



Applying for Probate

Probate is a general term normally used to describe the legal and financial procedures involved in dealing with the property, money and possessions (ie the 'estate') of a person who has died. Applying for the legal right to deal someone's estate when they die is called 'applying for probate'.

A Grant of Probate is almost always needed when the person who died owned one or more of the following:

- £10,000 or more in a bank or building society account;
- stocks or shares or other investments;
- a house or flat or land held in England and Wales in their sole name or a divided share of such a property held as 'tenants in common';

The three most common types of Grant of Representation:

Grant of Probate

If the deceased left a Will, which named one or more individuals who they wish to administer their estate, then the individuals(s) named in the deceased's Will can apply for probate to administer the estate. An individual who administers the estate after being named in a Will is known as an executor.

The Grant of Probate is the court's validation of the executor's authority to deal with the assets of the estate in accordance with the terms of the Will.

Grant of Letters of Administration

If someone dies without a Will, they are said to be intestate.

The intestacy rules dictate who can apply to administer the estate and the specific order in which they can apply: spouse, children, parents, siblings, aunts and uncles etc. The individual who takes out the letters of administration is known as an administrator but they have the same responsibilities as executors.

Grant of Letters of Administration (with Will annexed)

If the deceased left a Will which either did not name executors or none of the individuals named as executors are actually able to apply for probate or if the Will did not cover all of the deceased's estate, then specific rules determine who can apply to administer the estate. Often, the majority beneficiary will apply. The individual who is appointed is known as an administrator.



The procedure

Applying for probate is relatively straightforward, but time consuming. The application is the same regardless whether there is a Will or not.

The steps are:

1 Information gathering

The first stage is an information gathering exercise to identify and value all of the deceased's assets for the purpose of reporting to HM Revenue and Customs ("HMRC").

First the executor/administrator must obtain the date of death valuations of all assets and liabilities of the deceased, including but not limited to: real property, mortgages, home contents, bank accounts, investments etc. Assets owned jointly with another and gifts (other than to a spouse or charity) made within 7 years of death also need to be accounted for. The deceased's share of money payable on death from pensions and life insurance is typically outside of the estate and so a grant may not be required by the scheme administrators.

2 Complete the Inheritance Tax ("IHT") account

IHT 400 is a lengthy document setting out the value of the assets and liabilities at the date of death. It is sent to HMRC by the executor/administrator.

Within 15 days of receiving the IHT400 or the payment of any Inheritance Tax due, whichever is later, HMRC should stamp a probate summary form IHT421 and send it directly to the Probate Registry.

The deceased's estate might fall under the excepted estates' regime. This is the case for example where the overall value of the estate is below the Nil Rate Band (currently at £325,000) or where the value of the entire estate was under £3 million and was left to a spouse (or civil partner) or where the deceased was never domiciled in the UK and has limited UK assets. If any such exceptions apply, a simpler IHT form is completed and HMRC do not need to stamp it before the Probate Registry proceeds with the application for the grant.

3 Pay any IHT due

If IHT is due, then at least a proportion of the tax due will need to be paid before the Grant of Probate/Letters of Administration is issued and therefore before it becomes possible to draw in assets of the estate. This can sometimes leave the executors/administrators without available funds to pay IHT. There are various ways to pay IHT due on an estate in such a situation, the most common being directly from the deceased's liquid assets. Many banks permit direct payments out of the estate directly to HMRC in satisfaction of the IHT due. The best option will depend upon the specific circumstances of each estate.

Ideally, IHT should be paid **no later than six months** from the end of the month in which the deceased died, as HMRC will begin to charge Interest on unpaid tax after that date.



4 Apply for the Grant/Letters of Administration

In order to apply for probate, the probate application needs to be completed and signed by the executors/administrators.

In most cases the application will need to be made online through the court portal, but if the circumstances fall outside of what the portal can handle, the PA1P paper form needs to be completed if there is a Will and the PA1A paper form if there is no Will. Whether applying via the portal or the paper forms, the executors/administrators will need to declare in a statement to the court that the information provided in the application is true to the best of their knowledge and belief.

The online probate application / PA1A / PA1P forms need to be submitted to the Probate Registry along with:

- the original Will (if there is one); if an original Will cannot be found, there is a presumption that the testator destroyed it with the intention of revoking it, although copy Wills can be proven in certain circumstances if there is supporting evidence to rebut the presumption of revocation, and
- in certain situations, an affidavit, for example if the Will is not in the same condition as when it was made, and
- the Probate Registry office fee of £273. You can also order additional copies of the Grant/Letter of Administration for £1.50 per copy, which is essential for dealing with institutions once the grant has been obtained.

The Probate Registry currently have a service standard to issue the grant within 8 weeks of receiving the stamped IHT421 from HMRC, but this can take longer if they raise any queries.

5 Distribution of the estate

Once the grant has been issued, the executor/administrator will collect all the assets and pay any liabilities; This will include:

- closing / transferring bank accounts/investment accounts;
- selling any properties and valuables not specifically disposed of in the will;
- paying any debts, including any remaining IHT due, and any pre-death Income Tax or Capital Gains Tax (CGT). Further Income Tax or CGT might also be owed for income received or assets realised during the period of estate administration;
- distributing the estate in accordance with the Will or intestacy rules.

In order to protect themselves from personal liability from any unidentified creditor of the estate, professional executors/administrators who do not take a personal benefit in the estate should also place a statutory advertisement in The Gazette and a local newspaper. Creditors must contact executors/administrators within two months of the date of publication of the notices before the executor/administrator protection begins. The beneficiaries of the estate remain liable to those creditors.

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This document has been drafted and provided by Kingsley Napley LLP.

This document should be used for information purposes only. This information is based on current legislation and should not be relied on as an exhaustive explanation of the law or the immigration issues involved without seeking legal advice.

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