
The Guide To

PROBATE

& Estate Administration



K & K Solicitors

12 Market Place, Hatfield,
Hertfordshire, AL10 0LN

01707 244442

www.kandsolicitors.co.uk

Dealing with the loss of a loved one is a very difficult time both mentally and emotionally. In addition, having to deal with probate can be confusing, lengthy and is often a fraught process during a distressing time. This guide is designed to inform you of the process required in order to obtain a Grant of Probate. However, it does not cover every eventuality as each probate is different and you should speak to one of our lawyers if you have any questions or doubts.

What is probate?

Probate is the right to deal with a deceased individual's estate which is given to the executor(s) of the estate property, personal belongings and money. If there is no Will in place, the next of kin (e.g. spouse/civil partner or children) usually applies for the authority to deal with the deceased estate.

When does an estate require a Grant of Probate?

Probate will usually be required if the deceased had assets valued at over £5,000 at the date of their death. Some financial institutions will deal with accounts that have balances over this amount, and have set their own limits before requiring a Grant of Probate. There is however, no set rule and the legal threshold remains at £5,000.

Who are the Executors?

Executors are the people appointed by the deceased in his or her Will and they are responsible for carrying out the wishes of the deceased as set out in the Will. The executors are responsible for making sure the terms of the Will are implemented, paying any outstanding debts, finalising any tax issues of the deceased, both prior to death, and during the period of administering the estate, collecting in all the assets, and distributing the estate as set out in the Will.

What happens once probate has been granted?

Copies of the Grant of Probate to persons and organisations that have control of your assets, such as your bank, so that they will transfer the assets to the executors or the solicitors care dealing with the estate. Once all the assets have been collected executors or the lawyers will pay any debts owed to the estate, such as the household bills or the funeral expenses, and will then distribute the remaining money or possessions as stated in the Will.

Who will pay for the funeral?

If the deceased had a bank account, the bank will usually release money before a Grant of Probate is obtained for the payment of the funeral director's bill.

What costs are involved?

There are various costs involved, including paying for a funeral, court fees associated with obtaining a Grant of Probate, legal fees and liabilities such as inheritance tax. There may also be fees for special notices which can protect the executors from liabilities that come to light after the estate has been distributed. These costs would be covered by the estate and would be regarded as expenses to the estate for the purpose of inheritance tax.

How long will it all take?

The time-scale of winding up an estate can vary hugely depending on the complexity of the estate. In the most straightforward cases it can all be dealt within a couple of months. However, it is not uncommon for it to take a year or more. Factors such as tracing family members, foreign property, multiple properties, selling shares and settling liabilities such as inheritance tax can all delay the process.

What happens if a Grant of probate is not required?

- Apply to banks etc. to obtain all assets.
- Statutory notices are placed to notify any potential creditors.
- Complete appropriate asset release forms, provide death certificate, copy of Will (if applicable) and provide evidence of identity.
- Settle any debts and then pay any legacies in a Will.
- Attend to house clearance, transfer of utilities, passport, driving license, memberships, subscriptions and health equipment etc.
- Complete forms and apply to HMRC for income tax clearance.
- Prepare estate accounts for beneficiaries and retain a copy.
- Distribute the residue of estate.

For more information call 01707 244442

What to do if there is a dispute or a claim against the estate?

There can be several reasons for someone to bring a claim against the estate.

Challenging the Will

There are a number of grounds on which it may be possible to challenge the validity of a Will. The main grounds include that the deceased did not have mental capacity to make the Will, the deceased was under undue influence at the time the Will was made, the deceased did not approve or had knowledge of the contents of the basis and the necessary formalities of the Wills Act 1837 were not observed when the Will was made.

Claims under the Inheritance Act 1975

Whether the deceased has made a Will or dies intestate, the Inheritance (Provision for Family and Dependents) Act 1975 allows certain categories of person to make a claim for 'reasonable financial provision' out of the estate. The categories of the person who may be entitled to make a claim include the spouses, former spouses, co-habitants, children of the deceased, any other person who was maintained by the deceased.

Even where there is no dispute over who is entitled to benefit from an estate, there may be disagreement about how the estate is managed. In these circumstances, there are some steps or actions which can be taken.

So what happens if there isn't a Will?

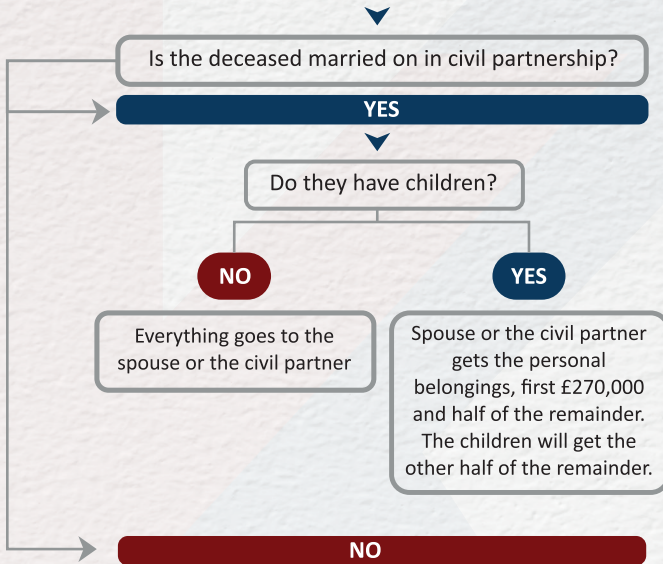
When someone dies without leaving a Will, they are said to die intestate. The distribution of their estate is governed by the Administration of Estates Act 1925. The act sets out who should deal with the deceased's estate and who should inherit their estate. Usually a close relative like a spouse, child or parent will have the legal right to sort out the estate of the person who died.

