

When the owner of a property dies estate agents will often be approached for the purposes of obtaining a valuation of the deceased's property. This is not just when the property is going to be put on the market for sale; the valuation is needed so that the amount of inheritance tax due on the deceased's estate can be calculated.



#### What is Probate?

Probate is the legal process of settling the estate of a deceased person and distributing the deceased's assets (not just property) under their Will or in accordance with the rules of intestacy if there is no Will. This may frequently involve selling a house or a flat so that the proceeds can be distributed to the beneficiaries.

#### Who does this?

The deceased's Will appoints executors who are responsible for calling in the assets and distributing them. The executors will not be able to deal with the assets until such time as a Grant of Probate has been obtained. This is issued by the Probate Court and confirms that the executors have authority to deal with the deceased's estate. In the majority of cases executors will appoint solicitors to act on their behalf.

Where a person dies without leaving a Will their estate is dealt with under the rules of intestacy. Rather than there being a Grant of Probate there are Letters of Administration and the court appoints administrators instead of executors.

#### How is a Grant of Probate obtained?

Before the Grant of Probate can be obtained a return must be submitted to HM Revenue and Customs confirming the amount of inheritance tax payable.

The return gives details of the deceased's assets at the date of death, this includes details of any real property. The solicitor completing the return must give the property's value.

Once the Revenue has confirmed that it is happy with the Return an application is made to the Probate Court for the Grant of Probate.

#### Probate Valuation?

For the purposes of Probate the property's value is based upon the open market value of the property in a sale by a willing seller to a willing buyer (section 160 Inheritance Act 1984). Any peculiarities of the property (for example the fact that there is a buyer desperate for a flat in that particular building and willing therefore to pay a premium) must be ignored. Often a number of estate agents will be approached to provide this figure and the average value is given in the return.

#### Querying the valuation

Once the return has been submitted, the District Valuer at the Capital Taxes Office will consider the valuation given. If they believe that the value is too low the person who

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submitted the return will be asked to defend the value given. The solicitor acting will turn to the estate agent and ask them to justify their valuation directly to the District Valuer. This situation may arise, for example, if the property is sold for considerably more than the value given in the return just a short period after the date of death.

It is quite rare for the District Valuer to question the valuation given, but it does happen.

Conversely, if, within 4 years of the date of death, the property is sold for less than the value given a claim can be made to the Revenue for a refund of the tax paid.

### Selling the Property

Often the property needs to be sold. However the sale cannot be completed until the Grant of Probate has been issued as it is only at this point that the executors have title to sell. This is frequently something that is not understood by the executors or beneficiaries who instruct the estate agents and is not made clear to the potential buyers. It can take many months, even years, to obtain the Grant and so a buyer may not wish to hang around – very frustrating for all involved.

It is however possible for contracts to be exchanged before the Grant of Probate has been obtained. This is because the executors would be held to be protecting the deceased's estate. In this case the contract needs to be carefully drafted to state that completion will only take place once the Grant has been issued, with perhaps a long stop date so that the buyer does have a chance to walk away if the Grant is not forthcoming. NB not all buyers (and their solicitors!) are prepared to proceed on this basis.

It is important to note that where there is no Will the administrators cannot do anything with the assets, even market the property, before the Letters of Administration have been issued.

It should be made clear to the buyer that they are going to be buying a property from executors who will probably not have lived at the property and have no detailed knowledge. In fact they may be able to give no information at all. The buyer must be prepared for this.

The executors are entitled to sell the property with limited title guarantee and there will be a statement in the Transfer Deed that they are only liable for the information that they provide in respect of the period since the date of death of the deceased.

### Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

It is possible for the executors to serve a Notice of Claim to extend a lease in accordance with the 1993 Act. They are entitled to do so within a period of 2 years from the date of the Grant of Probate, but only if the deceased had owned the property for 2 years and all other qualifications have been met.

This means that executors would be able to market a property for sale with the benefit of a Notice of Claim which could then be assigned to the buyer. This would avoid the buyer having to wait 2 years before extending the lease themselves, and of course increases the marketability of the property.

This is an overview of the issues that you need to be aware of when valuing or marketing a deceased's property. If you have any questions at all please do not hesitate to telephone Sophie Breakwell or Brian Hunter, in our private client department.

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