

Probate: What is it and do you need it?

If you've been told you need to "sort out probate" and you're not sure what that means, you're not alone. Most people have never had to do it before, and it can feel daunting at an already difficult time.

Here's a guide to what probate is and when it's needed.

What is probate?

Probate is the legal process of dealing with someone's estate after they die. Their estate is everything they owned: their home, savings, investments, personal belongings and so on, less any debts they owed.

Someone has to collect everything in, pay any bills and taxes, and pass what's left to the right people. That person is called the **executor** if the person who died left a will, or the **administrator** if they didn't.

The word "probate" is also used for the official document that gives that person the legal authority to act, known as a **Grant of Probate**. Banks, building societies and the Land Registry will usually want to see it before they'll release money or transfer property.

Is probate always required?

Whether you need a grant of probate depends on what the person owned and how they owned it. Here are some common situations:

- **Jointly owned property.** If a home was owned jointly, it usually passes automatically to the surviving owner, without probate.
- **Small bank accounts.** Many banks will release smaller balances without a grant, but each sets its own limit, so it varies from one to the next.
- **Larger assets in the deceased's sole name.** A house, or a bank account or investments above a bank's limit, will normally need a grant before they can be dealt with.

Even if you think you may not need probate, it's worth checking before you start. It's much easier to know where you stand at the beginning than to hit a problem halfway through.

Will or no will: what's the difference?

If there **is a will**, the executors named in it apply for a Grant of Probate and carry out the wishes set out in the will.

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If there **isn't a will**, or the will can't be used for some reason, the law decides who inherits and who can apply to deal with the estate. The document in that case is called **Letters of Administration**. The process is similar, but the rules on who can act, and who inherits, are more rigid. This is one reason it's so valuable to have advice early.

What does the process involve?

Every estate is different, but most follow the same broad steps:

If there is a will

1. **Find the will** and confirm who the executors are.
2. **Work out what the person owned and owed**, and get valuations where needed.
3. **Deal with Inheritance Tax**, if it applies. Many estates don't owe any, but the paperwork usually still has to be completed.
4. **Apply for the grant** from the Probate Registry.
5. **Collect in the assets, pay any debts, and settle tax.**
6. **Distribute the estate** to the people entitled to it, and prepare final accounts.

If there is no will

1. **Make sure there really isn't one.** Before assuming there's no will, we can help you check with the person's bank, their solicitor and any will-storage or registration services. A will is sometimes found in an unexpected place.
2. **Establish who is entitled to inherit.** Without a will, the law sets out who inherits and in what order, starting with a spouse or civil partner and children, then moving through other relatives. This often comes as a surprise, as **unmarried partners and step-children have no automatic right to inherit**, however long the relationship.
3. **Work out who can apply to act as administrator.** The right to apply usually follows the same order as the right to inherit. If several people have an equal right, we can help you decide how to proceed together.
4. **Work out what the person owned and owed**, get valuations, and deal with Inheritance Tax paperwork, as you would with a will.

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5. **Apply for Letters of Administration** from the Probate Registry. In some situations, extra steps such as taking out insurance to protect the beneficiaries may be needed, and we'll tell you if that applies.
6. **Collect in the assets, pay any debts, and settle tax.**
7. **Distribute the estate** to the people the law says are entitled to it, and prepare final accounts.

Where relatives/beneficiaries can't be found, or the family tree is complicated, the process can take longer. This is where having someone experienced to trace and verify the right people can make a real difference.

How long does it take?

It depends on the size and complexity of the estate. A simple one can often be wrapped up in six to twelve months. If there's property to sell, complicated finances, or a family disagreement, it can take longer. A good solicitor will give you a realistic timescale at the outset and keep you updated, so you're never left wondering what is happening.

Why get help?

You are allowed to do probate yourself, and some people do. But the role of executor carries real responsibility, and executors can be **personally liable** if something goes wrong, for example if the estate is distributed before all debts and taxes have been paid, or to the wrong people. Mistakes can be costly and stressful, and they're much harder to put right afterwards.

At MHHP Law, we take the paperwork, the deadlines and the technical detail off your shoulders, so you can concentrate on your family and on grieving. We explain everything in plain language, we tell you what to expect at each stage, and we're always at the end of the phone if you have questions.

Talk to us

If you're not sure whether you need probate, or you'd just like to understand where you stand, we're happy to have an initial conversation with no pressure. Call Ruth Hayward on 020 3667 4784 or email at ruth.hayward@mhhplaw.com, and we'll help you take the first step.

This article is a general guide and does not constitute legal advice. Every estate is different, so please take advice on your own circumstances.

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