



# Death before completion

**Katie de Swarte** outlines the practical steps to be taken when a vendor or buyer dies after exchange but prior to completion

**E**xchange had taken place in respect of the sale of a jointly owned business (father and son) and the granting of an occupational lease for the shop premises. A week before completion, the father, who was also the sole leaseholder of the property, died.

## How to proceed

The transfer of the business could proceed as planned pursuant to partnership law; however, the granting of the new lease could not, as the deceased was the registered sole proprietor of the leasehold and unable to provide good title. In this situation, the only way to give good title is for the executor under the will, or personal representatives in the case of intestacy, to obtain grant of probate, which takes time, rendering the impending completion date unachievable.

Most importantly, you need to try and prevent action being taken against the estate for breach of contract. The following options are available to the executor or personal representative in this regard:

- Try and negotiate an open delay so that you can obtain the full grant of probate to allow completion to take place. Unless the other side is extremely reasonable, this is an unlikely option – and far from being a commercially viable option due to the length of time it may take to obtain a full grant of probate.
- Agree for the buyer to move into the property, with completion to follow as soon as possible. Again, this may not be commercially appealing to either party, as time would have to be spent in drafting an agreement for this arrangement to provide protection to both parties.
- Agree to delay completion by a couple of weeks to allow for a limited grant of probate to be obtained for the purposes of completing the transaction. This is the most practical option and likely to be agreed to in light of the circumstances.

The limited grant to be obtained is an *ad colligenda bona*, which allows specific steps to be taken in respect of the estate. It is limited to the action that needs to take place and ceases to have effect upon full grant of probate being obtained.

## Obtaining an *ad colligenda bona*

Below is a step-by-step guide as to how to obtain an *ad colligenda bona*:

- Draft an affidavit explaining the circumstances and the specific steps that need to be taken.
- Draft the oath, which will include the standard limitation: ‘limited for the purpose of collecting, getting in and receiving the estate and doing such acts as may be necessary for the preservation of the same [add any specific acts that need to be carried out] until further representation be granted but not further or otherwise.’
- As a time-saving exercise, send the sworn affidavit and oath to the Newcastle District Probate Registry (currently all solicitors’ applications are dealt with here) for settling.

There is a GBP12 charge for each document. Briefly explain in your covering letter why you need such a grant and note any time restraints.

- While waiting for the return of the settled documents, inform HMRC of the situation and seek written permission to apply for the *ad colligenda bona* without submitting estate accounts, which will follow upon application for the full grant. Send a copy of HMRC’s written consent to the Probate Registry.
- Once the settled documents are returned, make any amendments and send the sworn affidavit (with any exhibits) to the Probate Registry and request the order granting permission to obtain the *ad colligenda bona* be granted.
- The Probate Registry will inform you, at request, once the order has been made (but will not provide a copy), upon which send the sworn oath to the Probate Registry requesting the *ad colligenda bona*. There is a GBP45 fee and cost of GBP1 for each copy.
- Once the above has been obtained, you can make preparations for completion.

From experience, this process takes just under three weeks to complete, but I did not let the Probate Registry forget me. Although an expedited procedure, completion may be delayed, but, given the circumstances and as long as you keep the purchasers fully updated, there is no reason for them not to cooperate.<sup>1</sup>■



**KATIE DE SWARTE**  
IS A SOLICITOR WITH  
CHILD & CHILD

<sup>1</sup> For more detailed guidance, see *Tristram & Coote’s Probate Practice*, 30th edn (London, LexisNexis, 2008), p739, paragraphs 25.177 onwards

