



Introduction to

Navigating Due Diligence in Probate Research: A

Collaborative Approach to research & contested

matters

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What is due diligence?

- Due “owed” – diligence “careful attention”
- Who to?
 - Clients
 - Beneficiaries
 - The Court
 - HMRC



Due diligence to minimise or prevent litigation

- For Wills files/reviewing a Will preparation file
 - Children from previous relationships (***Finders***)
 - Are all children/grandchildren noted?
 - Section 33 Wills Act 1982 – is it excluded?
 - Advice about Inheritance (Provision for Families and Dependants) Act 1975 (The 1975 Act) claims
 - Costs issues for your firm/bringing in the Will writing firm

Due diligence to minimise or prevent litigation

- Domicile of spouses/civil partners (CP)
 - 1975 Act unavailable if deceased domiciled outside of E&W
 - Spouse/CP exemption limitations
- Children/step-children/adoption in/out - ***Finders***
- Divorce/judicial separation – involve your family team/***Finders***
- Foreign Wills

Due diligence in litigation post-death?

- Bankruptcy - is your client/the claimant/others bankrupt?
 - When to check - *S436 Insolvency Act 1986 & Raymond Saul & Co v Holden (as personal representative of Hemming (deceased)) [2008] EWHC 2731 (Ch), [2008] All ER (D) 176*
 - Where to check - gov.uk Insolvency Service & HM Land Registry – differences - **Finders**
 - Foreign bankruptcy checks - **Finders**
- Missing beneficiaries
 - UK/Foreign/“Inside”/Classes & insurance – **Finders**
 - Mediation/claims issues

Due diligence to minimise or prevent litigation

- Foreign documents – *Finders*
 - Wills/Grants
 - Gov.uk probate search/caveats/standing search – E&W only remember Scotland & N.Ireland
 - Marriage & death certificates - apostilled/translations
- Dissolution/annulment of marriage/CP
 - s18A Wills Act 1837 (marriage) & s18C Wills Act 1837 for CPs
 - Part IV Admin Estates Act 1925 for intestacy
 - Locate divorce & financial orders - *Finders*

Due diligence for Inheritance Tax

- Spouse/CP exemption
 - Valid marriage?
 - Domicile origin/choice/deemed - RDRM23080
 - Documentation to be stored by PRs on first spouse/CP to die - Negligence issues? *Finders*
 - Pre 9 October 2007 – IHTM43011
 - Post 9 October 2007 – IHTM43012
- Downsizing issues

General other due diligence in probate/dispute matters?

- Birth certificates - *Finders*
 - Parentage issues
 - DNA/Deed of Variation/Court approval/minors/declaration of parentage
- Homemade Wills - locating witnesses – *Finders*
 - Due diligence on the state of the Will
 - Attestation
 - Computer forensic reports –
 - online storage/hard drives/floppy disks!

General other due diligence in Probate/dispute matters?

- Due diligence for release of documents
 - Who owns Will documents
 - ID/capacity to release/act?
 - On-line PA15s - PA12s
- Finally, due diligence of paperwork – professional PRs
 - What will you find?
 - Check, record, check and check again & collaborate
 - ***Finders***
 - Private Client & Litigation—are not mutually exclusive

— Questions?

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