

A Guide to Probate and Estate Administration

This guide sets out what has to happen, from a legal and financial perspective, when somebody dies. This can be a very upsetting and difficult 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, Villars Hayward LLP are licensed to provide probate services in England and Wales and can help you during this stressful time.

What is probate?

Probate is a term used generically 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 has been made, 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 doesn't own any property, land or shares and the estate is valued at less than £5,000.
- The contents of the deceased's estate is 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, Villars Hayward LLP can discuss and confirm this with you.

What's involved in the probate process?

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

Find the will

First you should check whether the deceased has left a will. If, following a search of their home, you haven't 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 didn't 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 Villars Hayward LLP. Some solicitors and banks can also undertake probate work. However, it is advisable to get comparable quotes before choosing who you want 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:

- 1) 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 form to confirm that this has happened which will be sent to the Probate Registry.
- 2) Complete the probate application form (form PA1) – this can be downloaded from <http://hmctsformfinder.justice.gov.uk>.
- 3) Send your application to your local Probate Registry – this should include the above PA1 and relevant inheritance tax forms, an original copy of the will and any codicils, as well as copies of the death certificate and current probate application fees.
- 4) Swear an oath – once they have received the necessary paperwork, the probate office will send you an oath. You will need to visit your local probate office or the office of a commissioner for oaths.

Once you have sworn the oath, you should receive the grant of representation within 10 working days.

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 isn't a 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.