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# The Probate Process

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This probate process has been prepared to explain what happens when an estate is administered and the role and responsibilities of personal representatives.

The procedure can be broken down into stages. Not every stage will apply to every estate and the stages may overlap. The timings given are very approximate and may be considerably greater in the case of large or complex estates or where there is a dispute between parties.

## Registering The Death

The death should be registered *within five days* and this is done by contacting the Register Office. It is best to contact the Register Office in the area where the person died.

### Who Should Register The Death?

This should normally be a family member, or next of kin but could be the executor of a Will, person present at the time of death or other official.

The Register Office may want to see the deceased's:

- Birth certificate;
- Passport;
- Driving licence;
- A council tax bill;
- Proof of address (such as a utility bill);
- Marriage or civil partnership certificate (if they have one);
- NHS medical card.

You will also need to tell the registrar:

- The deceased's Full Name at the Time of Death;
- Any names previously used;
- The deceased's date and place of birth;
- Their last address;
- Their occupation;
- The full name, date of birth and occupation of a surviving or late spouse or civil partner;
- Whether they were receiving a State Pension or any other benefits.

### Documents

When you register the death you will receive the following documents:

- **A Certificate of Burial or Cremation** (known as the Green Form) – This gives permission for a burial or an application for cremation.
- **A Certificate of registration of Death** (known as Form BD8) – You will need to fill this in and return it if the deceased was receiving a State Pension or benefits.

- **A Death Certificate** – This will be needed for dealing with the deceased’s affairs (it is sensible to obtain several death certificates).

## **Arranging The Funeral**

The funeral can usually only take place after the death is registered. You can pay for a funeral director to arrange the funeral or do it yourself.

You should check if the deceased had made arrangements for their funeral - this could include prepaid funeral plans or life insurance. If there is a Will, you should also check to see whether it contains any funeral or burial wishes.

### **Funeral Costs**

Funeral costs can include:

- Funeral director fees;
- Things the funeral director pays for on your behalf (called ‘disbursements’ or ‘third-party costs’), for example crematorium or cemetery fees, or a newspaper announcement about the death;
- Local authority burial or cremation fees

Funeral directors may list all these costs in their quote. You can get quotes from several funeral directors to see what is available within your budget.

The funeral can be paid for:

- From a financial scheme the deceased had, for example a pre-paid funeral plan or insurance policy;
- By you, or other family members or friends;
- With money from the deceased’s estate (savings, for example).

If paid for by you or others, if the estate is solvent, you can later be reimbursed.

If you want to pay the funeral from the estate, you should take the funeral account and death certificate to the deceased’s bank and they should arrange payment directly.

## **Informing The Government About The Death**

### **Tell Us Once Service**

Tell us once is a service that lets you report a death to most government organisations in one go.

The Tell Us Once will notify:

- **HMRC** - to deal with personal tax and to cancel benefits and credits, for example Child Benefit and tax credits (you need to contact HMRC separately for business taxes, like VAT);
- **DWP** - to cancel benefits and entitlements, for example Universal Credit or State Pension (HMRC and DWP will contact you about the tax, benefits and entitlements of the person who died);
- **Passport Office** - To cancel a British passport;
- **DVLA** - To cancel a licence, remove the person as the keeper of up to 5 vehicles and end the vehicle tax;
- **The Local Council** – To cancel Housing Benefit, Council Tax Reduction (sometimes called Council Tax Support), a Blue Badge, inform council housing services and remove the person from the electoral register; and
- **Veterans UK** - to cancel or update Armed Forces Compensation Scheme payments.

Tell Us Once will also contact some public sector pension schemes so that they cancel future pension payments.

They'll notify:

- My Civil Service Pension;
- NHS Pensions for NHS staff in England and Wales;
- Armed Forces Pension Scheme;
- Local Government Pension Schemes (LGPS).

You will receive a code to enable you to compile the tell us once service with the death certificate pack.

