

## Our Guide to Probate & Estate Administration



This guide sets out what must happen, from a legal and financial perspective, when a loved one dies. This can be a very upsetting and stressful period for you. You should think carefully before deciding if you want to take on this additional administration burden, which can be complicated and take several months to finalise. If you have any concerns, Simpson Wreford LLP are licensed to provide probate services in England and Wales and can help you during this difficult time. We are one of the first accountancy firms in the local area to be licensed to carry out probate work, following a major change in the law which previously only allowed solicitors or banks to complete this work.

### What is probate?

Probate is a term used to refer to the process of dealing with the estate of a deceased person. The people who are legally entitled to deal with the estate of the person who has died are known as 'personal representatives'.

If there is a Will naming executors, and they are willing and able to act, they become the personal representatives. They will need to obtain a grant of probate from the Probate Registry, which will enable them to fulfil their duties.

If there are no executors willing or able to act, or if there is no Will, the personal representatives will be called 'administrators', and they will need to obtain a 'grant of letter of administration' which gives them authority to act. To keep things simple, we will use the term probate to cover all situations.

The probate process ensures that relevant taxes are calculated and paid, money owing to creditors and owed by debtors is collected, and, if a Will does exist, the deceased's remaining assets are distributed to the beneficiaries in accordance with his or her wishes.

The process of probate can sound quite formal and complicated. To help you with some of the common words and phrases that are used, we have put together a glossary of probate and estate administration terms at the end of this guide.

### Is probate always required?

In certain circumstances you do not have to go through the probate process, for example if:

- The deceased does not own any property, land or shares and the estate is valued at less than £5,000.
- The contents of the deceased's estate are held jointly with another and therefore passes automatically to the other joint party. Examples of where this may apply are joint bank accounts and some properties.

If you are not sure whether probate will be required, Simpson Wreford LLP can discuss and confirm this with you.

## What is involved in the probate process?

There are several stages to the probate process, which are set out below.

### *Find the Will*

Firstly, you should check whether the deceased has left a Will. If, following a search of their home, you have not been able to find a Will, you should also check with:

- his or her accountant
- his or her solicitor
- his or her bank(s)
- a Will storage company – by doing an online search
- the London Probate Department

If you are liaising with accountants, solicitors, banks, or Will storage companies, they will need to see a copy of the death certificate and also proof that you are the executor named in the Will, before they release any documents.

If the deceased did not leave a Will, which is referred to as 'dying intestate', it is usual for the next of kin to oversee the probate process. As noted above, for the purposes of probate they are referred to as 'administrators'.

## Applying for the grant of representation

The deceased's personal representatives (executors or administrators) are responsible for handling the probate process.

The personal representatives can choose if they are happy to undertake the administration of the probate process, or whether they would like to engage the services of a suitably qualified professional, such as Simpson Wreford LLP. Some solicitors and banks can also undertake probate work. However, it is advisable to get comparable quotes before choosing who you would like to administer the deceased's estate.

The first part of the process is to apply for a grant of representation. There are 4 stages to the application process:

- Complete an inheritance tax form - you or a professional valuer need to calculate how much the deceased's estate is worth, including property, shares, goods and chattels etc. This valuation will decide which form you complete and how much tax there may be to pay on the estate. If inheritance tax is payable the form will be sent to HMRC and the tax payable must be paid before you apply for the grant. HMRC will send a confirmation to the Probate Registry to verify that this has happened.
- Complete the probate application form either online or in paper format (form PA1 using the relevant version) – these can be downloaded from <http://hmctsformfinder.justice.gov.uk> or apply online.
- Submit your application to the Probate Registry if not done online – this should include the above PA1 and relevant inheritance tax forms, an original copy of the Will and any codicils, together with copies of the death certificate and current probate application fees.

Once everything is submitted you should receive the grant of representation within eight weeks, although in some cases, it can take a little longer.

## Administering the estate

Once the grant of representation has been received you will need to send a copy to the deceased's asset holders, such as banks, building societies etc.

At this point you can start liquidating the deceased's assets, which will provide funds to clear debts, pay additional inheritance tax, income tax or capital gains tax arising from the estate.

