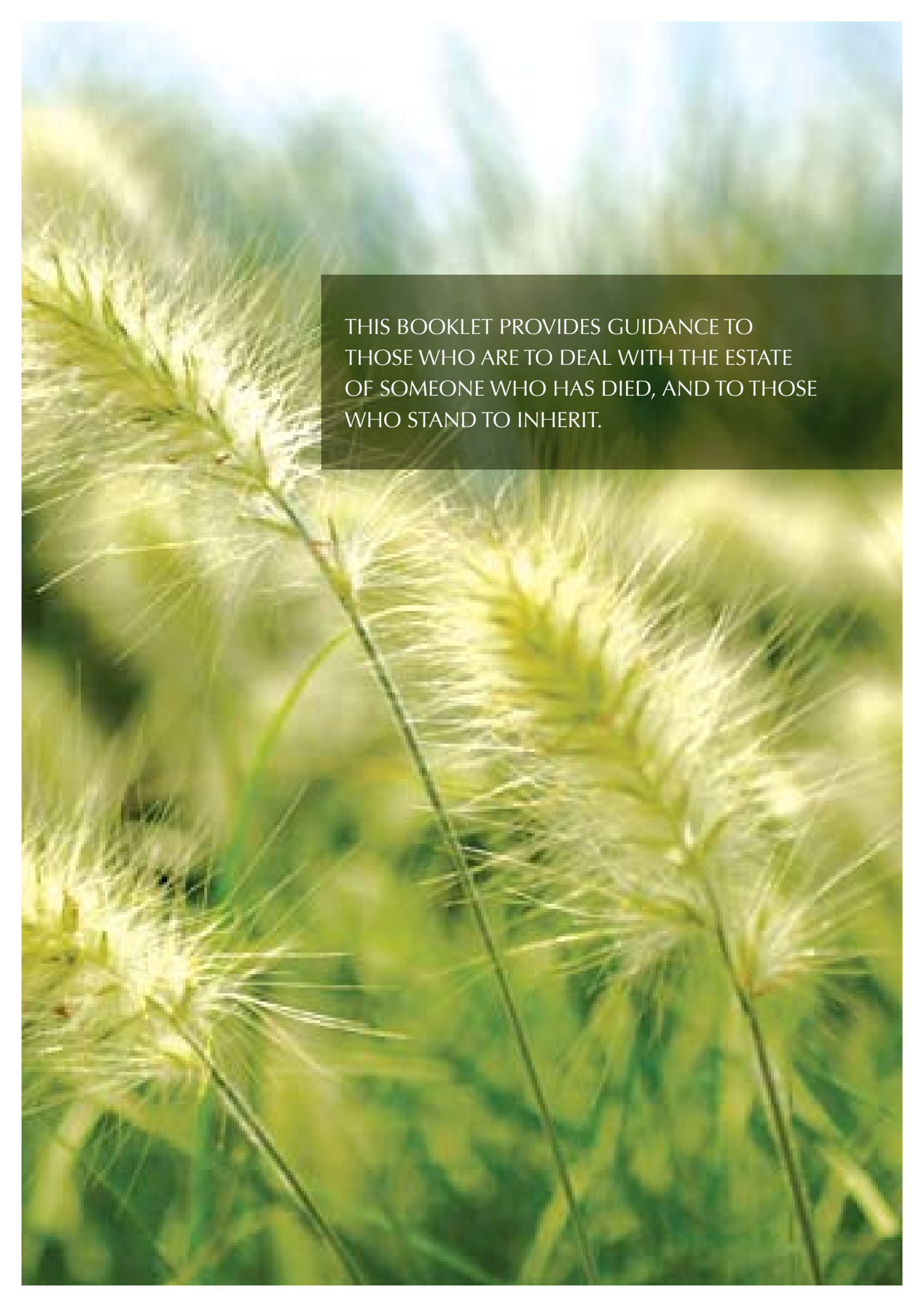


PEMBERTON  GREENISH

A short guide to
Probate



THIS BOOKLET PROVIDES GUIDANCE TO
THOSE WHO ARE TO DEAL WITH THE ESTATE
OF SOMEONE WHO HAS DIED, AND TO THOSE
WHO STAND TO INHERIT.

