

# Unlocking the Mystery of Probate and Estate Administration

**PEARSON MAY**

CHARTERED ACCOUNTANTS & CHARTERED TAX ADVISERS  
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# 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. Even a fairly simple estate can take between 6-9 months to complete because of the number of different steps involved, but it is not uncommon for the whole process to take a year or more, especially if there is property to be sold. If you have any concerns, Pearson May are licensed to provide non-contentious probate services in England and Wales and are here to give you a hand 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 letters 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 is paid 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 the deceased’s 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 value of the estate is small. Previously, this applied where estates were less than £5,000 but banks and other institutions are increasingly flexible about releasing larger sums of money without the need to provide a Grant.
- The contents of the deceased's estate is held jointly (unless held as tenants in common) 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, Pearson May can discuss and confirm this with you.





# What Is 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 bank(s)
- his or her solicitor
- a Will storage company – by doing an online search
- the London Probate Department

The Will should name the Executors and may also contain instructions about the funeral. If you are liaising with accountants, solicitors, banks or Will storage companies they will need to see a certified copy of the death certificate and also proof of identity, before they can 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 Pearson May.

The first part of the process is to apply for a grant of representation if one is required. There are 4 stages to the application process. It is necessary to:

- 1) Gather information about the estate, find out what is owned and the value thereof, and ensure that all assets are made secure and insurers notified if appropriate. You will need to know the value of everything owned by the deceased as at the date of their death, any monies they were owed and anything they owed to anyone else. This step involves correspondence with various third parties, such as banks, building societies, property valuers, pension providers, financial institutions, utility providers (e.g. electric, gas, telephone, internet), council tax and insurers, amongst others.



# Applying For The Grant Of Representation Cont'd

- 2) Considering the inheritance tax position - you need to calculate how much the deceased's estate is worth, including property, shares, goods and chattels etc. Professional valuations may be needed for some items such as land and property and stocks and shares. The value of the estate will determine whether separate forms need to be completed and how much tax there may be to pay on the estate. If inheritance tax is payable the form will be sent to HM Revenue & Customs (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.
- 3) Complete the probate application. This is now done online and requires each Executor applying for probate to sign a Legal Statement confirming the information provided with the application is complete and correct. The application fee is also payable at this point.
- 4) The original documents (including the Will) must then be sent to the Probate Registry by post, where they will be retained. The Will becomes a public document. The Legal Statement replaces the Oath, which formerly had to be sworn in front of a Commissioner for Oaths. The current advice is to wait 20 working days after submitting the inheritance tax forms to HMRC where you are completing the full IHT account.

To make an application for a grant of representation, a fee must be paid for all estates where the value is £5,000 or over. Currently, that fee is £273 for all applications.



# Administering The Estate

Once the grant of representation has been received, the Personal Representatives can proceed with the administration of the estate. A copy must be sent to the deceased's asset holders, such as banks, and other financial organisations such as pension providers and insurance companies. These organisations need formal evidence that the person to whom they are releasing the money is the person who is entitled to receive it.

At this point the Personal Representatives can start liquidating the deceased's assets, which will provide funds to clear debts and pay additional inheritance tax, income tax or capital gains tax arising from the estate.

The Personal Representatives are personally liable if they distribute the estate to the beneficiaries, but a creditor of the deceased subsequently makes a claim for an unpaid debt. To protect themselves from this happening they 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

A set of estate accounts will need to be prepared showing all of the money that has come into the estate, any expenses incurred (e.g. cost of death certificates, probate fees, valuation fees, other costs of administering the estate, costs of selling property etc.). Note that a Personal Representative cannot charge for their time unless they have been appointed in a professional capacity as part of their business.

Once all claims on the estate have been investigated and all debts and taxes have been paid, the Personal Representatives can proceed to distribute the estate. They must distribute the estate assets to the beneficiaries as identified in the Will, or, if there isn't a Will, as stated by the law. All beneficiaries should sign a discharge to confirm receipt of their assets or funds. Residuary beneficiaries will normally sign the estate accounts that will need to be prepared, 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.