As the personal representative you are personally liable if you distribute the estate to the beneficiaries, but a creditor of the deceased subsequently makes a claim for an unpaid debt. To protect yourself from this happening you can give notice to potential creditors under Section 27 of the Trustees Act 1925. This involves placing an advert in the deceased's local paper and in the London Gazette. Potential claimants have a set timeframe for responding, which can be no less than 2 months and one day from publication of the notice.

## Preparing estate accounts

Once all claims on the estate have been investigated and all debts and taxes have been paid, you can proceed to distributing the estate. As the personal representative for the estate, you must distribute the estate assets to the beneficiaries as identified in the Will, or by statement of the law, if there is no Will. All beneficiaries should sign a discharge to confirm receipt of their assets or funds. Residuary beneficiaries will normally sign the estate accounts that you will need to prepare to confirm that they are happy to accept the amount left to them once all other payments have been made and confirm that they have no further call on the estate.

## Deed of Variation

After the death of a loved one and during the application process or estate administration, it may be found that the assets pass to the beneficiaries in a way that is felt not to be desirable. It is possible for the Will to be 'rewritten' and this is achieved by an arrangement known as a 'Deed of Variation'.

The Deed must be executed within two years of the death.

The Deed can be effective for inheritance tax and/or capital gains tax. If the beneficiaries making the variation want it to take effect for inheritance tax, capital gains tax or both, the variation must contain a statement to that effect. Deeds of Variation do not change either the general law position or the income tax position.

## Glossary of probate and estate administration terms

Term	Definition
Administering the estate (or estate administration)	The process of distributing assets and funds to beneficiaries of the deceased's estate, either as documented in a Will or by following the rules of intestacy.
Administrator	Someone who is appointed when executors are not named in the Will or if a named executor does not want to be responsible for the probate process. The administrator can also be the next of kin where the person has died without making a Will.
Assets	A generic term for everything which the deceased owns including property, shares, money, goods and chattels etc.
Beneficiary	A person who receives assets will have been left to them through a Will or by the rules of intestacy.
Codicil	A written statement which makes changes to an existing Will.
Creditors	People or businesses to whom the deceased owes money.
Debtors	People or businesses who owe the deceased money.
Deed of Variation	A legal document which enables the beneficiaries to make changes to the Will, even after the death of a person.
Estate	All the assets owned by the deceased including property, stocks and shares, money, goods and chattels.
Estate accounts	Financial accounts that document what monies have been received and paid by the estate. The estate accounts also identify what assets and funds have been and are now due to be paid to the beneficiaries.
Executor	A person identified in the Will to administer the deceased's estate.
Grant of probate	The legal document that is produced following the grant of representation which enables the personal representatives to administer the estate.
Grant of representation	The grant giving the personal representatives the right to handle all the deceased's legal and financial affairs, such as: selling or transferring property; accessing bank accounts; calculating and paying what tax is due; identifying what debts are outstanding and what money is owed; and distributing the estate.
Goods and chattels	Tangible moveable property but not money or securities for money, property used by the deceased at his death solely or mainly for business purpose, and property held by the deceased at death solely as an investment.
Inheritance tax	Tax to be paid to Her Majesty's Revenue and Customs where the value of the deceased's estate is above the current inheritance tax threshold.
Intestate or intestacy	When a person dies without leaving a Will.

Letters of administration	The grant which is given to personal representatives to administer the estate in the absence of a valid Will or executors who will take on the estate administration.
Liquidating assets	Where the deceased's property and assets are sold to generate money to pay taxes, creditors and to distribute to the beneficiaries.
Next of kin	The deceased's closest living relative(s).
Personal representative	A general term given to executors or administrators who are responsible for the probate process.
Probate	The legal and financial process which occurs following a person's death. Sometimes referred to as 'administering the estate', probate deals with the deceased's property, finances, and personal belongings.
Will	A legal document detailing how a person wants his or her estate to be dealt with after death.

## Information for users

This guide is designed to provide information to readers. Whilst we have taken great care to ensure its accuracy, the information contained may not be comprehensive, and you are strongly recommended to seek professional advice from us before taking any action based on the information. Simpson Wreford LLP accepts no responsibility for any loss arising from any action taken or not taken by anyone using this guide.