PROBATE AND INHERITANCE TAX

WHAT IS PROBATE?

Probate is the term commonly used to describe the process of winding up a person's affairs after he or she has died.

WILL OR INTESTACY?

If the deceased leaves a valid Will then he dies "Testate". The Will governs who is to be entrusted with winding up the estate and who will inherit the estate.

If the deceased dies without a valid Will then he dies "Intestate". Those entrusted with winding up the estate and those who will inherit are determined by the laws of intestacy.

PERSONAL REPRESENTATIVES, EXECUTORS AND ADMINISTRATORS

Those entrusted with dealing with the estate are called Personal Representatives (or PRs for short).

The terms "Executor" and "Administrator" are used to distinguish Personal Representatives appointed by Will from those appointed by the laws of intestacy. Those appointed by Will are called Executors; and those appointed by law are called Administrators.

WHAT IS A GRANT AND WHAT IS ITS SIGNIFICANCE?

A Grant is the document issued by the High Court which names the PRs and gives them the power to deal with the deceased's assets.

Where the deceased died with a valid Will (testate) the grant is called a Grant of Probate and those named in it are the Executors named in the Will.

Where the deceased died without a valid Will (intestate) the grant is a Grant of Letters of Administration and those named in it are those prescribed by law; often the deceased's "next of kin" .

Without a Grant the PRs will have only very limited access to the deceased's assets.

A THREE PART PROCESS

The process of administering an estate falls broadly into three parts:-

1. Establishing the Personal Representatives' right to deal with the estate - "obtaining a Grant".
2. Dealing with the estate – "the Administration" or "winding up the estate"
3. Settling the Inheritance Tax.

Page 13 sets out how a typical estate might be administered and how the work is likely to divide between the Personal Representatives and us.

On page 11 there is an outline of how Inheritance Tax is calculated and the process for getting it paid.

SOME QUESTIONS FREQUENTLY ASKED BY PERSONAL REPRESENTATIVES

WHAT WILL BE EXPECTED OF ME IF I AM ASKED TO ACT AS A PERSONAL REPRESENTATIVE?

You have a duty to act diligently and in the best interest of the estate and the beneficiaries.

Although we take on most of the administrative work and provide advice throughout the process, you will be making the key decisions, for example whether to accept an offer on the house, when to distribute and how much, and whether to distribute assets instead of cash.

We will normally ask you to distribute and dispose of the household goods and personal possessions.

At the end of the Administration financial accounts of the Administration are usually prepared for the PRs to sign. Apart from acting as a useful record of the estate such accounts help show the beneficiaries that you have discharged your duties properly.

DO I HAVE TO ACT IF I AM NAMED AS AN EXECUTOR, OR AM ENTITLED TO ACT AS AN ADMINISTRATOR?

You have three options:-

1. Take up the appointment.

You should be aware that once you have taken up the appointment you cannot retire from it until the Administration is complete. There are exceptional circumstances such as severe ill health which would allow you to retire before then. Additionally if the Will or intestacy creates on-going trusts, you will become trustees of that trust (unless the will directs otherwise) and so your obligations will continue beyond the administration period. You can retire as a trustee, provided there are enough trustees who are continuing, or if not, if you are replaced by a suitable person.

2. Do not take up the appointment – “renounce probate”.

You may not then interfere in the Administration and you will have no say in any decisions taken.

3. Retain the option to join in at a later date – have “power reserved”.

In practice joining in later causes additional work and so normally it is only done when absolutely necessary for example on the death of one of the other PRs.

CAN I BECOME LIABLE FOR THE DEBTS OF THE DECEASED OR OF THE ESTATE?

No. The debts of the deceased are met from the deceased's assets.

If however you distribute assets before all debts have been paid, or ascertained, you may find yourself liable for debts which you later discover. This will be so if you have not retained enough money to meet those debts. You can protect yourself from unknown creditors by placing notices in a prescribed form and in prescribed publications. This is sensible when you are not familiar with the deceased's financial affairs.

