

# Probate: A simple guide



Probate is one of those legal expressions that lots of people have heard of, and use following a death. However, the process surrounding it is often not completely understood. This guide is intended to outline what this process usually is.

However, some estates are more complex and additional steps may need to be taken along the way. There is no “one size fits all” system. Each estate, like each person, is different.

## What is a 'Grant of Probate'?

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A Grant of Probate is a Court Order confirming the authority of executors named in a Will (and who want to act) to deal with a deceased's affairs. For example it allows them to sell investments, sell or transfer land in the deceased's name and to close bank accounts.

## What if there is no Will and What are 'Letters of Administration'?

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If a person dies without a valid Will they die 'intestate'. When this happens rules laid down in law set out who can apply for what's known as a Grant of Letters of Administration. This is equivalent to a Grant of Probate and gives similar authority.

## Do you always need a Grant of either type?

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No. If the estate is very small and simple and/or all the assets were jointly owned (for example joint bank accounts or property held as joint tenants), you may not need a Grant. This is because most banks and some other organisations are prepared to close accounts/liquidate assets below a certain threshold without requiring one. The threshold varies from organisation to organisation. A Grant isn't needed for assets that pass automatically to a surviving co-owner. If there are shares or other investments however, it is more likely that a Grant will be needed.

### Overview of the process:

So, what needs to be done after death (this is not an exhaustive list):

- **Register the death** - The death should be registered as soon as possible, and ideally within 5 days. Family members will often do this but the executors (who may not be family members) would need to if they don't.
- **Locate the original copy of the last Will** - This could be with the deceased's paperwork, their solicitor (or Will writing company), or their bank. The Will should be kept safe and the other executors should be notified. If an executor does not want to act, they should make this clear early on and not get involved, otherwise they may not be able to step aside. There is no need to have a formal “reading” of a will - that is now the fiction.
- **Arrange the funeral** - Again family members usually do this, but if they don't the executors may need to. It is usually possible to pay the funeral invoice by presenting it to the deceased's bank.
- **Secure any property** - Ensure the deceased's property is secured and insured (insurance may lapse on the death of the policy holder but in any event the policy provider should be told promptly of the death as it is, clearly, a fundamental change of circumstances).

## Do you always need a Grant of either type? *continued*

- > **Notify organisations with which the deceased had dealings** - e.g. Banks, HMRC, credit card companies, DWP, private pension providers, registrars who deal with shareholdings - to name but a few. Valuations for all assets in the estate will need to be obtained and the value of any debts left ascertained.
- > **Complete and submit inheritance tax returns** - These are not always needed however, and will be less so from now on (rules changed in January 2022). The executors must also pay any inheritance tax (IHT) due from the deceased's assets, or if these can't be liquidated, from another source (e.g. a loan). Interest will be added if tight timescales aren't met. Remember for IHT purposes it is not just assets and debts that are important, interests in trusts and lifetime gifts can also create a tax liability.
- > **Apply for Probate/Letters of Administration** - This is now mostly done online, but can still take some time for procedural reasons.

## What happens after a Grant is issued?

Once this stage is reached, assets can be encashed and debts paid before the estate is distributed. If a Will created any trusts, the executors will often also be the trustees and so will have an ongoing duty to manage those trusts.

## How long does the process take?

Bluntly, it depends. Each estate is different. More complex and higher value estates will take longer to deal with than simple ones. When a dispute arises the process can be significantly extended. Executors should be aware though that their responsibilities last until their own death. If previously unknown assets are subsequently discovered for example then these will have to be dealt with by them too.

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