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# PROBLEMS WITH JOINT ATTORNEYS IN A LASTING POWER OF ATTORNEY

When making a Lasting Power of Attorney to look after their affairs, the attorney has the choice to either appoint a single attorney, or more than one attorney. If they appoint more than one, they have the choice to appoint them to act "jointly" or "jointly and severally". Generally, people will appoint two or three people, typically their children. You can also appoint "Alternative Attorneys" to act if the original attorneys cannot act.

Many people may think appointing their attorneys to act jointly is a good idea. They may want to be fair, and make sure one attorney doesn't act without the authority of the other. However, in practice, a joint appointment can make it more difficult to use the document. If for any reason one of the attorneys is unavailable to act, the other cannot act on their own. For example, if an attorney moves to live abroad. The other problem is where one of the attorneys is uncooperative towards the other, perhaps the one who is doing all the work. There is no guarantee both attorneys will work well together. One of the attorneys could be ill, or even die, which would prevent the document from working.

For these reasons it may be more flexible to appoint the attorneys "Jointly and Severally". This way, one attorney can act on their own. It is also worth considering that the document may not be needed for many years, and situations can change considerably over that time.

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# RESIDENTS NIL RATE BAND-HAVE YOU READ THE SMALL PRINT

You may remember, David Cameron at election time, boasting that he was going to increase the allowance for Inheritance tax for a couple to £1m. Well this has not happened fully yet, but there have been changes in the April 2017 budget.

Before April 2017, everyone had an allowance of £325,000, before inheritance tax is payable. It is payable at 40% of the excess. So a married couple have two allowances making £650,000, that they can leave before tax is payable.

Particularly in the South East of England, where property prices are relatively high, this isn't a massive allowance. So many house owners will be pleased to read about this change.

The new allowance is called the Residents Nil Rate Band. Currently, it gives house owners an extra £100,000 allowance each, before inheritance tax is payable. This extra allowance is set to rise each year by £25,000 until 2021.

This means a couple can now leave assets of £850,000 before paying Inheritance Tax or does it? Well, there is quite a lot of small print.

For example if you have assets of over £2million the extra relief is tapered.

Firstly, you must leave the house to "linear" descendants which means children or grandchildren. The Will cannot have trusts in it, which give Discretion, to the trustees as to who they leave assets to. There are many Wills of this type around as before 2007, having such a Will, could enable you to obtain the two nil rate band allowances which didn't generally happen otherwise.

So in conclusion, the danger here is fairly obvious. Lots of these Wills were written before 2007 setting up Discretionary Trusts. This was to enable more wealthy people to obtain two nil rate bands for Inheritance tax reasons. Then in 2007, the government decided to give all married couples the two allowances so you could argue that the Discretionary Trusts in the Wills were no longer needed.

If you are going to need the extra residents allowance, for example a single person with assets over £325,000, or a couple with joint assets of over £650,000, it might be worth checking that you current Will enables you to qualify for it. If it doesn't you might have some very disappointed beneficiaries. One extra allowance of £100,000, at 40% tax, is worth £40,000 and two allowances are worth £80,000. As always, if in doubt, take professional advice.

# KEN DODD HAS THE LAST LAUGH!

By now most readers will be aware of the death of Sir Ken Dodd on 11th, March 2018 at age 90. Ken enjoyed a very successful career in show business for over 60 years. He also had several hit records. Ken was knighted in 2017.

In 1989 Ken got into trouble with the tax man for tax evasion. The case went to court in Liverpool and after three weeks he was acquitted.

Having been single all his life, he decided to get married just two days before his death to his long term partner Anne Jones. There could be a number of reasons for this? He may have wanted to ensure Anne's financial security in retirement. A possible reason for this may have been his desire to avoid paying tax again.

As a single man, Inheritance tax would have been payable on death on assets over £325,000 at 40%. As a married man however, his estate would pass to his wife Anne with no tax to pay. If Anne makes large gifts from her estate, provided she lives for seven years, no tax will be chargeable on them.

# HOW TO AVOID THE COSTS OF PROBATE ON THE FIRST DEATH

When someone dies, if they only have a small estate, it may be possible to distribute their assets without a "Grant of Probate". It can be helpful if they have written a Will and if not, the "Intestacy Rules" will apply, which state where your assets should go.