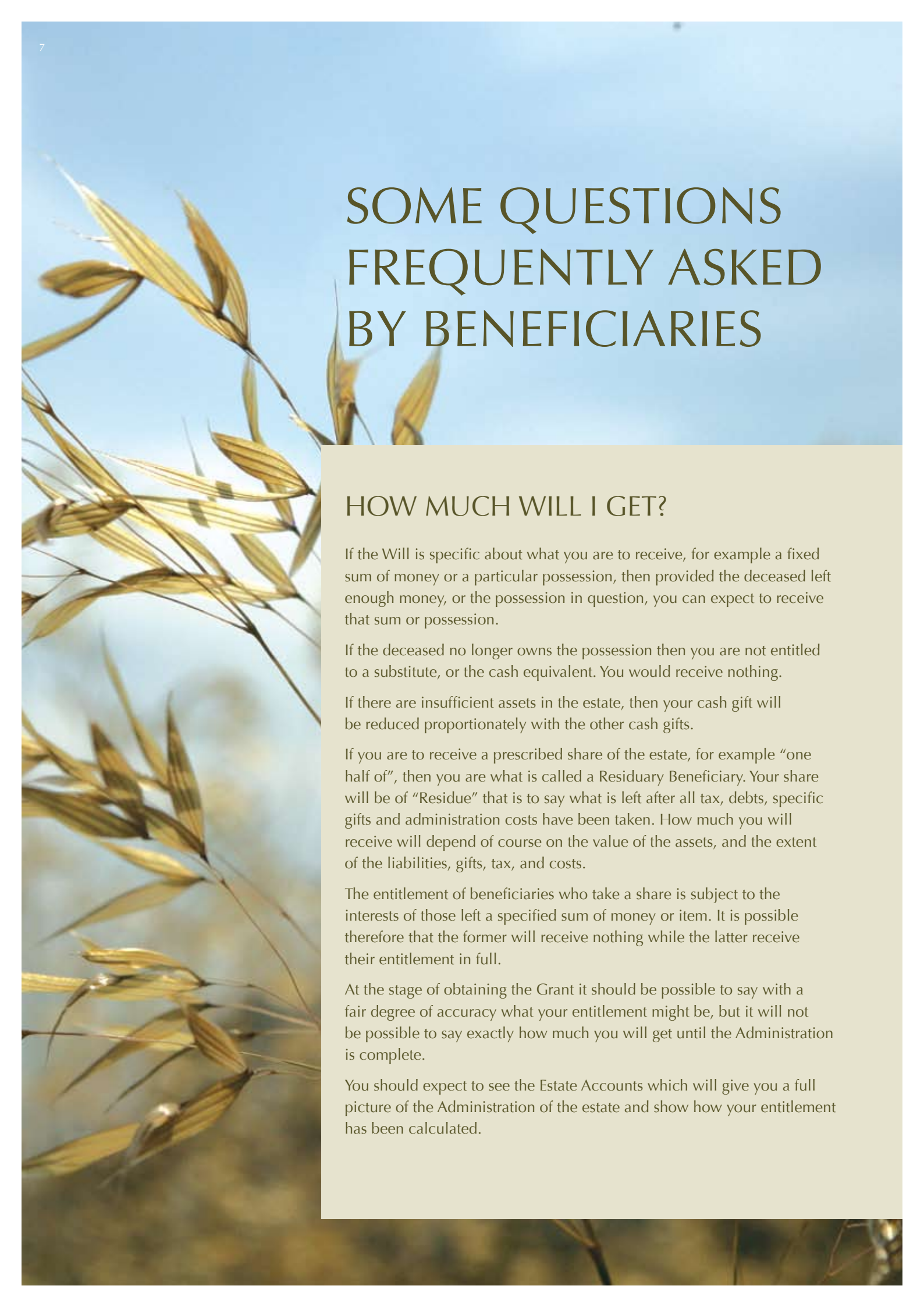
If the deceased was a member of Lloyds of London, then the position is more complicated. It is possible to obtain complete protection as PRs and we can advise you on this if necessary.

If the assets of the estate are insufficient to meet the debts, then the estate is insolvent. A special process needs to be followed in winding up an insolvent estate, but to the extent that there are insufficient assets to meet all the debts in full any remaining unpaid debts are in effect written off.

