

Recovery Matters

There are only two things guaranteed in life ... but what happens when an estate is insolvent?

Ian Robert, partner at Kingston Smith & Partners LLP, welcomes you to the Summer edition of Recovery Matters.

It is a common misconception that, when a person dies, his/her debts are automatically discharged. This is not the case and, unless they have been provided for, they will need to be paid from the assets of the deceased individual in priority to the beneficiaries of the estate.

But what happens when the estate is insolvent or, in other words, the debts are more than the known assets?

In this case it is the responsibility of the personal representatives or executors of the estate to ensure that the estate is dealt with and administered properly. Failure to do so may lead to the personal representatives being held personally liable.

The personal representatives can deal with the estate out of court but, given the potential risks, many representatives will not wish to take on the time, cost, responsibility and potential liabilities for the estate. If there is concern as to whether or not the estate is insolvent, action can be brought so that the estate is administered by the court and the court will issue directions on this.



The final alternative is for an application to be made to the court for an order that the insolvent estate be administered in bankruptcy, known as an Insolvency Administration Order, and the Official Receiver will be appointed as Trustee.

Where there are assets to be realised, an Insolvency Practitioner such as myself would normally be appointed as Trustee in Bankruptcy at the request of the creditors, and will gather in the assets and seek creditors to prove their claims. In addition, a Trustee in Bankruptcy will investigate whether the estate has claims against any third parties to recover assets, such as assets that have previously been given away as a gift. In these circumstances, a Trustee in Bankruptcy has the power to apply to court for actions to be overturned.

Unfortunately, the biggest asset of an estate is normally the family home and this may need to be sold to repay the debts. If there is a surviving spouse with a legitimate interest in the property, this is of course recognised.

The personal representative of the insolvent estate has similar duties to that of a bankrupt in a bankruptcy, including:

- the duty to submit a statement of affairs
- notifying the Official Receiver/Trustee of any assets
- providing an inventory of the estate
- attending on the Official Receiver/Trustee as reasonably required
- providing information regarding the assets, liabilities and affairs of the deceased debtor.

If the personal representative fails to comply with these obligations they may be guilty of a contempt of court and may be privately examined.

If an Insolvency Administration Order is made, any disposition of property between the date an individual dies and the date a Trustee in bankruptcy is appointed are void, unless the transaction is ratified by the Court.

This may potentially have significant implications for the beneficiaries of the estate as they may have to return any money or assets they have received.

There are allowances for the costs of a funeral to be paid out of the estate's assets in priority to the claims of the creditors.

An Insolvency Administration Order is very similar to bankruptcy and can often be complex. Seeking advice from an Insolvency practitioner early can help personal representatives/executors ensure that they are able to fulfil their duties both to the courts and to the family.

Chris Purkiss, Licensed Insolvency Practitioner at Kingston Smith & Partners LLP

Election comment

A week can be an age in politics. They say it's hard to predict the Championship (as a Reading fan, don't I know it!), but these days you can't bet on elections, referendums or any future leadership challenge...

Uncertainty is always bad for the economy. Mark Carney at the Bank of England spends his time telling us what is going to happen to growth, inflation, and interest rates - to manage our expectations and to provide a sense of certainty to the spending public, the borrower and the investor.

Surely all he can just about predict is what he's having for tea tonight but, as for what happens tomorrow for the economy in the U.K., Europe and further afield, who knows?

With Trump, Brexit, a strong Labour opposition, a reducing Chinese influence and an increasing terrorist backdrop to ordinary lives, uncertainty is the only certainty. Surely a worldwide recession is around the corner, but then again...

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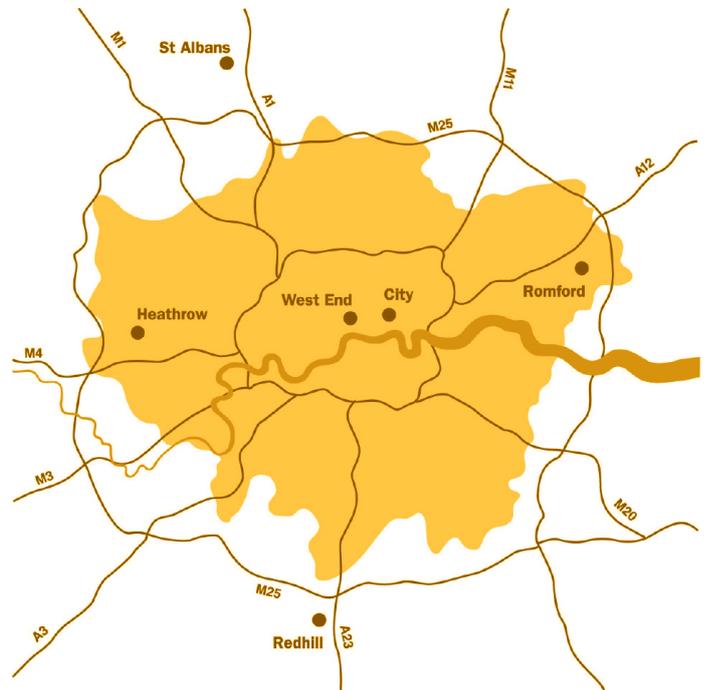
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