

Probate

What is Probate?

This is the legal authority to administer a deceased's estate. In simple terms, this means carrying out the necessary legal and financial processes involved in dealing with the property, money and possessions (called the assets) of a person who has die.

What is a 'Grant of Probate'?

A Grant of Probate is an order of the Court giving one or more people the legal authority to administer the estate of the deceased in order to distribute it correctly to the beneficiaries.

Who can apply for the Grant of Probate?

There are different types of Grant depending on the circumstances and who is to deal with the estate, the main types of which are: -

- The Grant of Probate, where there is a Will
- Letters of Administration, in situations where there is no Will

The people who have the right to apply for a Grant of Probate are the **Personal Representatives** (PRs) of the estate. PRs are either the **Executors named in the Will** or the **next of kin** following the **Rules of Intestacy if there is no Will**.

The people named in the Grant of Representation are legally responsible and ultimately liable for the administration of the estate of the deceased. The decision about who is named on the Grant of Representation is a very important one because it carries this responsibility.

When is Probate required?

Probate is required in the following situations: -

- When property is held in the sole name of the deceased or as tenants in common
- When the deceased held assets typically worth £5,000* or more with financial institutions
- When the financial institutions holding assets in the sole name of the deceased require a Grant of Probate for the funds to be released*
- When the deceased benefited from a trust during their lifetime

*Banks and other financial institutions may use a higher threshold than £5,000 before they require evidence of the Grant of Probate to release the funds, so it is worth checking with these organisations exactly what they require.

What is involved?

Probate involves a series of interdependent legal, tax and administrative activities that must be carried out in order for the estate to be administered correctly.

It involves communication with many parties including the Court, HM Revenue and Customs, and all related financial institutions. Essentially it involves collecting all assets, settling all debts and tax liabilities and correctly distributing the remainder of the estate to the beneficiaries in accordance with the Will or Rules of Intestacy. Care and attention must be taken to avoid mistakes being made at every stage in the process, as the Personal Representative is responsible and ultimately liable.

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How long will it take?

This depends on how complex the particular situation is, but it normally takes around 6 to 9 months to complete the process.

An outline of the steps in the Probate process

1. Value the estate and speak to the deceased's banks and other financial organisations to establish whether you need a grant of representation (or confirmation).
2. If you do need a grant of representation, complete the relevant application and Inheritance Tax form - the Inheritance Tax form will vary depending on whether or not the estate owes Inheritance Tax.
3. Send the forms to the relevant government bodies (in England and Wales, that's the Probate Registry and HM Revenue & Customs (HMRC)).
4. Pay whatever Inheritance Tax is due.
5. Attend in person at a Probate venue or at the office of any commissioner for oaths (usually a solicitor's office) to swear an oath.
6. Wait for the grant of representation (or confirmation) to arrive in the post - banks and other organisations will ask to see this before they allow access to the deceased's assets.
7. Pay any debts owed by the estate and then distribute the estate.

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