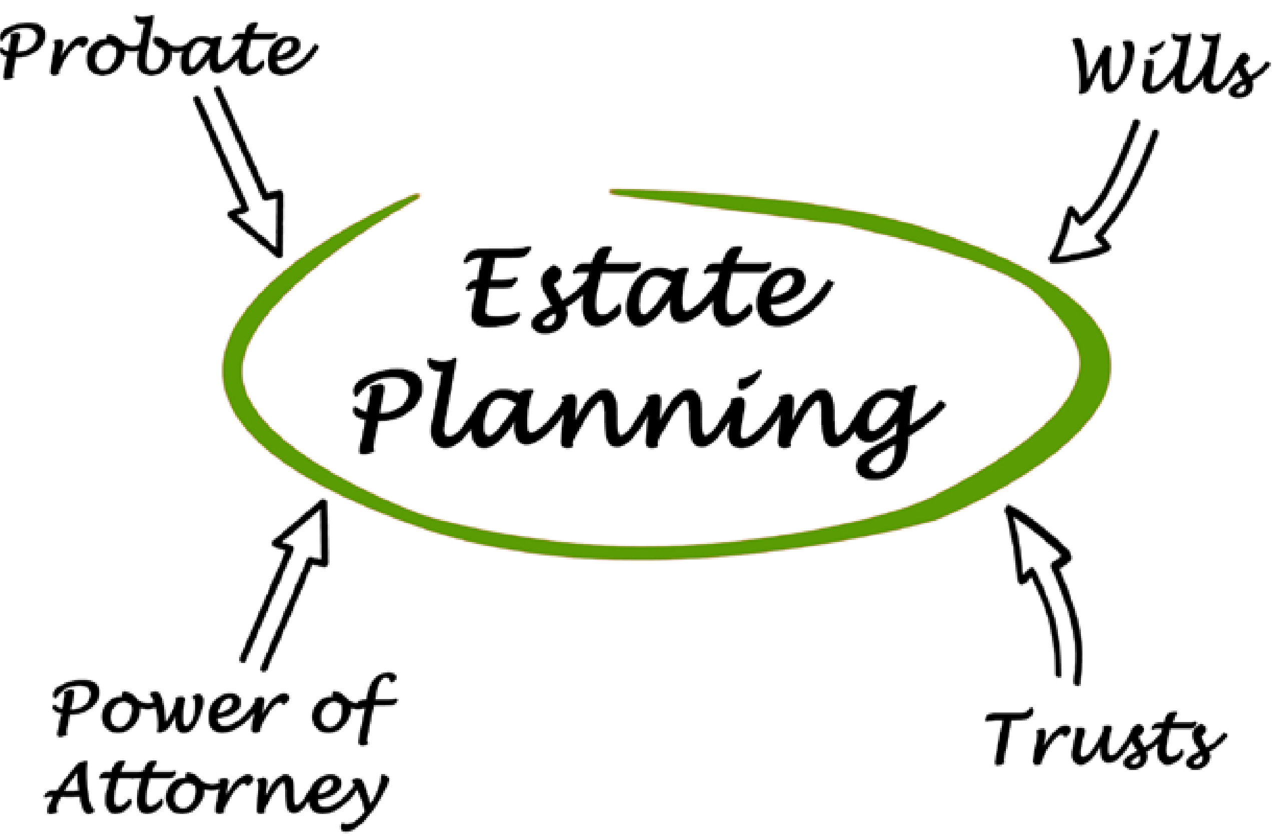
A Grant of Probate is a document issued by the Probate Office, (which is a government office), allowing the distribution of an estate of a deceased person. The government is keen to make sure such assets go to the right people.

To obtain a Grant of Probate will normally take some time and money. Firstly, you need a list of the assets a person owned, and the values. Once you have this, the information can be transferred to forms required to obtain the Grant. The cost of obtaining a Grant of Probate will vary, depending upon the complexity of an estate. Normally, the family of the deceased or "Executors" will engage a Solicitor or other professional to assist with this work. A fairly simple estate could cost £1,500 to administer up to many thousands of pounds.

