

YOUR GUIDE TO PROBATE

When a person dies, someone has to deal with their affairs. This is called 'administering the estate'.

If the person who has died leaves a Will

If the person who has died leaves a Will, it will usually name one or more people to act as the executors of the Will – i.e., to administer their estate.

If you are named as an executor of a Will you may need to apply for a grant of probate.

A grant of probate is an official document which the executors may need to administer the estate. It is issued by a section of the court known as the probate registry.

If there is no Will

If there is no Will (known as dying intestate) the process is more complicated. The Administration of Estates Act 1925 sets out who can act as administrator - that is, who has the legal right to deal with the affairs of the person who has died. The administrator will usually be a close relative of the person who has died, if there is one. There may be more than one person who has an equal right to do this.

Anyone who has this right can apply to the probate registry for a grant of letters of administration. This is an official document, issued by the court, which allows administrators to administer the estate.

In some cases, for example, when the person who benefits is a child, the law says that more than one person must act as administrator.

Some more legal terms you may come across

Personal representatives (PRs)

This means executors or administrators. If there is more than one personal representative they must work together to decide matters between them. Disagreements between personal representatives can cause expensive delays.

Grants of representation

This includes grants of probate (when there is a Will) and grants of letters of administration (when there is no Will).

Often people just refer to probate even if there is no Will.

When a grant of representation is needed

A grant of representation is not always needed, for example, if the person who died:

- has left less than £5000 in total; or
- owned everything jointly with someone else.

In other cases, some financial organisations, such as banks, may agree to pay funds to a personal representative without a grant of representation - it is always worth asking.

Usually, a grant of representation will be needed when the person who has died left:

- more than £5000;

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- stocks or shares;
- a house or land; or
- certain insurance policies.

How to get a grant

Option 1:

You can apply for a grant in person at the Principal Registry (Family Division) at the London Probate Registry or the District Probate Registry in Oxford.

If you apply in person, you will have to go for an interview at the registry and fill in an application form and a Tax form.

There is a fee for this. Staff at the registry can help you fill in the forms.

Option 2:

We can apply for the grant on your behalf (no interview at the registry required) and you can deal with the distribution of the estate yourself.

Option 3:

We can apply for the grant and deal with everything on your behalf including collecting in all the assets, paying all the debts and distributing the residue (what is left) in accordance with the Will or intestacy rules.

Inheritance tax

Personal representatives are also responsible for finding out if inheritance tax is due as a result of a person's death. If it is, the personal representative has to make sure that it is paid.

Whether inheritance tax needs to be paid can depend on:

- how much the property and belongings of the dead person were worth when they died;
- the value of any gifts that they gave before they died, and who they gave these gifts to;
- the value of certain trusts from which the dead person benefited; or
- which people benefit under the Will or under the rules of intestacy (the beneficiaries).

Your guide to Probate

Likely timescales

Dealing with the affairs of someone who has died can take a long time. It is not unusual for it to take up to a year, perhaps longer if things are not straightforward. Many organizations may be involved in the process; for example, banks, building societies, insurance companies, HM Revenue & Customs, Department of Work and Pensions and local authorities.

The estate cannot be dealt with until all claims to it have been received. Individuals have six months from the date when probate was granted to make claims against the estate.

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Other things that may affect the time taken are:

- whether the financial affairs of the person who died were in order;
- what the person who died owned and where it is;
- whether the person who died had an interest in a business or a farm;
- what the Will or the rules of intestacy say;
- whether there are any legal disputes (claims against the estate or claims by the estate);
- whether inheritance tax needs to be paid; and
- making sure that all HM Revenue & Customs files are closed and that matters relating to income tax, benefits agencies and pensions have been sorted out.

Arguments between family members, beneficiaries or personal representatives can also delay matters. Any disagreements must be sorted out before the affairs of the person who died can be settled.

Costs

Charges depend on what is involved in administering the estate. It is often not possible to know immediately what may be involved and how much advice and help is needed.

We will tell you how our costs will be calculated and an estimate of what they are likely to be before carrying out any work.

The cost of dealing with the estate is usually paid from the estate.

However, cost is not the only consideration. It is equally important to find a solicitor who is approachable and sympathetic, and whose advice you understand. We believe we meet these criteria.

While we have made every effort to provide accurate information, the law is always changing and affects each person differently.