

Webinar with Fraser and Fraser

Presented by

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Our Services

- Confirming whether or not owners of empty properties are in occupation
- Tracing empty home owners to their new address
- Identifying and locating executors of next-of-kin deceased owners
- Helping Empty Homes Officers navigate GDPR, procurement and legal
- **Empty home stuck in probate?** We can help move the process forward



Probate for Empty Homes Officers

7 February 2024

Sarah Arundel

Probate Solicitor, Taylor Fawcett Solicitors

About today's session

- Why probate law and rules are an opportunity for EHOs
- Probate 101 – the estate administration process in general
- What's going on in the background?
- What causes delay and how to fix it
- Bona Vacantia – GLD's approach

Probate

The Opportunity

- Once grant extracted:
 - Property sold & occupied
 - Family housed
 - CT tap switched on
- How do we get there?



What is estate administration?

- Generically referred to as “probate”
- The main players...
 - Executors (if the deceased has left a valid will)
 - Administrators (if not)
 - Collectively known as Personal Representatives (PRs)
 - Legatees remembered in the will
 - Statutory Next-of-Kin entitled on intestacy

What is estate administration?

- Very broadly...
- Jobs to do:
 - Apply for Grant of Representation
 - Collect in all assets of the deceased (sell house...)
 - Settle all liabilities (tax, debts to Council, loans etc.)
 - Distribute the balance to those entitled



Probate

What causes delay?

- PRs unknown so not applying for grant?
- PRs known but not applying for grant?
- PRs obtained grant but it's gone quiet?



Probate

How to fix it

- Non-contentious probate rules:
 - Citing PRs to take grant
 - Rule 52
- S.116 Senior Courts Act
- S.50 Administration of Justice Act



Where PRs don't apply for Grant

- How to get Grant to move things along
- Power of Court to pass over prior claims to Grant
- S.116 Senior Courts Act 1981:

If my reason of any special circumstances it appears to the High Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this section, would in accordance with probate rules have been entitled to the Grant, the Court may in its discretion appoint as administrator such person as it thinks expedient.

Where PRs don't apply for Grant

- Power of Court to remove PRs, appoint substitutes
- S.50 Administration of Justice Act 1985:
 1. Where an application relating to the estate of a deceased person is made to the High Court under this subsection by or on behalf of a PR of the deceased or a beneficiary of the estate, the court may in its discretion –
 - a. Appoint a person (in this section called a substituted PR) to act as PR of the deceased in place of the existing PR or representatives of the deceased or any of them; or
 - b. If there are two or more existing PRs of the deceased, terminate the appointment of one or more, but not all, of those persons.

Probate CT Exemption “F”

- Some properties occupied
- Some cases the grant has been out for 6 months _
- Some cases the owner is still with us
- Some cases property transferred to another
- So... not all eligible for the exemption...
- It's worth asking the question

Deceased property owners

- Potential risks to EHOs?
- Public Sector Body was “custodian” of an Empty Property
- Identity / whereabouts of relevant people unknown
- Action to deal with property delayed
- Title to property affected adversely to interests of estate
- Market value of assets can fluctuate
- Delay: things can get worse before they get better?



Deceased property owners

- Potential risks to EHOs?
- Anecdotal evidence indicates that PRs sometimes less enthusiastic to deal with properties with enforcement related charges attached
- But – our being “Not The Council” helps moves things along



Bona Vacantia – GLD's approach

- A Bona Vacantia Estate:
 - One to which there is no party with a better claim than the Crown or either of the Duchies of Cornwall or Lancaster
 - i.e. there is no will and no next-of-kin
- The starting point:
 - Next-of-kin do exist and can be found
 - Eight classes of kin entitled in priority to Crown / Duchies
 - National demographic

Bona Vacantia – GLD's approach

- Our position is that as over 80% of estates referred to the GLD each year are not bona vacantia, we should aim to give up the Crown's interest in such estates as quickly as possible.
- Ideally, of course, our preference would be that these estates are not referred here in the first place as it is not appropriate that GLD is used as a tracing agency for missing kin or executors.
- Furthermore, it is our view that before anyone refers an estate to GLD they should be as sure as they can be that the estate is, in fact, bona vacantia.
- *Relevant people do exist and can be found.*

Summary

- Probate is an opportunity – need not be a problem
- Probate gives you more tools, helps to Bring Empty Homes Back into Use
- Tricky deceased owner cases can be more easily dealt with when they're also regarded as probate matters.



Questions?





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