

Probate Process:

What You Need to Know



Probate is the legal process used to settle a person's estate after they die. Here, we explain how it works. We cover the steps that have to be gone through and who needs to be involved. The process is simpler when there is a valid will with a named executor, but we also talk about what happens when this isn't the case.

A key person (or persons) is the executor. Nominating an executor is an important decision when you make your will. It doesn't have to be a lawyer but it must be somebody you trust, who is happy to take on the responsibility, and who is competent to deal with basic legal and financial matters.



What Does An Executor Do?

The executor is the person with the authority to deal with the estate. When you make a will you should nominate one or more executors. They will apply for probate, handle the legal processes and divide the estate in accordance with the will. They can act independently or with the help of a solicitor.

The executor can be a beneficiary of the will. They have the legal authority to handle the estate and decide, for example, how and when to sell property. Executors cannot act in a way that contradicts the terms of the will and cannot add or remove beneficiaries.

If you know that you have been nominated as an executor, your first task should be to locate the will and check that it is valid and has been drawn up and witnessed correctly.



What Is An Estate?

The 'estate' means all of the assets and possessions owned by the deceased. This can include property, investments, bank accounts, pensions, stocks and shares, life insurance policies and general possessions (chattels). Hopefully the deceased will have left paperwork that is in good order and easy to find.

It is a good idea to make an inventory of possessions and identify any that are specifically mentioned in the will. The executor should ensure that valuable items are secured and that appropriate insurance is in place for property and valuables.

Valuing The Estate

Estimating the value of the estate is an important early step as this will help assess whether Inheritance Tax will be due. To do this, you will need to write to banks and other institutions to get a current valuation of any assets. They will normally need to see a copy of the death certificate before releasing any information.



Grant of Probate

The Probate Registry is responsible for granting executors the power to administer the estate (Grant of Probate). Most asset holders such as banks and financial institutions will need to see the Grant of Probate before they will release funds.

If there is a valid will that nominates an executor, the process is straightforward. First, you will need to complete a PA1 form. This asks for details about the deceased, their relatives, and their assets. Send the PA1 form to the Probate Registry, along with:

- the correct Inheritance Tax form (see below),
- an official copy of the death certificate,
- the Probate Registry fee,
- the original will plus three copies (including any codicils).

You may have to swear an oath that all information given to the Probate Registry is true. You will need to make an appointment at a local probate office or with a commissioner for oaths (typically a solicitor) to take the oath and sign the probate document.

Inheritance Tax

In order to be granted probate, you will need to pay any inheritance tax due on the estate. Usually this can be paid from the deceased person's bank account. Payments on account can be made if the exact tax liability isn't known (for example when property has to be sold).

You won't need to carry out a detailed valuation of the estate right away if it is likely to fall below the limit for Inheritance Tax (which is the case for most estates). Inheritance Tax is not due if the estate passes directly to a spouse or civil partner or is bequeathed to a charity.

Administering The Estate

Once probate has been granted, the executors can start collecting and transferring assets in accordance with the will and paying off any debts.

Usually they will open a separate bank account to handle and disburse funds.

Once the Estate has been distributed, the executors prepare the final estate accounts.

These are signed by the executors and main beneficiaries to complete the probate process.



If No Executor Is Named



If the will is valid but there is no named executor, the next of kin or a family member applies to the Probate Registry for a Grant of Letters of Administration. Otherwise, the process is the same as the one described above.



What Happens When There's No Will?

If there is no will it's usual for the next of kin or another relative to apply for probate and become the estate administrator (rather than executor). They apply to the Probate Registry for a Grant of Letters of Administration.

The process is similar and uses the same PA1 form but some sections won't be relevant. The form must be returned with the correct Inheritance Tax form, an official copy of the death certificate and the fee. Arrangements must also be made to settle any Inheritance Tax due.

Once the Probate Registry issues a Grant of Letters of Administration the administrator can wind up the deceased person's affairs.

The Estate is then distributed to the beneficiaries following the Rules of Intestacy. These place relatives into an order of priority. The process is completed when the final estate accounts are approved and signed by the beneficiaries.

Responsibilities

Being an executor comes with a lot of responsibility and potential liabilities. It is possible to instruct the Probate Team at Powells to act on your behalf and relieve you of the burden. You can then be confident that everything will be carried out properly for a fee that you agree up-front.

Find out more by contacting the Probate team for a free, no-obligation consultation on 01934 623 501 or email helpforyou@powellslaw.com.