You should also take steps to notify other people or organisations with which the deceased had a financial arrangement. For example, their landlord or mortgage provider, bank and any insurance providers, utility providers and employers.

### **Meeting At The Office To Discuss The Next Steps**

We provide a free initial no obligation consultation to discuss any estate, confirm whether you require [‘probate’](#), discuss your options, costings, the process and likely timescales.

For your initial meeting we will need to see: -

- Any Will;
- The original death certificate;
- Your identification;
- Any paperwork you wish to discuss.

The meeting should ideally be with all appointed executors. If there is no Will, we can meet with family members or next of kin.

### **How Can Avery Walters Help?**

#### **1. An initial free consultation to provide guidance with no obligation to proceed.**

- We will meet with personal representatives to discuss the terms of a Will, or advise on the rules of [‘intestacy’](#), discuss whether a Grant of Representation is required, provide general advice, and set out available options or next steps.

#### **2. A fixed fee limited retainer to obtain a Grant of Representation for the personal representatives.**

- We can assist by making the application to the probate registry on your behalf after drafting the required probate application paperwork. This is based on you valuing the estate and providing the relevant information to us for the application; we can confirm what information we need at the outset. Upon receipt of the Grant of Representation, you are then responsible for closing accounts and collecting in assets and dealing with all other estate matters such as paying liabilities and distribution of the estate.
- This is a popular option due to the fixed fee and limited nature of our retainer which may suit many clients who are happy to correspond with third parties in the estate and go through paperwork or where the estate is straightforward.
- Timescale: A fixed fee limited retainer application may take anywhere between 8-14 weeks.
- Costs: See our costs here [‘GOP Only Costs’](#)

#### **3. Deal with the full administration of an estate on behalf of the personal representatives**

- This would involve us contacting all financial parties in the estate and building up a financial picture of the estate as at the date of death to include assets and liabilities. We would then prepare all probate application papers and submit these on the personal representative's behalf.
- Once probate was received, we would collect in all assets, pay all liabilities, and ultimately prepare estate accounts and distribute the estate giving the personal representatives and beneficiaries peace of mind.
- Timescale: Depending on what is involved we estimate that the full administration of an estate could take anywhere between 6 months - 24 months.
- The likely timescales involved depend on the nature and complexity of the matter, but we will be able to provide you with a likely timescale at the outset of the matter upon receipt of the facts.
- Costs: See our costs here ['Full Administration Costs'](#)

After this initial appointment we will send out a letter of engagement for your signature and return. This will include the next steps and provide you with a quote ['Link to quote page'](#).

Once we have received this we will begin work on your file.

### **ID, Bankruptcy & Property Searches**

The next step would then be to carry out ID & bankruptcy searches on the personal representatives. This is done to ensure that the personal representatives are able to act and we have verified we are dealing with the correct individuals.

Office Copy Entries would then be obtained on all properties in the estate to confirm the deceased was the legal owner and how the properties are held.

### **Settling Funeral Costs And Arranging The Funeral If You Have Not Done So**

When arranging the funeral, the first thing to check is whether the deceased had a funeral plan in place. You may be able to locate this information by having a look thorough the deceased's paperwork or you may have heard them speak about this in their lifetime.

We would then contact the undertakers and make them aware of the passing, in order that they can arrange the funeral.

If the deceased didn't have a funeral plan in place, we can arrange for funeral costs to be settled directly from the deceased's bank account. This is done by providing the death certificate and funeral account to the deceased's bank and asking them to make payment on their behalf.

### **Valuing Assets And Liabilities In The Estate**

The next step would then be to ascertain the values of the assets and liabilities comprising the estate as at the date of death and the debts due from the estate to then allow us to make our application to the HMRC, if necessary, and the Probate Registry.

### **Personal Assets & Chattels**

If the value of the items is likely to be considerable and if the estate is taxable, then a professional valuation would be obtained. This is not compulsory but it may save time when dealing with later enquiries by the HMRC.

