

Personal representatives and the early distribution of Estate assets

Introduction

This information sheet provides guidance for personal representatives when considering an early distribution of estate assets, bearing in mind the provisions of the Inheritance (Provision for Family and Dependants) Act 1975 (the Act). A testator is generally free to leave his estate in whatever way he chooses, and nobody has an automatic right to benefit under the terms of his Will. However the Act gives the court power to order that financial provision should be made from the net estate of a deceased person for the benefit of certain categories of applicant. The Act applies in cases of intestacy as well as cases where the deceased left a Will.

Who May Apply Under the Act

Where a person dies domiciled in England and Wales, the following are entitled to make a claim against the estate:

- 1 the spouse* of the deceased;
- 2 the former spouse of the deceased who has not remarried;
- 3 any child of the deceased;
- 4 any person treated by the deceased as a child of the family;
- 5 anyone who immediately before the death of the deceased was being maintained either wholly or in part by the deceased (the Act provides that a person is "maintained" if the deceased made a substantial contribution in money or money's worth towards that person's reasonable needs);

- 6 any person who (though not married to the deceased) lived with the deceased as a spouse for the two years prior to the deceased's death, provided the deceased died on or after 1 January 1996.

The claim is made to the court for an order on the grounds that the destination of the deceased's estate effected by his Will or under the rules of intestacy does not make "reasonable financial provision" for the applicant.

The Time Limit

A claim must be made by the applicant within six months of the date of the Grant of Probate or Grant of Letters of Administration. The date of death is irrelevant. If the personal representatives distribute the deceased's estate, or a part of it, within this time period and a successful claim is subsequently brought which the personal representatives are unable to satisfy, they can be held personally liable for any shortfall.

The court has power to permit an application to be made after the six month period. This is a matter for the discretion of the court.

Additionally, under the rules which govern the service of proceedings of such claims in court, the claimant has a further four months within which to serve the paperwork on the personal representatives. Theoretically, therefore, personal representatives may not be sent an actual notice of a claim for up to ten months after the date of the grant.

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How to guard against the provisions of the Act

The Act contains specific provisions which give a measure of protection for personal representatives. A personal representative will not be liable for having distributed any part of the estate after the end of the six month period on the ground that he ought to have taken into account the possibility of the court granting an extension of time. Further, bearing in mind the fact that a claimant has an additional four months to serve notice of the claim, it follows that distributions should not be made during the ten month period after the date of the grant if a claim is imminent, likely or even possible.

It is unlikely that a potential claimant would not notify the personal representatives at the same time as issuing the proceedings in court, but they are not obliged to. Accordingly, the distribution period has to be considered carefully.

Early Payments from an Estate by Personal Representatives

It is often necessary or desirable to make early distributions. The personal representatives are therefore advised to consider the following:

- 1 If there is a single beneficiary who is also the only executor, then the estate can be wound up as soon as practicable. The executor/beneficiary should, of course, be aware of any potential liability and exercise appropriate caution.
- 2 In other cases it may be inadvisable to distribute more than a small proportion of the estate within the ten month period.

As a general guide, it is suggested that it would not be prudent to distribute more than one fifth of the estate too early. Any pecuniary or specific legacies should be taken into account in calculating the value of a one fifth share of the estate.

- 3 The personal representatives may decide to make early distributions on the basis that the beneficiary or beneficiaries under the Will or intestacy are able to protect the personal representatives by signing a deed of indemnity. This can provide that early distributions are only made on the basis that if a successful claim is subsequently made, the beneficiary or beneficiaries will refund sufficient money in order to satisfy the claim against the estate. The personal representatives should bear in mind that an indemnity will only provide effective protection to the extent that the beneficiary or beneficiaries do not quickly dissipate the cash or assets paid over to them.
- 4 In a case where the main beneficiary is the deceased's surviving spouse, the personal representatives may feel reasonably confident that, in normal circumstances, an interim payment to meet an immediate and demonstrable need is unlikely to be upset by the court.

Conclusion

Personal representatives should always review the position carefully before deciding to make any distributions from the estate within ten months of obtaining the grant of representation. If the personal representatives are in any doubt about the possibility of a claim being brought under the Act, the beneficiaries should normally

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be advised that distributions cannot be made until the ten month period has elapsed.

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Disclaimer

This information sheet is written as a general guide. As any course of action must depend on your individual circumstances, you are strongly recommended to obtain specific professional advice before you proceed. We do not accept any responsibility for action which may be taken as a result of having read this information sheet.

*All references to the term 'spouse' include a civil partner as defined by Section 1 of the Civil Partnership Act 2004, and references to marriage include a registered civil partnership.

If you require further information, please contact Alan Dickins or Helen Stewart on 01892 510000 or by email at:

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