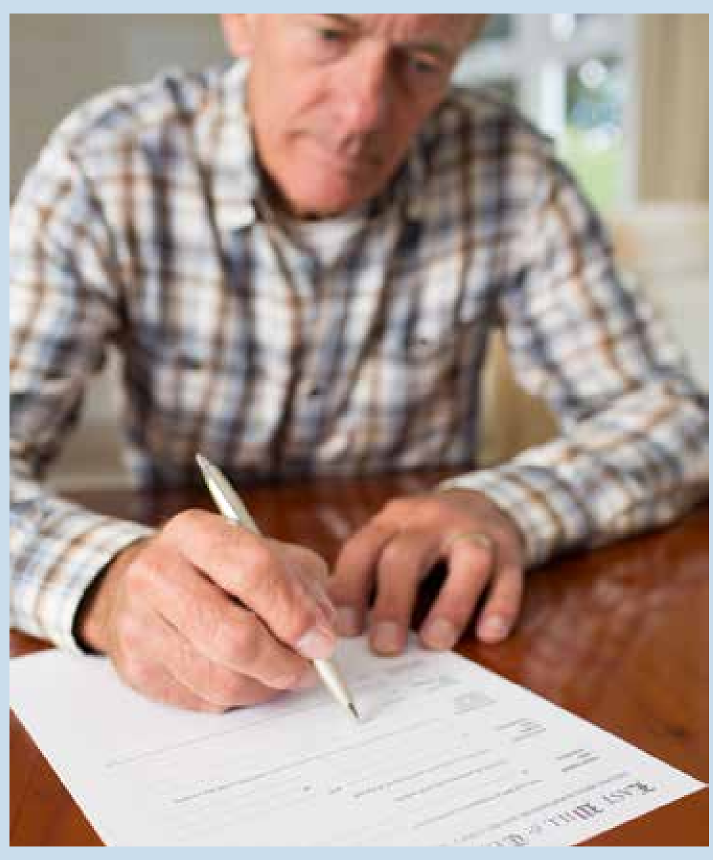
A way to avoid this cost, for a couple, on the first death, is to hold assets "Jointly". When the first to die sadly, passes away, the survivor will hold the assets, now in their sole name. This can happen with a house which is jointly owned by a couple, and bank and building society accounts. Individual Savings Accounts (ISA's) can cause problems as they are only held in a sole name. By transferring to joint accounts, on the first death, probate costs can often be avoided. Some banks and financial institutions will allow "small balance" bank accounts to be closed without a Grant of Probate. There is no exact figure as to when a Grant will be needed, typically this might be around £10-20,000. If you have such an account, it does no harm to ask at the bank if probate would be required to release the funds.

Other investments that may cause problems for the executors are small portfolio's of shares. These again will generally be in sole names.

In such cases, a Grant of Probate will usually be required on the second death, especially if the estate includes a house.



# 1837 WILLS ACT SECTION 33 A TRAP FOR THE UNWARY!



When making a homemade Will or using a simple "Will Kit" the person writing the Will, known as the "Testator" may not give thought to the position if a beneficiary of the Will dies before them.

Wills can be around for a long time, and in some cases, many of the beneficiaries and possibly the executors may have died.

If a beneficiary dies, who is a child or grandchild of the testator, and there is no specific wording as to what should happen, the 1837 act states that the gift will pass to the child or children of the intended beneficiary. If this is not wanted in a Will, it is important to state very clearly what should happen to the gift.

A good example could be a grandchild who may not be good with money, or has a drink problem. If his parent dies, a gift from a grandparent could come straight to them, which might not be appropriate.

As you might expect, this law has led to disputes, when it wasn't totally clear what should happen.

The other problem with leaving gifts to children is that the gift will need to be held by the executors and trustees until the children are old enough to receive the gift.

Typically this will be at age eighteen or twenty one. If the children are young, this can be quite a responsibility for the trustees to look after the funds as best they can for the duration.

Other gifts in a Will which are not to children or grandchildren will fail if the beneficiary dies. For example, if you leave £1,000 to a good friend, who dies before you, that gift will not be paid.

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