of Probate

This is a document produced by the Probate Registry which proves that the will of the deceased person is valid and confirms that the executors/trustees are the correct people to pay the money from the estate to.

Often this document is required to deal with estates worth more than £5,000 but not always. Sometimes banks, for example, have their own limits of how much money they are willing to release without seeing a GOP. Also it is worth knowing that joint assets held as joint tenants* (but not as tenants in common*) pass outside the will or intestacy rules so a grant is not required to transfer their ownership – just a death certificate. The value of these assets is however relevant for inheritance tax purposes.

A GOP is always required in an estate which consists of the ownership of a whole property in the sole name of the deceased person. It is sometimes also required in an estate where a fixed share of the property is owned by the deceased person as a tenant in common*.

Depending on what an individual has done with their estate in their lifetime there may be circumstances when inheritance tax forms are required to be completed as part of the GOP procedure (or Grant of Letters of Administration (GOLOA) procedure) even though there is no inheritance tax to pay.

***Joint Tenants** – this is where more than one individual is treated as if they were one person so if one should die the share of that person passes by survivorship to the other individual automatically outside the will or the intestacy rules.

***Tenants in Common** – this is where each individual has a specified share (such as 50/50 or any other shares). This falls to be dealt with by the person's will or via the intestacy rules – it does not automatically pass to the other owner(s).

Grant of Letters of Administration/ Intestacies

Where a person dies without a valid will the intestacy rules govern which members of your family will receive the benefit of the estate and in which shares.

No-one is automatically entitled to deal with an intestate's estate – the authority for dealing with the estate usually comes from certain specified family members applying to be appointed as an administrator by obtaining a GOLOA.

The process is fairly similar to applying for a GOP but intestacies can sometimes be more complex than dealing with estates which have a valid will so it is always worth taking professional advice if you are considering applying to be an administrator in an estate.

We will be happy to advise you on any of these complex areas of law.