WILLS AND ESTATES

Estate Administration in Emergencies

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"He went home to put his affairs in order" has a wonderful Victorian ring about it. Crushed with news of only a short time to live, the object of the story puts a brave face on matters and organises his affairs to depart this life, with all the documents tied up in neat pink ribbon and with a will up to date and ready on hand as events unfold.

Sometimes life is not like that. Contracts are signed but completion is two weeks away when the heart gives way, or a man has a stroke and dies whilst in the middle of selling his various companies.

The quiet and measured world of the probate department may be unused to such shocks and surprises, but it can cope with a little assistance.

The essence of the problem is usually the need for somebody to be able to represent the estate, to receive or pay monies, sign documents or just to give a good receipt. Sometimes, more rarely, it is to make a decision between competing courses of action that brook no delay.

Sometimes the law copes with the problem automatically as by survivorship or section 38 of the Partnership Act 1890 where a partnership is dissolved by death. There remain occasions when it does not.

There are a variety of limited grants to deal with different situations but there are three key ones for present purposes:

- Grants limited to property
- Grants pending determination of a probate claim ("pendent lite")
- Preservation grants ("ad colligenda bona")

The first two are specific to particular situations whereas the third is really a general purpose which in the writer's experience is favoured for most situations where an emergency arises. However there are important distinctions for each both as to procedure and what the appointee to the estate can do.

A key aspect of a grant *ad colligenda bona* – and why it is attractive to the registrars and the court – is that it merely preserves, holding the ring - it does not allow for distribution of the estate as between competing claimants. In this sense it is often a neutral step to allow somebody the Court trusts (usually a solicitor, an officer of the Court) to step in and take control of an otherwise volatile situation. Full probate or letters can be granted in due course.

An example from the Warner casebooks is as follows. One morning a solicitor arrived at chambers with a sad story. His client, the matriarch of the family, had just died. The family were divided with

one faction having moved into the deceased's house, but when they had gone out the day before the other faction had gone in and changed the locks. Now there was uproar, the police were standing back as it was a civil matter, and each side were threatening to move themselves in and the other side out. So we whisked around to the Chancery Division in Bristol, giving an undertaking to issue proceedings seeking an order that a limited grant *ad colligenda bona* be issued to the solicitor – which was granted. Then the solicitor went to the Probate Registry for his grant. Armed with that back to the Judge who granted the solicitor (now with the title of the Deceased as her PR) an injunction against all comers to vacate the property. Net result - by lunchtime of the day the solicitor arrived in chambers there was full control of the property to preserve it from the battle raging hitherto (also one solicitor in need of some serious R & R).

As to who should be appointed there is authority (*Ghafoor v Cliff* [2007] 1 WLR 3022) that in a contentious case the solicitor for one of the parties will not be appointed. However, as with receiverships, this counsel of perfection may have to yield where costs or the difficulty of finding a professional willing to enter a snake pit are significant issues. After all, if we are simply dealing with preservation, then there may be limited discretions to be exercised anyway.

If there are decisions to be made that might be contentious there is a mechanism to have in mind to cope with this, which should give comfort to potential appointees who can foresee these arising during their appointment. Under the Court's domestic jurisdiction over trustees the trustee can release their discretion to the Court (see *In re Earl of Strafford* [1980] Ch 28). This is very useful where trustees or PR can see that whichever way they "jump" they may be criticised by one party or another – so they go before the Judge and ask to be told what to do.

Coming back to the less contentious areas where a property sale needs completing or suchlike the procedure for a grant *ad colligenda bona* is simple and quick being commonly made to the registrar – usually experienced and helpful - without notice based on an affidavit. Where matters are more complex the district judge or registrar may adjourn it to the Judge but they will be well aware of the urgency and an early hearing is the norm.

Finally an expedited grant can be sought in cases where the usual time periods for a grant to issue will cause hardship. These can be sought informally from the registry.

In conclusion: you may have never had to deal with circumstances where the deceased has not left their affairs in order, but it is the nature of practice that you will have two in as many months now!