

Probate Guide



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What is Probate?

People often use the term "Probate" (otherwise "estate administration") to mean the process of administering the estate of a person who has died. This includes: -

- Identifying all the assets of a person who has died
- Collecting in the assets and/or selling property
- Making sure that all debts and taxes are paid
- Dividing the remainder between the people who are legally entitled to it

A Grant of Probate is an order of the court and it gives the executors named in the Will the legal authority to distribute assets in line with the wishes in the Will. Probate will be granted to the people named in the Will as executors.

Is a Grant of Probate always required?

In some situations, a Grant of Probate is not required, for example:

- The estate is small. In some cases estates can be dealt with under the "Small Estates Procedure". It will depend on what sort of assets the deceased owned and the rules of the bank or organisation holding the assets.
- There are joint accounts or joint property. These will often pass to the surviving joint owner unless the asset is held as "tenants in common".

If the deceased held land or property in their sole name a Grant will usually be required to sell or transfer ownership. If you are unsure speak to us.

First steps

Following a death, there is no immediate urgency to apply for a Grant of Probate. The first steps required are to register the death, ensure that the house and contents are secure, locate the Will if there is one and make funeral arrangements. The executors should also check to see that any property and personal belongings are adequately insured. You may then decide to get some legal advice or assistance with the next steps.

Who will pay for the funeral or Inheritance Tax?

If the deceased had a bank account, the bank will usually release money before Probate for the payment of the funeral director's bill and Inheritance Tax. There is a special procedure for asking the bank to release money to pay Inheritance Tax. We can advise you on this.

What is the executor's role?

The executor will be named in the Will and may be a friend or relative of the deceased. A solicitor can also be instructed to act as the executor. The job of the executor is to organise everything which needs to be done to carry out the wishes of the Will, including obtaining a Grant of Probate if necessary and distributing assets to beneficiaries. The executor is responsible for collecting in the estate assets and paying all the debts and expenses in the estate. Great care should be taken because an executor can be personally liable for debts in the estate if the correct procedure is not followed.

What happens if there is no Will?

If there is no Will, the estate will be distributed amongst the deceased's relatives according to the rules of intestacy. As the deceased person will not have selected an executor, the estate must be dealt with by an administrator – most often a relative entitled under the intestacy. Please see our leaflet "Why make a Will?" for more information about the order, or priority, of entitlement under intestacy.

A friend or relative expecting to inherit may not be entitled under the intestacy rules. If there is likely to be a challenge to the distribution of assets it is a good idea to involve a solicitor as soon as possible.

How long will it all take?

The timescale of winding up an estate can vary hugely depending on the complexity of the estate. In the most straightforward cases it can all be dealt with in couple of months. However, it is not uncommon for it to take a year or more. Factors such as tracing family members, foreign property, multiple properties, selling shares and settling liabilities such as Inheritance Tax can all delay the process.

What costs are involved?

There are various costs involved, including paying for a funeral, court fees associated with obtaining a Grant of Probate, legal fees and liabilities such as Inheritance Tax. There may also be fees for special notices which can protect the executors from liabilities that come to light after the estate has been distributed.

In summary, administering a loved one's estate can be an overwhelming task, often during an emotional and difficult time. Our expert team is here to help you with any issues you may have, offering practical advice along the way. Call your closest office today to speak with a member of our team.

Estate administration checklist:

The following checklist gives an overview of the main tasks associated with administering an estate. We can assist you with some or all of these tasks.

Before Probate:

- ✓ Make sure that the deceased's property is secure and safe.
- ✓ Register the death (very little can be done before you have a death certificate).
- ✓ If there is a house and contents, make sure you inform the house insurer of the death. Find out whether they have any special requirements if the property will be unoccupied.
- ✓ If there is a Will, find out where the original is and check whether it says anything about funeral wishes.
- ✓ Arrange the funeral (take care to make sure the deceased has funds to pay for the funeral or you may end up paying for it yourself).
- ✓ Identify assets and liabilities in the estate.
- ✓ Notify organisations of death and find out if a Grant of Probate is required.
- ✓ If required, complete Inheritance Tax Returns and paperwork to apply for Probate and pay any Inheritance Tax due.
- ✓ If necessary, enter Trustee Act Notices to protect executors against unknown liabilities in the estate.

After Probate:

- ✓ When Probate has been issued, close bank accounts, sell property or shares and collect in all other money.
- ✓ Make sure all debts are paid (including any Income Tax for the deceased's lifetime and for the estate period).
- ✓ Prepare an account of the estate to give to the beneficiaries.
- ✓ Pay the beneficiaries what they are entitled to (make sure those receiving the money give you a receipt).

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