AM I RESPONSIBLE FOR FOREIGN ASSETS?

What happens to foreign assets, and who is ultimately responsible for them will depend on a number of factors, including the relevant foreign law. This is a specialist area, but one in which we have the necessary expertise to advise.

Even where there are no assets in the UK, but the PRs are based in the UK we can act for PRs in a co-ordinating capacity by acting as a central reference point for the PRs, co-ordinating advice from advisers in foreign jurisdictions, and ensuring that the PRs' UK legal and fiscal obligations are satisfied.



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SOME QUESTIONS FREQUENTLY ASKED BY BENEFICIARIES

HOW MUCH WILL I GET?

If the Will is specific about what you are to receive, for example a fixed sum of money or a particular possession, then provided the deceased left enough money, or the possession in question, you can expect to receive that sum or possession.

If the deceased no longer owns the possession then you are not entitled to a substitute, or the cash equivalent. You would receive nothing.

If there are insufficient assets in the estate, then your cash gift will be reduced proportionately with the other cash gifts.

If you are to receive a prescribed share of the estate, for example “one half of”, then you are what is called a Residuary Beneficiary. Your share will be of “Residue” that is to say what is left after all tax, debts, specific gifts and administration costs have been taken. How much you will receive will depend of course on the value of the assets, and the extent of the liabilities, gifts, tax, and costs.

The entitlement of beneficiaries who take a share is subject to the interests of those left a specified sum of money or item. It is possible therefore that the former will receive nothing while the latter receive their entitlement in full.

At the stage of obtaining the Grant it should be possible to say with a fair degree of accuracy what your entitlement might be, but it will not be possible to say exactly how much you will get until the Administration is complete.

You should expect to see the Estate Accounts which will give you a full picture of the Administration of the estate and show how your entitlement has been calculated.

WHEN WILL I GET IT?

Usually gifts of possessions and of fixed amounts of cash can be made as soon as the PRs have obtained a Grant and have control of enough cash. In a straightforward case this should be between 3 and 6 months after the death.

If you are entitled to a share of the estate then you could normally expect an interim distribution at any time after the liabilities and fixed legacies of the estate have been paid. A final distribution will only be made on completion of the Administration which at best will be shortly within a year of the death.

There are no hard and fast rules, and in complex estates it may take much longer.

If you are entitled to a fixed amount of cash, you are entitled to interest on that amount from the first anniversary of the death. The rate of interest is fixed by the court and is currently 4% per annum.

DO I HAVE TO PAY TAX ON WHAT I GET?

It is usual for all taxes to have been paid by the PRs. It is possible you will have an income tax liability on some of what you receive. If that is the case the PRs should provide you with the information necessary for you to deal with this.

The exact tax treatment of distributions and of gifts made by the deceased before he died is a complex area and will differ in each estate. We will advise you as necessary in each case.

WHAT CAN I DO IF I DON'T THINK THE PRS ARE DOING THEIR JOB PROPERLY?

If you are unable to obtain satisfactory explanations for the way the estate is being administered then you can apply to the court if necessary to have the PRs removed and others appointed in their place. You can also apply to the court for an order that the PRs prepare full accounts of the estate.

Such a court application should be a last resort only. You should always try to resolve your concerns between you; indeed the court will expect you to do so and you could be liable for costs if you do not talk first to the PRs and their solicitors.

SOME QUESTIONS FREQUENTLY ASKED BY PERSONAL REPRESENTATIVES AND BENEFICIARIES

WHAT HAPPENS IF THERE IS A DISPUTE?

It is possible that a disappointed friend or member of the family may seek to challenge the Will. This might be because they allege the Will itself is invalid, or wrongly worded so that it does not correctly reflect the wishes of the deceased, or that the deceased should have made provision for someone left out of the will.

If you think there may be a dispute about the Will or you believe there are grounds for challenging the Will, please let us know immediately. We will be able to advise you and help you take any immediate action necessary to protect your position, and to act on your behalf in defending or bringing a claim.

WHAT HAPPENS ABOUT TRUSTS?