The table on the right shows how the estate would be distributed when someone dies without leaving a Will.

Call 01707 244442 to discuss how we help in these situations.

So what happens if there isn't a Will?

Start here



Is the deceased married or in civil partnership?

YES

Do they have children?

NO

Everything goes to the spouse or the civil partner

YES

Spouse or the civil partner gets the personal belongings, first £270,000 and half of the remainder. The children will get the other half of the remainder.

NO

▼ **NO**

Do you have any living children?

YES

Everything shared equally between the children

▼ **NO**

Do they have any living parents?

YES

Everything shared equally between the parents

▼ **NO**

Do they have any living siblings?

YES

Everything shared equally between their siblings and if no full siblings then shared equally between the half siblings

▼ **NO**

Do they have any living grandparents?

YES

Everything shared equally between the grandparents

▼ **NO**

Do they have any living aunts or uncles?

YES

Everything shared equally between the full aunts and uncles and if no full aunts and uncles then shared equally between their half aunts and uncles

▼ **NO**

Everything goes to the crown

Inheritance tax

Inheritance tax is charged at 40% on the estate above the nil rate, or tax free, band. At present the nil rate band is £325,000. The main exception to this rule is that gifts to spouses, civil partners and charities are exempt from inheritance tax. Everyone has a nil rate band available for use on their death. In the case of spouses or civil partners, if the nil rate band is not used in whole or in part on the first death, the unused portion can be transferred and added to the nil rate band available on the second death. This is known as the transferable nil rate band.

Paying inheritance tax

If inheritance tax is due on the estate, the total inheritance tax bill is calculated when the inheritance tax account (the form IHT400) is completed. The proportion of the total tax bill which is applicable to land, property and business assets can be deferred and paid by instalments (the instalment option). The proportion applicable to the rest of the estate (for example on bank accounts or shareholdings) has to be paid on submission of the inheritance tax account. The instalment option for payment of inheritance tax provides for tax to be paid over 10 years by instalments. The first instalment is payable on the last day of the sixth month after the date of death. The instalment option ceases if the asset to which the tax relates is sold. All outstanding tax on that asset then becomes payable.

The Revenue charges interest from the first day of the seventh month after the date of death on all outstanding inheritance tax, whether or not any assessments for the tax have been issued. Currently the rate of interest is 3%. Inheritance tax can be complicated and it is advisable for you to seek expert advice.

Problems can be caused by the tax (or at least part of it) being payable in order to obtain the Grant of Probate. In some cases the personal representatives find it impossible to find the money to pay the tax in advance, as without the Grant of Probate then cannot sell the assets of the estate and so cannot raise the funds for the tax. If you find yourself in this position let us know and we will be able to advise you further.

How K&K Solicitors can help you with your Probate matter

We can help you in a variety of ways:

- Obtaining a Grant of Probate – assisting the executors or administrators to obtain the “Grant” in order to deal with the deceased’s estate.
- Identifying the assets and liabilities of the estate – this can include bank accounts, credit cards, pensions, properties, share holdings, insurances, utilities, taxes, etc.
- Valuing the assets of the estate – valuing assets in accordance with the Inheritance Tax Act 1984, and claiming all reliefs (spouse exemption, charitable gifts, etc.) and transferable nil rate band if applicable.
- Completing the forms PA1 and IHT forms – this will include either IHT400 or IHT205 depending upon whether the estate is excepted.
- Estate accounts preparation – drawing up financial statements showing incoming and outgoings of the estate, and ensuring that assets are distributed in accordance with the Will (or as deemed by law where there isn’t a Will).



Book your Free Advice by calling 01707 244442

What to do next...

1. Call us for free advice

At a difficult and upsetting time, we can guide you through the process from start to finish, and deal with everything on your behalf.

2. Book a free advisory meeting

Here at K&K Solicitors, our specialist Probate Team is sympathetic and understanding, whilst at the same time, we appreciate that things need to be done as smoothly and efficiently as possible. We offer a professional service to make things as bearable for you as possible.

3. Receive a fixed price for our complete administration service

Unlike most lawyers, we can offer a simple to understand, fixed-fee structure that remains in place no matter how much time is spent dealing with an estate. You will always have the comfort in knowing exactly how much we will charge from the outset.

K&K Solicitors Wills and Probate Services

Will and Probate department at K&K Solicitors deals exclusively with later life and end of life issues. This means that you can be confident that you are in the hands of professionals who know exactly what they are doing.

Disclaimer

This guide is for information and guidance only and does not remove the need to take professional legal advice relevant to the specific facts of any individual case. The facts and figures stated in this guide are correct at the time of printing. No responsibility will be accepted for any losses occasioned as a result of any action taken in reliance on the contents of this document.



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