Although the HMRC have no power to compel a professional valuation, it is not sufficient to merely estimate. The value should be estimated in some detail and individual chattels worth £100 or more should be shown separately with detailed particulars and pictures. The price of a car should be obtained from a source such as an online valuation.

### Property

- **If the property is to be sold:** We would obtain a formal valuation from 2 – 3 reputable estate agents in the local area in order to give us an accurate market value. (HMRC will usually treat the sale price as the probate valuation if it is sold within a year of the death).
- **If the estate isn't taxable:** In this case, a formal RICS valuation would not be necessary and reasonable estimates is all that will be required, as above.
- **If the estate is taxable:** We would obtain formal RICS valuation to confirm the value of the property at the date of death.

The executors may put the property on the market and preliminary conveyancing steps may be taken before the Grant is obtained.

- **Clearance:** We would also arrange clearance of the property, if needed. This could be in preparation for the sale, or even if the property is rented and is due to be handed back to the landlord.

### Bank Accounts & Investments

We would write to all holdings to obtain date of death valuations.

### Cancelling The Lasting Powers Of Attorney

If the deceased had a Lasting Power of Attorney ('LPAs') in place on their death, we would contact the Office of the Public Guardian ('OPG') and arrange for these to be cancelled. If we are in possession of the deceased's LPAs we will send these to the OPG for cancellation.

This is done to protect the deceased's estate as Lasting Powers of Attorney are void upon death and shouldn't be used to access any of the deceased's finances.

### Statutory Notices For Creditors

Depending on the circumstances of the deceased's estate, we would then place statutory notices in the Gazette and the local newspaper. We can discuss this with you to decide if this is necessary.

A statutory notice is an advertisement to inform any potential creditors that the estate is soon going to be distributed. This gives the deceased's creditors an opportunity to claim back money or property that they are owed before the estate is distributed to the beneficiaries.

There is no legal requirement for such a notice, however, by placing the notice the personal representatives will be protected from any personal liability of a creditor comes forward to make a claim against the estate further down the line.

### What Can Be Done Before The Grant Of Representation

The personal representatives will not be able to deal with most of the deceased's property until the Grant of Representation is issued. Shares, property and monies held in a bank, building society or similar institutions over certain thresholds are 'frozen' until a Grant of Representation is issued.

The personal representatives can obtain information about these assets but cannot deal with them until they can show a copy of the Grant of Representation. However, there are a few items that can be dealt with before the Grant of Representation is obtained.

### Joint Property

For example, a joint bank account. When one of the joint owners has passed away all that is usually required is for the survivor to produce a copy of the death certificate and the asset is then automatically transferred into the survivor's sole name. There are certain exceptions to this, such as property that is held as beneficial joint tenants, where the Land Registry would need to be updated to remove the deceased's name from the Title Register.

### Small Accounts

If there is a bank account with not much money in it, or an asset of low value, you may be able to cash this in without obtaining a Grant of Representation. There is no set limit on the threshold for a bank to release funds without a Grant of Representation, this varies between banks so this will need to be checked with the bank directly.

### Certain Insurance Policies

This will depend upon the terms of the terms of the policy. It is important to keep a copy of the policy as the HMRC may wish to see it.

### Personal Assets

It is often advisable to deal with personal assets before a Grant of Representation is issued as the personal representatives may want to remove valuable items to safe custody. Such items may not have insurance cover if they are left in an empty house. The personal representatives have a right to do so as they are responsible for the property and it is their duty to take any steps they may consider necessary to safeguard it. The executors get authority to act through the Will and administrators get authority to act through the Grant. Thus, if a personal representative does deal with any items he should make sure that they retain control of them until Probate is granted.

### Update Insurance To Vacant Possession & Contact Utility Companies

If the deceased's property has been left vacant on their death, their current buildings insurance may no longer be valid. You will, therefore, need to update this to vacant possession property insurance and steps should be taken to ensure its security.