The trustees of the Trust will be responsible for ensuring that the Trust assets are properly dealt with following the death of a beneficiary of the Trust. However it is important for the PRs to liaise with the trustees, for a number of reasons: there may be undistributed benefit still due to the deceased beneficiary; the will may have a bearing on the how the Trust fund is to be distributed; and the value of the Trust may have to be taken into account in calculating the Inheritance Tax due on the death.

ESTATE ACCOUNTS – WHAT ARE THEY AND ARE THEY NECESSARY?

Estate Accounts act as a record of the Administration of an estate.

The exact form of the Accounts will vary depending on the size and complexity of the estate. Usually they start with a snapshot of the deceased's assets and liabilities with values as at the date of death.

The main body of the Accounts show movements of cash and assets during the Administration period. A final section shows the entitlement of the Residuary Beneficiaries and shows any distributions made during the Administration.

Apart from standing as an accurate record of the Administration of the estate, they demonstrate to both Personal Representatives and Beneficiaries that the estate has been properly administered.

HOW LONG DOES IT ALL TAKE?

We aim to obtain a Grant within 3 months of the death, and to make the final distributions within a year. It is unusual to complete the process in much less than a year. Large and complicated estates can take longer. We will discuss likely timescales with you when we know the assets and liabilities comprised in the estate.

Exactly how long it will take will depend on how quickly information is provided to us and what sort of assets are included in the estate.

HOW MUCH WILL IT ALL COST?

We generally find legal fees for administering an estate work out between 1% and 4% of the gross value. A more accurate figure can be given when the full extent of the assets and liabilities are known.

INHERITANCE TAX

Inheritance Tax (IHT) is the tax payable on death on the assets owned by the deceased (and in some cases merely used or enjoyed by him).

IHT is charged at 40% on the value of those assets less the deceased's debts and the deceased's IHT allowance. The deceased's IHT allowance is often called the Nil Rate Band. It varies from year to year, but generally increases. A table showing the projected amounts is set out below.

So for example Desmond dies with assets of £1m and debts of £150,000 the value of the net estate will be £850,000. Taking away the £300,000 of Nil Rate Band leaves £550,000 taxable. Applying the tax rate of 40% gives a tax bill of £220,000.

The resulting tax bill can in the right circumstances be reduced or eliminated altogether using Inheritance Tax exemptions and reliefs. The most common exemptions are the complete exemptions on assets passing to a spouse or to a charity. The most common reliefs are full or partial relief on business and agricultural assets and property.

If Desmond leaves his estate to his wife Stephanie then the spouse exemption will mean that the £220,000 inheritance Tax bill will be eliminated altogether and there will be no tax to pay on the death.

It is sometimes necessary to include in the IHT calculation gifts made by the deceased, in particular gifts made during the seven years leading up to the death. We will advise you which gifts it is necessary to take into account, and the extent (if any) to which they will increase the tax bill.

THE INHERITANCE TAX NIL RATE BAND

For deaths occurring in the tax year:-

2006/07	£285,000
2007/08	£300,000
2008/09	£312,000
2009/10	£325,000
2010/2011	£350,000

PAYING INHERITANCE TAX

The PRs are responsible for making proper disclosure to the Revenue and are liable for the Inheritance tax due on the estate. The tax is paid from assets of the estate and so the PRs are not out of pocket themselves, but may become personally liable if they distribute the estate without making adequate reserve for the tax which has yet to be paid.

Disclosure is by an Inheritance Tax Return to the Revenue. This is a complex form which in practice we prepare for the PRs to sign.

The form is then sent to the Inland Revenue with the first payment of tax. That first payment has to be made before a Grant can be obtained. It is now usually possible to use assets of the estate to make this payment even though the PRs do not yet have a Grant.

It is sometimes necessary to complete a corrective account: following submission of the original Inheritance Tax return other assets (or liabilities) come to light; or adjustments have to be made to the values originally submitted. There may also be opportunities to reclaim tax if assets sell for less than expected. Such adjustments and claims are usually made towards the end of the Administration.

