

# A Guide to Understanding Probate

This document contains important information and you should read it carefully and keep it safe for future reference.



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## IMPORTANT INFORMATION

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# What is probate?

Probate is the legal process of administering the estate of a deceased person.

This process involves proving the validity of the deceased's will (if one exists), identifying and valuing their assets, paying any debts and taxes and distributing the remaining assets to the beneficiaries as specified in the will or, if there is no will, according to the rules of intestacy.

The following information is based on the probate process in England and Wales. There are some differences between the process in Scotland and Northern Ireland which will be touched on towards the end of this guide.



## Registering the death

The first step is to register the death of the individual. This can be done at a register office. Following this, you can report the death to the Tell Us Once service which allows you to report a death to most government organisations in one go. This is often done by the executor of the will or next of kin due to the details that are required such as the deceased's national insurance number, passport number and details of any benefits or entitlements that they were getting for example. It is important to note that the Tell Us Once service is not available in Northern Ireland.

# Steps in the probate process

## QUICK LOOK AT THE STEPS

### STEP 1

**Check to see if probate is needed**

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### STEP 2

**Check if you can apply for probate**

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### STEP 3

**Valuing the Estate and Inheritance Tax**

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### STEP 4

**Applying for probate**

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### STEP 5

**After you've applied**

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### STEP 6

**Paying debts and taxes**

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### STEP 7

**Distributing the estate**

## STEP 1

### Check to see if probate is needed

First of all, you should contact the financial organisations the person who died used for example, their bank and mortgage company to find out if you'll need probate to gain access to their assets. Probate is generally required when the deceased had significant assets that need to be distributed. However, it may not be necessary if the estate is very small and straightforward (for example, if the value of the estate is below a certain threshold, typically between £5,000 and £50,000 depending on the bank or financial institution) or all assets were jointly owned, such as with a spouse, where ownership automatically passes to the surviving partner.

## STEP 2

### Check if you can apply for probate

Not just anyone can apply for probate. Who can apply depends on whether or not there is a will in place. If there is a will then the executor of the will can apply. If there is no will then the closest living relative can apply. This does not include any unmarried partners. This can become quite complicated if you are for example a close friend or neighbour who is supporting if the deceased is estranged from their relatives. This is where it is important to seek professional advice for additional support. The probate application fee in England and Wales is £300 for estates valued over £5,000. There is no fee for estates under £5,000.

## STEP 3

### Valuing the Estate and Inheritance Tax (IHT)

The first step is to calculate the total value of the deceased's estate. The estate includes all the deceased's assets, such as property, savings, investments, personal belongings, and any outstanding debts. The executor or administrator must compile a comprehensive inventory and valuation of these assets.

The value of the estate is crucial for determining IHT liabilities. There is normally no IHT to pay on an estate below the value of £325,000 or anything over this threshold left to a spouse, civil partner or a charity. This threshold increases to £500,000 if a home is being left to children or grandchildren. The standard IHT rate is 40% and is only charged on the part of your estate that's above the threshold.

So, for example if your estate was worth £400,000 then you would pay 40% IHT on £75,000 ( $£400,000 - £325,000 = £75,000 \times 40\% = £30,000$ ).

Funds from your estate are used to pay the IHT to HMRC. This is normally done by the executor of the will but if there is no will then it will be done by whoever is dealing with the will. If there is IHT to pay then you must have started to pay this before you can apply for probate.

## STEP 4

### Applying for probate

You can apply yourself online or by post or you can pay a probate practitioner to do this for you. There is some helpful information on the GOV website to help you with this application.

## STEP 5

### After you've applied

Once your application is approved, you will get one of a few documents that will allow you to start dealing with the estate.

If the deceased left a will, the executor named in the will, will receive a "grant of probate". This is a legal document that confirms the executor's authority to manage the deceased's estate and is issued by the probate registry.

If there is a will but this doesn't outline an executor, or the executor is not able to fulfil this duty, a "letter of administration with will annexed" will be awarded to the applicant.

If there is no will, referred to as dying intestate, then a "letter of administration" will be awarded to the person who applied. This document grants similar authority to an executor to manage and distribute the estate.

Once there is a person is appointed, they become responsible for managing the assets until the date that everything has been passed onto the beneficiaries. This is known as the administration period.

## STEP 6

### Paying debts and taxes

Before distributing the estate to the beneficiaries, the executor or administrator must pay off any debts owed by the deceased, such as mortgages, loans and credit card balances. They must also pay any tax due on the estate, often inheritance tax, income tax and/or capital gains tax and report the estate value and tax liabilities to HMRC. If the estate has a lot of assets such as trusts, you should seek the support of a professional in order to support you through the process.

## STEP 7

### Distributing the estate

Once all debts and taxes have been settled, the remaining assets are distributed to the beneficiaries according to the instructions in the will or, if there is no will, according to the intestacy rules. This may involve selling assets, transferring property or directly handing over cash or possessions. It is important to note that if property is being passed on then you must update the property register with HM Land Registry.

# Differences in the probate process across nations

The probate process is not the same across all UK nations. There are some slight differences in the process for when probate is required in Northern Ireland and Scotland.

## Northern Ireland

In Northern Ireland probate is required when the deceased leaves one or more of the following:

- £20,000 or more
- Stocks and/or shares
- Certain insurance policies
- Property or land held in their name or as 'tenants in common'.

Further information on the process can be found on the [NI direct website](#).

## Scotland

In Scotland, the probate process is called 'confirmation' and instead of a grant of probate, the applicant or executor applies for a grant of confirmation. In Scotland, probate is not mandatory and is often only needed if a company needs it before they will let you deal with an account or asset or there is a property that doesn't automatically pass onto anyone else.

Further information on the Scottish confirmation process can be found on the [Scottish Courts website](#).

# Probate FAQ's

## How long does probate take?

The probate process can take anywhere from several months to over a year, depending on the complexity of the estate. Factors such as the number of assets, the need to sell property, disputes among beneficiaries or unresolved debts can all lengthen the process.

## Why is probate important?

Probate ensures that the deceased's wishes, as expressed in their will, are carried out in a legally recognised manner. It also provides a clear and organised way to settle the estate, pay debts and ensure that assets are distributed fairly and according to the law.

For individuals dealing with the probate process, it is often advisable to seek legal advice or the help of a probate specialist, especially if the estate is large, complex, or contentious.

## Do I need a solicitor for probate?

You don't need a solicitor to apply for probate if the estate is straightforward. However, you may choose to hire one if the estate is complex (e.g., with businesses, multiple properties or international assets), if there is a disputed will or if there is a large estate subject to inheritance tax.



The Financial Conduct Authority does not regulate Will or Probate Services.

## What happens to the house during probate?

If the deceased owned a property, it forms part of the estate and must be included in the valuation. During the probate process you can manage the property (e.g., maintaining it or renting it out with approval), but ownership cannot be legally transferred or sold until probate is granted.

## Can probate be contested?

Yes, probate can be contested, typically on grounds such as:

- If the will is not signed or witnessed properly, it may be contested.
- Claiming the deceased lacked mental capacity when making the will.
- Arguing that the deceased was coerced into making certain provisions.

Contesting probate often involves court proceedings and can delay the administration of the estate.

This guide provides a general overview of the UK probate process. It's advisable to seek professional guidance, especially for complex estates or legal concerns, to ensure that probate is handled correctly and efficiently.

