

Your guide to probate



The Law Society

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

How to get a grant

You can ask a solicitor to apply for the grant of representation on your behalf. To find a solicitor:

- visit www.lawsociety.org.uk/findasolicitor and search under 'wills and probate';
- visit www.probatesection.org.uk; or
- phone 0870 606 2555.

You can also apply for a grant in person at:

- the Principal Registry (Family Division) at the London Probate Registry (phone 0845 302 0900 or visit www.hmcourts-service.gov.uk); or
- a district probate registry in cities and many large towns (ring 0845 302 0900 to find your nearest probate registry and to get an information pack).

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.

Responsibilities of personal representatives

Personal representatives are responsible for making sure that the estate is administered correctly. If there is a will, the personal representative must make sure that the wishes of the person who has died, as set out in their will, are followed. If there is no will, you must follow the rules of intestacy (set out in the Administration of Estates Act 1925). You should ask your solicitor to explain these.

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).

You can find out more by looking at the HM Revenue & Customs website at www.hmrc.gov.uk or by asking a solicitor.

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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 organisations may be involved in the process, for example, banks, building societies, insurance companies and HM Revenue & Customs.

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.

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 can vary between solicitors and 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.

Your solicitor should tell you what the costs are likely to be before carrying out any work. You can compare costs by contacting more than one solicitor. Remember that 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.

More information

This is one of a series of leaflets covering the most common types of legal services that solicitors provide. Other leaflets in the series are listed below. Ask your solicitor for a free copy or phone the Law Society on 0870 3333 084.

- Your guide to making a will
- Your guide to buying a home
- Your guide to getting a divorce
- Your guide to problems at work
- Your guide to setting up in business
- Your guide to making a personal injury claim
- Your guide to financial matters for the elderly
- Your guide to setting up home with your partner
- Your guide to renting out your property
- Your guide to renting a home
- Your guide to using a solicitor
- Your guide to claiming asylum

You can get this leaflet in large print, in Braille, on audio tape and on CD. If you need one of these versions, please contact us by e-mail at accessibility@lawsociety.org.uk or phone 0870 606 2555.

You can also get this leaflet in different languages. You can get these by visiting our website, www.lawsociety.org.uk.

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