

FACT SHEET

CAVEATS.

Health warning: We advise obtaining legal advice before taking this step. For example, if you intend making an Inheritance Act claim, entering a caveat is entirely inappropriate and the standing search procedure should be used – see “Obtaining Probate Records” fact sheet.

What is a caveat?

A caveat is used to stop a grant from being taken out.

Use

It can be used to at the outset of a contested probate claim for these reasons:

1. The potential claimant wants to prevent a grant being taken out in respect of a will which he considers to be invalid;
2. The potential claimant wants to stop a grant of letters of administration being taken out on the basis that the deceased died intestate (i.e. without leaving a valid will) and the claimant thinks that there is a last valid will.

As stated above, a caveat should **not** be used when you wish to start a claim under the Inheritance Act 1975. The Standing Search procedure should be used to discover that a grant has been obtained.

Issuing a caveat

A precedent form is set out below. However, if you wish, a letter will suffice so long as it contains the following information:

- a request asking for a caveat to be entered;
- full name and date of death of the deceased, as recorded in the register of deaths, (in addition you may also provide any other names used by the deceased) (it is crucial that the correct information is provided as stated in the death certificate);
- the last permanent address of the deceased;
- your name and address.

Precedent form requesting a caveat.

BIRMINGHAM DISTRICT PROBATE REGISTRY

In the Estate of _____, Deceased

Let no grant be sealed in the estate of _____ of, deceased, who died on the day of 200____, without notice to _____

Dated the _____ day of _____

Signed

Who address for service is:

The letter/form can either be delivered personally to any probate registry or sub-registry or posted (at your own risk of non-arrival) to any probate registry or sub-registry. The fee currently payable is £15.00. It is advisable to check the current fee either by telephoning any probate registry or sub-registry or by visiting the Court Service website – www.hmcourts-service.gov.uk Cheques should be made payable to “HMCS”.

How long does a caveat last?

Six months from the date it is entered. In the month before it is due to expire, you may apply to extend it for a further period of six months. It currently costs a further £15 to extend a caveat (again, it is wise to check the fee). The request can be made by letter, enclose a copy of the caveat with the letter. There is no reminder system, if a caveat is not extended it simply expires.

When will the caveat be discovered?

The person against whom a caveat is issued will discover its existence in one of the following ways:

1. by information from the caveator (the person entering the caveat) or his solicitor;
2. by discovering its existence when the grant is applied for.

There is no formal requirement on the caveator or the probate registry/sub-registry to serve notice on anyone that a caveat has been entered.

What happens after the caveat has been discovered?

The person who discovers it has to “warn” the caveat by asking the probate registry to issue a “warning”. That person will warn the caveat for two reasons:

1. because he is entitled to take a grant of probate either as a person entitled to the grant as executor or as a person entitled to letters of administration; and
2. because he has an “interest” in the estate as a person entitled to an earlier, or later will than that which the caveator wants to prove – or the person warning seeks an intestacy.

The warning requires you to formally state your interest in the estate. If you fail to respond he can apply to have your caveat removed.

What must the caveator do next?

This is where matters become complicated and we strongly urge you to seek legal advice. The issue of costs could arise and there is a possibility that you could become liable to pay not only your own costs but those of the other person as well.

Briefly, if you respond and enter an “appearance”, the caveat will remain in force for an indefinite period until matters are resolved:

- either by you or the person applying for probate issuing a summons which will be heard by the District Probate Registrar;
- either you or the person applying for probate commencing a probate court action in the estate.

NOTE: Our fact sheets are intended as general guides only. Each case turns upon its facts and legal advice should be sought upon those specific facts.

If we can be of any further assistance, please do not hesitate to contact:

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