It may also be the case that the utility companies were all in the name of the deceased. They will too need to be contacted and cancelled or switched into the name of another occupier or frozen until completion of the administration of the estate.

## **Obtaining The Grant Of Representation**

When considering applying for the Grant of Representation, the first thing to do is to check whether the deceased had a Will in place on their death.

### Finding The Will

It should not be assumed that the deceased passed away without a Will. You should undertake the following tasks before proceeding: -

1. A thorough search of the deceased's residence.
2. Contacting their solicitor or local solicitors in the area to see if a Will is held.
3. Putting a notice in the London Gazette requesting information about any Will.
4. An application to search any registers of Wills (commercial or otherwise).

If you have exhausted all of the options above then you are able to proceed on the basis of intestacy.

### Passing Away **With** A Will In Place

If the deceased had a Will, it will appoint one or more executors. The executors are the people who are legally responsible for dealing with all of the deceased's property. They become legally responsible from the moment of death. The Probate Registry grants the right to do this by a document called a Grant of Probate.

### Grant of Probate

The purpose of obtaining a Grant of Probate is to prove the Will officially and to confirm the executors named in the Will so that they can administer the assets in the estate. The original Will is deposited at the Probate Registry with a legal statement signed by the executors in which they set out the facts of the deceased and that they are the Executors named in the Will. The Registry scrutinises the Will and the statement. If satisfied, the Will is filed at the Registry and a Grant of Probate is issued to the Executors. This is the official document confirming the appointment.

### Renouncing Executorships

Executorship is a serious responsibility, but it is not compulsory. Anyone who does not wish to act as an Executor may renounce their Executorship. Renunciation is final and cannot be retracted once made. An Executor who wants to renounce must not start dealing with any property of the estate.

### Intermeddling

The term "intermeddling" is used to describe actions carried out by an individual who appears to accept the role of a personal representative even if that individual is not entitled to that role or does not wish to act in that capacity.

This can be actions such as:

- Selling assets of the deceased.
- Collecting debts due to the deceased and issuing receipts for their payment.
- Paying debts.
- Carrying on a business of the deceased.
- Disposing of the deceased's chattels.

As a result of this apparent acceptance, the individual runs the risk of being liable for their actions in respect of the estate.

### Non-proving Executors

Alternatively, one or more of the executors may choose to become non-proving executors. They remain Executors but do not take part in the application for the Grant of Probate. This frequently happens where one of the Executors is living abroad, or if there are three or four Executors and it is felt that it would be unnecessarily expensive and time consuming to circulate documents and forms to all of the Executors for signature. If 'non-proving' they are not named as Executors in the Grant of Probate and do not sign any documents. However, they may apply to the Court to be included if they think that this is necessary.

## Passing Away **Without** A Will In Place

If the deceased died without a Will then this is known as intestacy and the closest family members to the deceased will be entitled to apply to administer the estate and to share in it. The Probate Registry grants the right to do this by a document called Letters of Administration.

### Letters of Administration

The purpose of obtaining letters of administration is to grant the appropriate individual(s) permission to administer the assets in the estate.

It is then the responsibility of the administrators to gather information about the deceased's estate, making note of all of their assets and liabilities such as property, money in the bank, cash at the property, assets, investments, life insurance policies, pensions, mortgages, loans, monies owed to or from utility companies etc.

*It takes approximately 8 - 12 weeks for the Grant to be issued by the probate registry from when the application is submitted.*

### Considering Inheritance Tax

The next step will then be to determine whether the estate is taxable:

If the deceased's estate is below £325,000, then their estate will not be taxable.

If the deceased's estate is over £325,000 and their estate comprises of a residential property and they are gifting that property to their children or other direct descendants such as grandchildren then they will be able to leave up to £500,000 inheritance tax free, depending on the value of the residential property.

If the deceased was married or in a civil partnership and they are leaving their estate to their spouse or civil partner then regardless of the value of the estate, this will be 100% exempt from inheritance tax.

