



How to obtain probate - A guide for people acting without a solicitor

What is the Probate Service?

The Probate Service is part of HM Courts & Tribunals Service. It administers the system of probate, which gives people the legal right to handle the estate (for example, money, possessions and property) of a deceased person.

This leaflet will advise you if you want to obtain probate without using a solicitor.

If you have any queries, please contact your local probate registry. The staff are there to help you – but please note that they cannot give you legal advice.

Introduction

When a person dies, they usually leave an estate (including money, possessions and property) and sometimes a will.

A will should name one or more executors who are responsible for collecting in all the money, paying any debts and distributing any legacies left to individuals or organisations.

In order to access the estate, the executor needs to apply to the probate registry for a document called a Grant of Representation or 'grant'. This process is called probate. The grant establishes who can legally collect money from banks, building societies and other organisations which hold assets belonging to the deceased person.

In most cases, applying for probate is a straightforward procedure. The Probate Service administers applications for grants throughout England and Wales.

The information in this leaflet refers only to the law in England and Wales. If the deceased person was permanently resident in Scotland, Northern Ireland or another country when they died, please contact your nearest probate registry for advice.

What is the purpose of the Grant of Representation?

A Grant of Representation establishes who can legally collect money from banks, building societies and other organisations that hold assets belonging to the deceased person.

There are three types of Grant of Representation:

Probate

Probate is issued by the Probate Service to the executor(s) named in the deceased person's will.

Letters of Administration (with will)

Letters of Administration (with will) are issued when no executor is named in the will, or when the executors are unable or unwilling to apply for the grant.

Letters of Administration

Letters of Administration are issued when the deceased person has not made a will, or the will they have made is not valid.

Is a grant always needed?

Not every estate needs a grant. A grant may not be needed if:

- the home is held in joint names and is passing by survivorship to the other joint owner(s). This can be the case for married couples and those in a legal civil partnership.
- there is a joint bank or building society account. In this case, the bank may only need to see the death certificate, in order to arrange for the money to be transferred to the other joint owner. However, a grant could still be needed to access assets held in other bank accounts or insurance policies.
- the amount held in each account was very small. You will need to check with the organisations (banks, building societies or insurance companies) involved to find out if they will release the assets without a grant.

If none of the circumstances above apply, a grant may be required.

You should ask anyone holding the deceased's money (such as a bank or insurance company) whether they will release it to you without seeing a grant. If they agree, they may attach conditions such as asking you to sign a statutory declaration before a solicitor. You can decide whether it is cheaper or easier to do this than to apply for a grant.

Please note that a grant **must** be presented in order to sell or transfer a property held in the deceased's sole name or a share of a property held jointly with the deceased person's spouse or partner as tenants-in-common. Tenancy-in-common is a written agreement between two people who own a joint asset (usually land or buildings). Normally, a married couple does not have a tenancy-in-common contract. If you aren't sure about this, you should consult a solicitor.

You cannot complete a sale on any property owned by a deceased person until the grant has been issued. Properties named in a will should not be put up for sale until a grant has been obtained.

Who can apply for probate?

It isn't necessary for everyone left money or property in a will to apply for probate. Usually, only one person needs to do it – normally the executor(s) named in the will.

However, if the person entitled to the estate is under 18, two people are legally required to apply for probate. If this is the case we will let you know when we receive your application.

You can apply for probate if you are over the age of 18 and:

- you are an executor named in the will;
- you are named in the will to receive some or all of the estate (if there are no executors, or if the executors are unable or unwilling to apply);

- the deceased person did not make a will and you are their next of kin, in the following order of priority:
 - lawful husband or wife or civil partner (a civil partnership is defined as a partnership between two people of the same sex which has been registered in accordance with the Civil Partnership Act 2004). Common law partners cannot apply for probate.
 - sons or daughters (excluding step-children) including children adopted by the deceased. (Children adopted out of the family can only apply in the estates of their adoptive parents and not their biological parents.)
 - parents
 - brothers or sisters
 - grandparents
 - uncles or aunts
 - If sons, daughters, brothers, sisters, uncles or aunts of the deceased person have died before the deceased, their children may apply for probate.

