

Wills & Probate Jargon Buster.



Despite moves towards a modern approach, the law surrounding Wills and probate is one of the most old fashioned parts of our legal system (the Wills Act of 1837 remains in force nearly 200 years on). Because of this a number of terms are used that are certainly not in plain English and are unfamiliar.

Here we outline and explain some of the more frequently used terms. However, we will be pleased to explain any other terms to you so please ask.

Terms	Definitions
Administration Period	The period of time between a person's death and the final winding up of their affairs. This can be relatively short (a few months) if these are simple or, sadly, run into years if the situation is more complex.
Administrator	Someone who is appointed to deal with a person's estate under a Grant of Letters of Administration. Sometimes (but rarely these days) the feminine term Administratrix is still used for a female Administrator.
Beneficiary	Someone who inherits under a Will or the Intestacy Rules (see below). If a person receives a legacy (please see below) they might be referred to as a Legatee.
Capital Gains Tax (CGT)	This tax is sometimes payable on the increase in value of particular assets, for example land/property (with an exemption for a main residence) and shares, between the date they are acquired and the date they are disposed of. Cash itself does not fall under this tax and there is an annual allowance available also. A person's death wipes out any liability for gains made on assets that are still owned by them at death. However, if the value of these increases between death and their disposal by the personal representatives (again please see below) this tax can be payable on these increases. There are ways to mitigate this however and again an annual exemption does apply for the tax year of death and the following two years.
Caveat	A procedure that is used to stop a Grant of Probate being issued if a person has concerns about the validity of the Will, for example, they believe the deceased person was pressured into making a Will or did not understand what they were doing at the time.
Codicil	A document that makes a change (or changes) to a Will. Historically, codicils were made as a simpler way to make small changes to a Will, rather than going to the cost of drawing up a new Will from scratch. As with a Will there are strict requirements that must be followed when making a codicil if it is to be valid.

Terms	Definitions
Deed of Variation	This is a document signed by a beneficiary (either under a Will or the intestacy rules) altering their entitlement. This might be done so that, for example, money passes to a person they want to benefit without any tax implications for themselves. To have any tax saving value a Deed of Variation must be completed within two years of death.
Estate	A person's assets at death. This could include a house/flat/land, cash, investments and overseas property and assets for example.
Executor (Executrix)	Someone named in a Will to administer the estate of a person who has died. Just because a person is named does not mean they have to act. It is possible to "renounce" (decline) the appointment. However, once an executor has involved themselves, they cannot then back away. It is also an unpaid role unless the Will allows for payment. Out of pocket expenses can be claimed however. Sometimes, the feminine "Executrix" is still used for a female but increasingly Executor is used for male & female appointments
Grant of Probate	This is a Court Order confirming the validity of a Will and allowing the named Executor(s) to sell/transfer the deceased's assets in accordance with the Will. It is not always necessary to get a Grant of Probate. Whether or not one is needed depends on the nature of the assets in the estate. However, it is a myth that the existence of a Will means that probate will not be required, it all depends on the circumstances.
Grant of Representation	Another name for both a Grant of Probate or a Grant of letters of Administration.
Intestacy	The name for the situation when a person dies without having made a valid Will.
Intestacy Rules	These rules dictate what happens to a person's estate if they die without a valid Will. This can lead to distant family members benefiting or sometimes (but in reality, rarely) the Crown. Relying on these carries the risk that your estate is not divided up as you would wish however.
Inheritance Tax (IHT)	<p>This tax is payable on the value of a person's assets at death. Certain allowances can be applied to reduce the bill (see the "nil rate band" and "residence nil rate band" below), and there are some exemptions, the main ones being gifts to a spouse/civil partner or charity. Debts due at death and funeral costs can be deducted also.</p> <p>However, if an estate still exceeds a set level after this then tax is payable at a rate of 40% on the excess. A lower rate of 36% applies if at least 10% of the estate is left to charity but the rest remains subject to tax (for example because none of the exemptions apply). It is the personal representative's responsibility to ensure all IHT that is due is paid.</p>
Joint Tenancy	One of the two ways property (e.g. land or joint bank accounts) are co-owned under English law. If an asset is owned this way then, on death, that person's share passes to the surviving co-owner(s) outright. It does not matter what the deceased's Will or the intestacy rules say. For the alternate way to co-own property please see "tenants in common" below.
Letters of Administration	This is a Court Order allowing a person to deal with an estate where the deceased died without a Will (intestate). Again, this is not required for all estates, it depends on the circumstances.
Legacy	A gift left in a Will. This could be cash (sometimes called a "pecuniary legacy"), a specific investment or item or piece of property.

Terms	Definitions
Nil Rate Band	<p>This is an allowance (currently £325,000.00) applied against the value of a person's estate for IHT purposes. If an estate is below this level the no IHT is payable.</p> <p>If a spouse/civil partner leaves some or all of their estate to the other spouse/civil partner then some of this allowance might not be used on the first death. Any unused allowance can be claimed by the second to die in addition to their own Nil Rate Band sum.</p>
Personal Representative (PR)	Another phrase for an Executor or Administrator
Potentially Exempt Transfer (PET)	<p>There are limits on the size of gifts that can be made by a person during their lifetime to mitigate inheritance tax. If a gift/gifts exceed these they are known as a Potentially Exempt Transfer (or PET) as they are "potentially" exempt from inheritance tax. The person making the gift must live for seven years for it to fall outside of their estate.</p> <p>If they die within this period it is factored back into the estate for tax purposes. In some cases, a 14 year period can apply. Any tax that is ultimately due on a PET is payable by the recipient but again it is the personal representatives job to make sure all tax due is paid.</p>
Probate	Please see grant of Probate.
Residence Nil Rate Band	An extra inheritance tax allowance that can be claimed if a person's main residence (or its proceeds) pass to direct descendants (e.g. Children, grandchildren, step children). Again, if this is not used on the death of one spouse/civil partner (because, for example, everything passes to the survivor) then any unused allowance can sometimes be claimed by the survivor's personal representatives, as well as that person's own at death. Care needs to be taken however as very strict rules apply to this exemption and it is not always available when you think it might be.
Residue/Residuary Estate	What is left in a person's estate after payment of all debts, taxes, legacies and expenses. This might be left to a single person/organisation or split amongst a number.
Tenants in common	Assets co-owned in this way do not pass automatically to a surviving co-owner(s) (please see Joint Tenancy above). Instead they pass in accordance with a Will (or the intestacy rules if none).
Testator (Testatrix)	A person who makes a Will. Testatrix is sometime used for a female but Testator is the more common phrase for both men and women.
Trust	A Will is a trust document in itself as it is a vehicle for the person who has died to pass assets on to other people. However, sometimes a Will contains other trusts over assets so that a beneficiary does not receive them immediately, or maybe just receives an income from an asset but not the asset itself, or might just be considered for payment by the Trustee of the trust (the people who run it).
Undue influence	Pressure put on a person to make a Will in a particular way. If this can be demonstrated the Will is invalid.
Will	A document under which a person sets out their wishes for what should happen to what they own after they die. Guardians can also be appointed for children in such a document. There are very strict requirements which govern what makes a valid Will and if these are not followed to the letter the Will would not be legally valid.



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