If the deceased is widowed and their late spouse or civil partner left everything to them solely, they may be able to carry over their late spouse or civil partner's unused bands, meaning they may be able to leave up to £1,000,000 inheritance tax free.

Complexities may occur where the deceased has overseas properties, was domiciled abroad or undertaken significant lifetime gifting.

### Drafting The Papers Leading To The Issue Of The Grant Of Representation

Regardless of whether the estate is taxable or not, to obtain probate, an application will need to be sent to the Probate Registry to include the original Will.

Different paperwork needs completing if the deceased died prior to 1<sup>st</sup> January 2022.

#### If The Estate Is Taxable

If the estate is taxable then we would need to submit a more complex form to the HMRC and Probate Registry.

Any inheritance tax needs to be paid at the end of 6 months after the date of death.

The inheritance tax returns and schedules then need to be submitted at the end of 12 months after the date of death.



If the estate is taxable, timescales are longer due to the involvement of an additional government body.

### Corrective Account

HMRC check the Inheritance Tax Account in detail and may raise queries about values or calculations of tax. As the administration proceeds, any values which were estimated are replaced by correct figures and a Corrective Account should be prepared with details of all of the corrections. Finally, when all values have been agreed an application should be submitted to HMRC for a clearance certificate, which confirms that all tax due has been paid.

### Submitting Papers To The HMRC & Probate Registry

Depending on whether the estate is taxable or not, different forms must be sent off to the HMRC and the probate registry to apply for the grant of representation, as stated above.

A fixed fee limited retainer application may take anywhere between 8-14 weeks and depending on what is involved we estimate that the full administration of an estate could take anywhere between 6 months - 24 months.

### Collecting In Assets & Discharging Debts

We will write to all financial parties to collect in assets and to creditors to pay debts.

### House Sale / Transfer

Depending on whether you would like to sell the property or have this transferred into the name(s) of the beneficiaries, we can assist you with this.

We can deal with this in house with the assistance of our conveyancing department '[Link to Probate Sales & Transfers page](#)'.

### Statutory Waiting Period

Once funds are received, we will hold them for a period of 6 months from the date of receipt of the Grant of Probate which is known as the statutory waiting period to allow any third party to make a claim against the estate.

### Potential Claims Against the Estate

The personal representatives must also consider whether there may be any potential claims against the estate under the Inheritance Act (Provisions for Family and Dependents) Act 1975. This Act enables certain class of family members and dependants to make a claim against the estate on the basis that the Will (or the intestacy rules) have not made "reasonable financial provisions" for them.

As a general rule, these claims must be issued at court within six months of the Grant of Representation being obtained. The personal representatives should therefore consider whether they wish to delay any distributions until the six month period has expired to protect the beneficiaries.

### Disclaimers

Professional Executors will usually hold all funds in the estate for six months to avoid a situation where the funds are distributed to the beneficiaries, the money is spent or the assets are disposed of and then a claim is made against the estate and the beneficiaries are left with a large bill and no means to settle it.

If there is one or a small number of beneficiaries in an estate and they are certain that the deceased had no other family and that no claims are going to be made against the estate, the beneficiaries can sign a disclaimer that they will take responsibility for any claims that arise and that this burden will not fall on the professional Executors and the funds can be distributed without the need to wait six months.

### **ID & Bankruptcy Searches**

We will then collect in 2 forms of identification from all legatees (if any) and carry out bankruptcy searches. If these come back clear, we will then distribute any specific legacies, and collect in receipts.

### **Dealing With Tax Up To The Date Of Death And Tax During The Period Of Administration**

#### **Income Tax**

The estate is liable to basic rate income tax (20%) on savings and rental income, (7.5%) on dividend income which it receives during the period of administration. Each beneficiary must include their share of that income in their personal tax returns. On conclusion of the administration Estate Accounts are prepared and all money received is accounted for and income tax is paid.

