

Understanding the probate process

Probate is the process of administering someone's estate after their death. This includes the dividing of the assets according to their will, or the rules of intestacy, and making sure all relevant taxes and debts are paid.

The guidance below helps to explain the process and when you may want to get expert advice.

What is a Grant of Probate and how does it differ from Letters of Administration?

A Grant of Probate is a document that is issued to the executors to confirm them as responsible for carrying out the wishes of a deceased person as contained in their will.

When there is no valid will, Letters of Administration are usually issued to the persons entitled under the rules of intestacy. Much like a Grant of Probate, it allows the named individuals to administer the estate.

Who can apply for probate?

Only certain people can apply for probate. If there is a will, the executors named in it can apply. If there is not, then the closest living relative can apply for a Grant of Letters of Administration.

Is probate always required?

Probate is not always required. It will depend on the circumstances, including the value of any assets, and if any of them were jointly owned.

Generally speaking, it is required if the deceased owned property or if any financial institution asks for a Grant of Probate. Every case is different though, so it is sensible to seek advice.

What do I need to do if there is no will?

You will need to refer to the rules of intestacy which will confirm who is able to act as the administrator of the estate. The role of the administrator is similar to that of the role of an executor.

When is probate not required?

If the value of the assets is less than £5,000, you may not need probate. Also, if the person who died only had jointly owned land, property, shares, or money, these will automatically pass to the surviving owners, so probate is not required.

However, every organisation has its own rules, and you may not be able to access assets without probate.

Often, personal belongings and house contents, including cars, can be released without a grant, as well as assets which do not form part of the estate such as life insurance or pension policies in trust.

How long will it take?

In most cases, the application for the Grant of Probate takes around 4 to 6 months to complete. However, this can vary depending on the complexity of the estate being dealt with.

You can expect an average timeline of 12 months for the estate administration to be fully completed if the estate is straightforward. If there are international assets, DWP claims, or any disputes, it could be significantly longer.

Does probate need to be completed before the funeral and how should the funeral be paid for?

In nearly all circumstances, the funeral will take place before the Grant of Probate has been finalised and the estate has been settled.

If there is no pre-paid funeral plan in place, then the funeral invoice can be settled from the deceased's account.

If there is not sufficient money, then the executor, or the person who instructed the funeral director, will have to pay the costs of the funeral and then recover the funds from the estate at a later date.

Should I open an estate bank account?

It's helpful to open an executor's bank account so that you've got somewhere ready for assets to be transferred into, and it's good to do this early.

If there is more than one executor, the bank account should require the signature of at least two executors to make a withdrawal.

What risks are there when handling probate myself?

It is worth noting that a will can be contested at any point. This can happen before or after probate has been granted. If you distribute any of the estate after you've been notified of a dispute, any financial loss experienced by the person making the claim could be sought from you personally as the executor.

If an estate is complex, it could be easy to make a mistake. This could cause big delays and there is a distinct possibility that you may also end up paying excessive tax if you do not seek expert advice.

Any failure to act appropriately as the executor could lead to legal action being taken against you, the cost of which could be sought from you personally.

What if there isn't enough money to pay off all debts?

Remember that only the estate of the deceased is responsible for debts in their name.

If there is not enough money to pay all of debts then the estate is considered insolvent and you should consider seeking legal advice because it makes the settlement of any debts much more complicated.

What should I do if there are claims against the estate?

If there is any indication that a claim might be made against the estate, then you should seek legal advice immediately.

If the claim is made on the grounds of the Inheritance Act 1975, then there is a 6 month period from the date the Grant of Representation is issued in which they can issue their claim at court.

There is then an additional 4 months in which a person can decide whether to serve their claim against the estate or not. You are also obligated to investigate any concerns that arise that the will is not valid.

We have a specialist contentious probate team who can offer expert advice if someone is contesting the validity of the will or if there is an inheritance dispute.

What does the probate process look like from start to finish?

- In real life, the process can vary greatly between estates. This is a summary of the basic process.
- First, you need to ensure that the death is registered. This should be done within 5 days at the local register office.
- Next, locate the original copy of the will and let any other executors know that you have done this.
- Identify all of the deceased's assets (property, investments and possessions) and all of their liabilities (any debts, from loans to utility bills), to determine the value of their estate.
- Banks and other financial institutions will need to be sent copies of the death certificate. Then you can ask them to stop any further payments.
- Pay any Inheritance Tax to HM Revenue & Customs and submit the Inheritance Tax return (if either is applicable). Then, apply to the Probate Registry for the Grant of Representation.
- After the Grant of Representation has been issued, you can sell the deceased's assets, settle their liabilities, and pay the final estate administration expenses. Submit accounting to HMRC to calculate any further Inheritance Tax, Income Tax or Capital Gains Tax due to or from the estate.
- Prepare the final estate accounts for all payments into and out of the estate, showing the balance left for distribution to the beneficiaries.
- Providing there are no challenges to the estate or other complicating factors that prevent distribution, the next step will be transferring assets to the beneficiaries, and distributing the balance of the estate in accordance with the terms of the will or the rules of intestacy.

Our expert team are able to manage the process in full on your behalf. Alternatively, we can provide advice and support for any part of the process, including when there are unexpected complications.

To speak with someone in our specialist probate and bereavement team please call 01865 594265 or email hello@hedgeslaw.co.uk.

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