If you are not sure whether you are entitled to apply for a grant, you should still complete and return the forms and we will tell you. If you are a distant relative, please supply a brief family tree showing your relationship to the deceased person.

When more than one person wants to apply for a grant, they may make a joint application. A maximum of four applicants is allowed and they will all have to attend an interview with the Probate Service.

Where will I find the will?

The original will may be held at a solicitor's office or bank, or at the Principal Probate Registry in London. It may be among the deceased person's possessions. If you cannot find it, contact your local Probate Registry. If you do not send the will, your application will take longer to deal with.

We will not return the original will to you as it becomes a public record once it has been proved (acted on). We will, however, send you an official copy of the will with the Grant of Representation.

What if I don't want to apply for a grant?

Executors may choose to give up all their rights to probate or they may reserve the right, called power reserved, to apply for probate in the future.

This option is often used when the executors live in different parts of the country or it is not convenient for one of them to attend the interview due to work commitments.

Only the executor(s) who attend the interview will be named on the grant and only their signature will be required to release the deceased person's assets for transfer or sale.

If the person who is entitled to the grant does not wish to apply, they may appoint someone else to be their attorney to obtain the grant on their behalf. If this is the case you should complete their details on form **PA1** (Section C). We will send you a form for them to sign

after we receive your application. If the person entitled to the grant has already signed an Enduring Power of Attorney (EPA) or a Lasting Power of Attorney (LPA) please file the original document with your application.

Note – A LPA must be registered with the Office of the Public Guardianship before it can be used.

You can contact them via www.publicguardian.gov.uk or by calling 0845 330 2900.

Why do I need to think about Inheritance Tax now?

The tax on the estate of a person who has died is called Inheritance Tax. It is dealt with by HM Revenue & Customs (HMRC) (Inheritance Tax). It only applies to a very small percentage of estates. If Inheritance Tax is due, you normally have to pay at least some of the tax before we can issue the grant.

The issue of the grant does not mean that HMRC (Inheritance Tax) have agreed the final Inheritance Tax liability. They will usually contact you again after you have received the grant. Subject to the requirements to pay some of the tax before obtaining the grant, Inheritance Tax is due six months after the end of the month in which the person died. HMRC (Inheritance Tax) will charge interest on unpaid tax from this due date whatever the reason for late payment.

Probate Registry staff are not trained to deal with queries about HMRC forms or Inheritance Tax. If you have any queries about these you should visit the HMRC website: www.hmrc.gov.uk/inheritancetax or contact the Probate and Inheritance Tax Helpline on 0845 30 20 900.

How do I apply for a grant?

You will need to follow the process explained here:

Complete the application form

You will need to complete **Probate Application form PA1, using Guidance Leaflet PA1A**. You can also get these forms from your nearest probate registry or by calling the Probate and Inheritance Tax Helpline – see page 7 for details.

These documents are also available online at hmctsformfinder.justice.gov.uk. You should print off a blank **PA1** and then complete it by hand.

On the application form, you should tell us which Probate Registry interview venue you would like to visit – you can choose the one which is most convenient for you, and any other executors.

Complete the tax form

When you apply for the grant, you will need to complete a tax form **whether or not Inheritance Tax is owed**. You should use form **IHT205** if no Inheritance Tax is owed. If form **IHT205** is not applicable to you, please contact HMRC (Inheritance Tax) for form **IHT400**.

For help completing the forms, you can contact the Probate and Inheritance Tax Helpline (the phone number is on page 7 of this leaflet). You can either work out the Inheritance Tax for yourself or you can ask HMRC to do it for you.

Decide how many official sealed copies of the Grant of Representation you need

Organisations like banks and building societies need to see sealed copies of the grant before they can release assets to you. They won't accept unsealed photocopies.

So if you want to deal with the estate quickly, you may want to order enough sealed copies of the grant to send to all the organisations you are dealing with at the same time.

If there are any assets held outside England and Wales, you may require a special copy of the grant – usually referred to as a sealed and certified copy.

If any person or organisation holding assets insists on seeing an official copy of the grant, you can write to the probate registry, which issued the grant to order more sealed copies. However, these will cost more than those ordered at the time of application (see the fee list), so it's important to decide before you apply for the grant how many copies you will need.