#### **Deed of Variation**

A Deed of Variation is a device that is available to a beneficiary of a deceased person's estate that allows them to give up their entitlements under the deceased's Will or the intestacy rules in favour of other persons, provided that the beneficiaries concerned are all of age and have capacity. It can apply to anything in the estate such as land, cash, a share in the residuary estate or a beneficial interest in a trust.

A Deed of Variation works by allowing the beneficiary to rearrange or redirect the interest that came to them originally from the deceased's estate. In effect, the beneficiary is transferring to another beneficiary some or all of the interest they have inherited. This transfer is usually made by way of a gift, but it can also be by exchanging respective interests in the estate or by selling an interest.

The disposition must be made within two years after the deceased's death and can be very useful if family circumstances have changed since the Will was made or if a beneficiary wishes part or all of his share of the estate to go to someone else without incurring any Inheritance Tax or Capital Gains Tax liability.

### **Tying Of Matters With The DWP**

We will contact the DWP to ensure that there is nothing owing to or from the estate of the deceased.

### **Preparation Of Estate Accounts**

We will then prepare estate accounts for your approval. These are detailed accounts showing all of the assets and liabilities in the estate, any income that has been received, any tax payable and details of distributions that have been made or are yet to be made.

Once you have reviewed this and are happy with it, you will sign and return this to us to confirm your approval.

### **Distribution Of The Estate**

Once you are happy with the estate accounts, we will distribute the estate in line with the Will or intestacy rules.

### **Closure Of File**

We will then close our file and store all papers for 12 years, which is the period recommended by the Law Society.

## **Continuing Trusts**

It is often the case that a Will leaves property on continuing trusts, for example the income is left to the surviving spouse for life and then the capital is distributed between the children.

The Will usually specifies that the Executors are also the Trustees of these continuing trusts. At the conclusion of the initial administration stage, the Executors automatically switch to their role as Trustees. The relevant assets are transferred into their names to be held as a Trust Fund and they are then responsible for carrying out the terms of the Trust.

Trusts now need to be registered with the HMRC under their Trust Registration Service.

You can find out more information here:-

Trusts and taxes: When you must register a trust - GOV.UK ([www.gov.uk](http://www.gov.uk))

Trusts in Wills that need to be registered include:

- Giving money, assets or a share of the estate to trustees to hold for a beneficiary until they reach a certain age (other than 18-25).
- Giving money, assets or a share of the estate to trustees on discretionary trust for them to distribute to a class of beneficiaries as they see fit.
- Giving money, assets or a share of the estate to trustees to allow an individual to benefit from the income or have a right to live in a property or share of a property for their life, subject to certain conditions.

The trustees can deal with this directly or, an accountant can assist with the registration, and this can cost around £250 + VAT. At the time of registration, the full names, addresses, dates of birth and national insurance numbers would need to be provided and the trustees would need to visit the HMRC register and ensure that all the details were up to date and report any changes on an annual basis.

If the trust is varied or wound up within 2 years of death, then it will not need registering with the HMRC. Registration is only required for trusts that continue for longer than 2 years post death.

## **Some Common Legal Terms Explained**

### **Administrator**

The person(s) appointed to distribute the estate in the absence of executors.

### **Bequest**

A gift under a Will (also known as a legacy).

### **Codicil**

A document amending a Will.

### **Estate**

A person's assets at the date of their death.

### **Executor**

The person(s) appointed in a Will to administer the estate.

### **Intestate/Intestacy**

When a person dies without a Will.

**Pecuniary Legacy**

A fixed sum of money given under a Will.

**Personal Representatives**

Generic term for executors and administrators.

**Probate**

Official confirmation by the Court of who is entitled to collect in and distribute the estate.

**Probate Court**

The part of the High Court that deals with probates.

**Residuary Beneficiary**

The person(s) who receives what remains of the estate after all other legacies, liabilities, tax and expenses have been paid.

**Testator/Testatrix**

The person making a Will (male/female).