

Probate explained

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. An application for a grant of letters of administration (an official document, issued by the court, which allows administrators to administer the estate) will need to be made.

The person to whom letters of administration is granted is known as the administrator. The administrator is the person who has the legal right to deal with the affairs of the person who has died, and is determined by a set order of priority. 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. Your solicitor will be able to provide you with information on the set order of priority.

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.

However, some financial organisations may require a grant before giving you access even to a small amount of money

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 Ison Harrison to apply for the grant of representation on your behalf.

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.

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

At Ison Harrison you will be guaranteed charges will not be more than 2.5% however Charges can vary between solicitors and banks (4-7%) 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.