# Glossary Of Probate And Estate Administration Terms

Term	Definition
Administering the estate (or estate administration)	The process of distributing assets and funds to beneficiaries of the deceased's estate, either as documented in a Will or by following the rules of intestacy.
Administrator	Someone who is appointed as a Personal Representative when there is no Will, the Executors named in the Will do not want to be responsible for the probate process or the Executors have died before the deceased. The Administrator can be the next of kin where the person has died without making a Will.
Assets	A generic term for everything which the deceased owns including property, shares, money, goods and chattels (personal possessions) etc.
Beneficiary	A person entitled to assets under a Will or by application of the rules of intestacy.
Codicil	A written statement which makes changes to an existing Will (prepared formally, during the deceased's lifetime).
Contentious Probate	Examples of contentious probate include disputes relating to the Will; actions against the Personal Representatives for a breach of trust, fraud or negligence; actions to remove or replace Personal Representatives; applications under the Inheritance (Provisions for Family and Dependents) Act 1975.
Creditors	People or businesses to whom the deceased owes money.

# Glossary Of Probate And Estate Administration Terms Cont'd

Term	Definition
Debtors	People or businesses who owe the deceased money.
Deed of variation	A legal document which enables the beneficiaries to make changes to the Will, even after the death of a person.
Estate	All the assets owned by the deceased including property, stocks and shares, money, goods and chattels, less any liabilities.
Estate accounts	Financial accounts that document what monies have been received and paid by the estate. The estate accounts also identify the assets and funds due to be paid or transferred to the beneficiaries.
Excepted Estate	This is the term for an estate which meets certain criteria such as to benefit from simplified reporting for IHT. For deaths on/after 1 January 2022, in most cases the value can be reported directly to the Probate Registry and, for earlier deaths, using form IHT205 rather than being required to submit a full IHT account to HMRC.
Executor/Executrix	A person identified and appointed in the Will to administer the deceased's estate.
Grant of probate	This is a specific type of the grant of representation. It is issued where the deceased left a valid Will appointing Executors, who are willing to act and who made the application to the Registry. It allows the Executor(s) named on the grant to administer the estate.



# Glossary Of Probate And Estate Administration Terms Cont'd

Term	Definition
Grant of representation	This is the generic name for the legal document that is produced when an application has been successfully processed by the Probate Registry. The grant gives the Personal Representatives the right to handle all the deceased's legal and financial affairs, such as: selling or transferring property; accessing bank accounts; calculating and paying what tax is due; identifying what debts are outstanding and what money is owed; and distributing the estate.
Goods and chattels	Personal items, excluding land and buildings owned by the deceased.
Inheritance tax (IHT)	Tax to be paid to Her Majesty's Revenue and Customs (HMRC) where the value of the deceased's estate is above the current inheritance tax threshold.
Intestate or intestacy	When a person dies without leaving a Will.
Legal Statement or Statement of Truth	This is the document that the Personal Representatives must sign, to confirm that the information they are providing to the Probate Registry in respect of the application is not deliberately untruthful or dishonest. The Statement confirms the value of the estate that the Personal Representatives will administer and the details of the deceased.
Letters of administration	This is a specific type of the grant of representation. In the absence of a valid Will or Executors willing to act, this is the name for the legal document issued to the Personal Representatives who made the application to the Registry. It allows the Administrator(s) named in the Letters to administer the estate.
Letters of Administration with Will Annexed	This is another specific type of the grant of representation. This is the name of the legal document issued to the Personal Representatives in cases where the deceased left a valid Will, but they did not appoint an Executor (or none of the appointed Executors were willing to act or had died). It allows the Administrator(s) named in the Letters to administer the estate.

# Glossary Of Probate And Estate Administration Terms Cont'd

Term	Definition
Liquidating assets	Where the deceased's property and assets are sold to generate money to pay taxes, creditors and to distribute to the beneficiaries.
Next of kin	The deceased's closest living relative(s).
Oath (no longer used)	This has been replaced by the 'Legal Statement'. Swearing the Oath was formerly the legal process of confirming the entitlement of the Personal Representatives to take out the grant and confirming that they would administer the estate in accordance with the law.
Personal Representative	A general term given to Executors or Administrators who are responsible for the probate process.
Probate	The legal and financial process which occurs following a person's death. Sometimes referred to as 'administering the estate', probate deals with the deceased's property, finances and personal belongings.
Will	A legal document detailing how a person wants his or her estate to be dealt with after death.