Inheritance Tax on certain types of assets can be paid in instalments over a period of up to 10 years. This applies to assets which it would be unreasonable to expect the PRs or the beneficiaries to sell immediately typically the house (or any other real property) or an interest in a business. PRs will need to make sure adequate safeguards are in place to ensure payment of any instalments outstanding on assets they wish to distribute.

When the final tax liability has been agreed and all tax has been paid the Revenue will usually write to confirm that they are closing their file. The Executors may wish to take the added step of obtaining a certificate from the Revenue to that effect. This prevents the Revenue from re-opening the matter in the future, and so enables the Executors to distribute the estate safe in the knowledge that they will not at some future date be called on by the Revenue for more tax.

HOW A TYPICAL ESTATE MIGHT BE ADMINISTERED AND HOW THE WORK IS LIKELY TO DIVIDE BETWEEN THE PERSONAL REPRESENTATIVES AND US

PRACTICAL MATTERS (executors/administrators)	LEGAL AND ADMINISTRATIVE (Pemberton Greenish)	INHERITANCE TAX (Pemberton Greenish)
DEATH OF THE DECEASED		
<ul style="list-style-type: none"> • Obtain death certificates (at least 6) • Notify insurers of any property left empty • Arrange Funeral • Place notices of death if wished 		
FIRST MEETING (usually within two weeks of the death)		
<ul style="list-style-type: none"> • Review Will – <ul style="list-style-type: none"> - are all Executors going to act? - Are all named beneficiaries alive and whereabouts known? • Review list of assets with approximate values <ul style="list-style-type: none"> - Do any pass outside the Will – for example jointly owned property? • Review list of liabilities 		
<ul style="list-style-type: none"> • Begin process of clearing house 	<ul style="list-style-type: none"> • Register death with holders of assets eg banks, building societies, bonds and stock office, investment managers • Notify creditors and the deceased's tax office • Prepare Oath and application for a Grant • Prepare the authorities for use after the Grant has been obtained 	<ul style="list-style-type: none"> • Obtain valuations of all assets and liabilities, including assets which do not pass under the terms of the Will eg property held as joint tenants, and assets held in trust • Prepare IHT account • Consider how IHT is going to be paid – and raise cash for this
SECOND MEETING (3 – 6 months after the death)		
<ul style="list-style-type: none"> • Swear the oath required to obtain the Grant • Sign the authorities for use after the Grant has been obtained • Sign the Inland Revenue Inheritance Tax account • Review the assets and decide what is to be sold and what kept for beneficiaries • Consider whether it is appropriate to advertise for creditors 		
	<ul style="list-style-type: none"> • Advertise for creditors • Submit application for the Grant of probate/letters of administration 	<ul style="list-style-type: none"> • Submit IHT account and • Pay IHT
RECEIPT OF GRANT OF PROBATE/LETTERS OF ADMINISTRATION		
<ul style="list-style-type: none"> • Make arrangements to sell house and any other real property 	<ul style="list-style-type: none"> • Raise cash by closing bank accounts, selling investments etc. • Settle liabilities 	
<ul style="list-style-type: none"> • Distribute legacies of chattels for example furniture, paintings and personal belongings • Arrange sale of any items not specifically bequeathed or wanted by the remainder beneficiaries 	<ul style="list-style-type: none"> • Pay pecuniary legacies • Consider interim distribution to remainder beneficiaries 	<ul style="list-style-type: none"> • Report any significant changes to values of assets and liabilities • Obtain any refund or pay any additional tax • Obtain confirmation that all Inheritance Tax has been paid
	<ul style="list-style-type: none"> • Preparation of Estate Accounts • Settlement of income and capital gains tax liabilities of the estate 	<ul style="list-style-type: none"> • Pay any IHT due on instalment option property which has been sold or make provision for future instalments
<ul style="list-style-type: none"> • Approve Accounts 	<ul style="list-style-type: none"> • Final Distribution 	

ABOUT PEMBERTON GREENISH

Pemberton Greenish is a specialist firm renowned for its property and private client work. Its core business remains providing legal services to companies and individuals owning and dealing in property with a focus on family and charity owned estates. Pemberton Greenish also offers services to private clients in areas of UK and international tax planning, trusts, wills and the operation of UK and offshore investment vehicles.

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