Make sure you enclose the correct documents

You will need to enclose:

- An official copy (**not** a photocopy) of the death certificate issued by the Registrar of Births Deaths and Marriages or a coroner's certificate.
- The **original** will and any codicils (or any document in which the deceased person expresses any wishes about the distribution of his or her estate). Keep a copy of any will or codicil you send us. Please do not attach anything to the will by staple, pin etc. or remove any fastenings from the will.
- Any other documents specifically requested by the Probate Service, such as a decree absolute.
- A cheque made payable to 'HM Courts & Tribunals Service' for the application fee, together with the cost of the number of official sealed grants you require. See the fees list on form **PA3**. (We cannot process your application until the fee has been paid.)

Where should I send my application?

You should send your application to the probate registry of your choice (see leaflet **PA4** for the address). You may wish to send your application by registered or recorded post.

Processing the application

When we receive your application, we will examine it and contact you if there are any queries. If you want us to acknowledge your application, please send a stamped addressed envelope.

If your application is complicated, we may require you to sign additional documents or contact other people – for example, a witness to a will – so that we can interview them or obtain their signatures on documents to help with your application.

If there are no problems, we will send you a letter (usually ten days after we receive your application) inviting you to a 10-15 minute interview at the location you have chosen. This interview is usually held within a month of receiving your application.

If you are applying for a grant with someone else and they cannot come with you, we can arrange for them to attend an interview separately at a different location if necessary. This will, however, delay the time it takes to issue your grant.

What happens at the interview?

The interview is simply to confirm the details you have given on the forms and to answer any queries you or we may have.

We also ask you to sign a form of oath and to swear or affirm before the interviewing officer that the information you have given is true to the best of your knowledge. You will be given the opportunity to swear on the religious book of your choice.

Please bring proof of identification which includes a photograph (such as your driving licence or passport) to the interview. Your appointment letter will tell you about any other identification which is required.

The interview is your chance to tell the interviewing officer if your case is urgent or if you wish to collect the grant in person.

What happens after the interview?

If everything goes smoothly, we will send you the original grant and copies of the grant (if you have requested them) and the original death certificate. The interviewing officer should be able to let you know how long this will take.

If it is not possible to issue a grant, we will explain the reasons.

We retain the original will, as it becomes a public record.

How do I use the grant?

When the grant has been issued you will receive information concerning your role as the executor. You will then have the legal right to ask any person or organisation holding the deceased person's money or property to give you access to these assets. These assets can then be released, sold or transferred as set out in the deceased person's will.

All grants of representation are public records.

The responsibility of the Probate Service ends when the grant is issued, and we cannot advise you on how to administer the estate. If you have any questions about this, you should seek legal advice.

Useful contacts

For general information on wills and probate:

www.direct.gov.uk/death

To access the online forms and leaflets:

hmctsformfinder.justice.gov.uk

To find the addresses of the regional probate registries:

hmctscourtfinder.justice.gov.uk

For information about Inheritance Tax and online forms:

www.hmrc.gov.uk/inheritancetax

For more detailed information about probate and Inheritance Tax:

Probate and Inheritance Tax Helpline: 0845 3020900

Probate forms and leaflets

- PA1 Probate application form
- PA1A Probate application form (guidance notes)
- PA2 How to obtain probate (leaflet)
- PA3 Probate fees list (leaflet)
- PA4 Directory of probate registries and interview venues (leaflet)
- PA5 Do I need a grant of representation (probate or letters of administration)? (leaflet)
- PA6 What will happen at my probate interview? (leaflet)
- PA7 How to deposit a will with the Probate Service (leaflet)
- PA7A Withdrawing your will from the Principal Probate Registry (form)
- PA8 How to enter a caveat (leaflet)
- PA8A How to enter a caveat (form)
- PA9 How to enter a general search (leaflet)
- PA10 How to enter a standing search (leaflet)
- PA1S Application for a probate search (form)

HMRC Inheritance Tax forms

- IHT205 Return of estate information
- IHT206 Return of estate information (guidance notes)
- IHT400 Inheritance Tax Account