

REVIEW



Administration of Estates - Pitfalls for the Unwary



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Introduction

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Advocate **Ilsa L Reeves** takes a look at ...

...the administration of Estates and pitfalls for the unwary.

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Administration of Estates - Pitfalls for the Unwary

Dealing with a death in the family can be stressful enough; once the funeral has been dealt with, if the estate has assets then a Grant of Representation is required to authorise the collection of the estate. Having a professionally prepared Will can help avoid battles over the validity of the document, either through lack of testamentary capacity or a failure to comply with the Wills Act 1985 (Isle of Man) or the Wills Act 1837 & 1963 (England and Wales).

Administering the estate involves identifying and collecting in the assets and discharging the debts of the estate. In intestacy (i.e. where someone dies without a Will) problems can arise at this stage, and even before, as a family tree will have to be prepared and the entitlements to the Grant and beneficiaries of the estate will need to be determined. If you are involved in such an estate you should consider instructing an expert as an incorrect distribution can cause the administrator to be liable. It is all too easy for an overlooked beneficiary to find out he has not received his or her entitlement to part of a deceased's estate. You can rest assured legal action will be brought by the aggrieved. The other beneficiaries to whom you have made payments will have spent their entitlement and will not repay part of what they perceive as their share to the person or persons who have been erroneously omitted from the estate. It is no defence to say you did not know of a branch of the family, you are liable to distribute the estate correctly.

If you are dealing with an estate which involves an intestacy, where the descendants are unclear e.g. there is a suspected illegitimate child or a branch of the family who are estranged and for whom contact is lost, professional advice should always be sought. The perceived cost savings of not having professional involvement are eroded once a mistake is made or discovered.

You might reasonably therefore, think dealing with an estate which involves a Will is more straightforward. This however, is not so as it is still possible to incorrectly distribute an estate either because the beneficiaries are not accurately identified in the Will, or where the person who made the Will failed to adequately provide for those he should have e.g. a dependant spouse or child.

Further problems can arise where the debts of the deceased are not easily quantifiable e.g. where they claimed benefits which they were not entitled to or where there were outstanding tax liabilities which were not easily determinable by the Executor. In such situations professional advice should be sought to minimise the risk to the Executor and to ensure the estate is correctly and only distributed at a time when the Executor is sure that there is nothing which will later cause him problems.

In the recent English Case of *Petterson v Ross* [2013] EWHC 2724 the Court examined the legal rules on gifts of

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properties under a Will which had secured debts i.e. mortgages attached to them. Section 35 of the Administration of Estates Act 1925 (s 40 Administration of Estates Act 1990 Isle of Man) states in the absence of contrary intention a debt charged on an asset which passes as a specific gift in a Will is not payable from the residue.

Thus, by way of example if 22, Acacia Street, Peel (valuation of £200,000 is subject to a mortgage at the time of death of £150,000 then a gift to Alice in the following terms "I give to Alice Smith my freehold property known as 22, Acacia Street, Peel" will mean that Alice in real terms receives £50,000.

If however, the gift is framed I give to Alice Smith my freehold property known as 22, Acacia Street, Peel free from any debt secured thereon. Then Alice will receive the property free of debt and in real terms receives £200,000. If the testator was English domiciled, further wording would need to be added to reflect whether the beneficiary was to take the gift free of Inheritance and other taxes.

Section 34 of the Administration of Estates Act 1925 and Part II of the first schedule set out the order in which assets are to be applied to meet unsecured debts. The Manx provisions which are similar but not identical are found in s. 41 of the Administration of Estates Act 1990.

In England first, undisposed property is used, then the residue, and if the residue or remainder is insufficient then the funds for pecuniary legacies are taken and if they are insufficient the property which is subject to specific gifts is taken. Under Manx law the order is first, property appropriated for the payment of debts, then undisposed property, then the residue and if the residue is insufficient property charged with or given subject to a charge for the payment of debts. Thus, it is important your Will is drawn up in a manner such that it accords to your wishes notwithstanding that after the date of execution your financial position may alter adversely because of debt or a reduction in the value of your estate.

Where an Executor or Administrator takes property (to discharge a debt) in the wrong order a disappointed beneficiary is entitled to be compensated from those assets which should have been taken first. The case of *Petterson v Ross* concerned a mother who owned a number of properties which were of modest value, some of which were mortgaged and others not. She had very few liquid assets. Her Will made a number of specific gifts of the properties resulting in insufficient funds in the residue to discharge the liabilities. Subsequent to the death, the Woolwich (the mortgagee) repossessed the property, sold it and discharged the mortgage. The Court used the equitable doctrine of marshalling which meant the beneficiary was then entitled to



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be paid from the residuary estate (i.e to the prejudice of the residuary beneficiaries) the amount which had wrongly been deducted from the value of the sale proceeds of the property because of the mortgage.

It is therefore, imperative the appointed personal representative seeks specialist legal advice prior to the distribution of an estate to ensure the estate is correctly administered and distributed.

About the author; Ilsa Reeves is a Manx Advocate and English Solicitor who specialises in Wills, Probate and Estates Administration.



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