



# How to obtain probate -

## A guide for people acting without a solicitor

### What is the Probate Service?

The Probate Service is part of HM Courts & Tribunals Service. It administers the system of probate in England and Wales, and issues grants of representation, which give people the legal right to handle the estate (for example, money, possessions and property) of a deceased person.

This leaflet provides guidance if you want to obtain probate without using a solicitor.

If you have any queries, please contact your local probate registry (see leaflet **PA4**). The staff are there to help you – but they cannot give you legal advice.

### Introduction

When a person dies, they usually leave an estate (including money, possessions and property).

In order to access the estate, the personal representative(s) of the deceased need to apply to the Probate Service for a grant of representation (a grant). The grant establishes who can legally collect money from banks, building societies and other organisations which hold assets belonging to the deceased person.

In most cases, applying for a grant is a straightforward procedure. It will involve completing a form with supporting documents, and swearing an oath in support of the application.

The information in this leaflet refers only to the law in England and Wales. If the deceased person was permanently resident in any other country when they died, please contact your nearest probate registry for guidance.

### What is the purpose of the grant of representation?

A grant establishes who can legally collect money from banks, building societies and other organisations which hold assets belonging to the deceased person. There are three types of grant:

#### Probate

Probate is issued by the Probate Service to the executor(s) named in a will left by the deceased.

## Letters of Administration (with will)

Letters of Administration (with will) are issued when no executor is named in the will, or when the executors are unable or unwilling to apply for the grant.

## Letters of Administration

Letters of Administration are issued when the deceased person has not made a will, or the will they have made is not valid.

## Is a grant always needed?

Not every estate needs a grant. A grant may not be needed if:

- the home is held in joint names and is passing by survivorship to the other joint owner(s).
- there is a joint bank or building society account. In this case, the bank may only need to see the death certificate, in order to arrange for the money to be transferred solely to the other joint owner. However, a grant could still be needed to access assets held in accounts not held in joint names, or insurance policies.
- the amount held in each account was small (even if held in the deceased's sole name). You will need to check with the organisations (banks, building societies or insurance companies) involved to find out if they will release the assets without a grant.

You may wish to ask anyone holding the deceased's money (such as a bank or insurance company) whether they will release it to you without seeing a grant. If they agree, they may attach conditions such as asking you to sign a statutory declaration before a solicitor. You will then be able to decide whether it is cheaper or easier to do this than to apply for a grant.

Please note that a grant **must** be presented in order to sell or transfer a property held in the deceased's sole name or a share of a property held jointly with the deceased and one or more other people as tenants-in-common. Tenancy-in-common is a written agreement between two or more people who own a joint asset (usually land or buildings). If you aren't sure about this you may wish to consult a solicitor.

You cannot complete a sale on any property owned, or partly owned, by a deceased person until the grant has been issued. It is therefore advisable not to put properties owned, or partly owned by the deceased, up for sale until a grant has been issued.

## Who can apply for probate?

You can apply for a grant if you are over the age of 18 and:

- you are an executor named in the will;
- you are named in the will to receive some or all of the estate (if there are no executors, or if the executors are unable or unwilling to apply); or

- the deceased person did not make a will and you are their next of kin, in the following order of priority:
  - lawful husband or wife or civil partner (a civil partnership is defined as a partnership between two people of the same sex which has been registered in accordance with the Civil Partnership Act 2004). The surviving partner of co-habiting couples not in a marriage or civil partnership are not entitled to apply for a grant.
  - sons or daughters (excluding step-children) including children adopted by the deceased. (Children adopted out of their biological family can only apply in the estates of their adoptive parents and not their biological parents.)
  - parents
  - brothers or sisters
  - grandparents
  - uncles or aunts
  - If sons, daughters, brothers, sisters, uncles or aunts of the deceased person have died before the deceased, their children may apply for a grant.

Usually, only one of the personal representatives is required to apply for a grant. However, if the person entitled to the estate is under 18, two people are legally required to apply for a grant. If this is the case we will let you know when we receive your application.

When more than one person wants to apply for a grant, they may make a joint application. A maximum of four applicants is allowed and they will all have to swear an oath in support of their application.

When you submit your application we will check to ensure that the right person(s) are applying for the grant. If you are a distant relative, please supply a brief family tree showing your relationship to the deceased person.

### **Where might the will be stored?**

The original will may be held at a solicitor's office or bank, or at the Principal Probate Registry in London. It may be among the deceased person's possessions. If you do not send the original will your application will take longer to deal with.

We will not return the original will to you as it becomes a public record once it has been proved (acted on). We will, however, send you an official copy of the will with the grant of representation.

### **What if I don't want to apply for a grant and I am named as an executor in a will?**

Executors may choose to give up all their rights to a grant ('renunciation') or they may reserve the right, ('power reserved'), to apply for a grant in the future. Unlike renunciation, power reserved will not prevent you applying for a grant at a later date should you need to do so.

Only the executor(s) who swear an oath in support of the application will be named on the grant and only their signature will be required to release the deceased person's assets.

If the person who is entitled to the grant does not wish to apply, they may appoint someone else to be their attorney to obtain the grant on their behalf. If this is the case the details of the person appointing the attorney should be entered on form **PA1**. We will then send you a form for that person to give formal authority, for you to act on their behalf. If the person entitled to the grant has already signed an Enduring Power of Attorney (EPA) or a Lasting Power of Attorney (LPA) please file the original document with your application. This document will be returned to you.

The grant will be issued in the name of the attorney but will state that it is for the "use and benefit" of the person entitled to the grant.

**Note** – LPA must be registered with the Office of the Public Guardian before it can be used.

You can contact them via [www.justice.gov.uk/about/opg](http://www.justice.gov.uk/about/opg) or by calling 0845 330 2900.

## Why do I need to think about inheritance tax now?

The tax on the estate of a person who has died is called inheritance tax. It is dealt with by HM Revenue & Customs (HMRC). If inheritance tax is due, you normally have to pay at least some of the tax before we can issue the grant.

The issue of the grant does not mean that HMRC have agreed the final inheritance tax liability. They will usually contact you again after you have received the grant. Subject to the requirements to pay some of the tax before obtaining the grant, inheritance tax is due six months after the end of the month in which the person died. HMRC will charge interest on unpaid tax from this due date whatever the reason for late payment.

Probate registry staff are not trained to deal with queries about HMRC forms or inheritance tax. If you have any queries about these you should visit the HMRC website: [www.hmrc.gov.uk/inheritancetax](http://www.hmrc.gov.uk/inheritancetax) or contact the Probate and Inheritance Tax Helpline on 0845 30 20 900.

## How do I apply for a grant?

You will need to follow the process set out below:

### Complete the Probate Service application form

You will need to complete **Probate Application form PA1**, using **Guidance Leaflet PA1A**. You can get these forms by:

- calling the Probate and Inheritance Tax Helpline on 0845 30 20 900;
- downloading them from [hmctsformfinder.justice.gov.uk](http://hmctsformfinder.justice.gov.uk). Please note, you cannot save the form online or submit electronically but you can either complete on the screen and print it, or print the blank form and complete it by hand; or
- they can be obtained by email from a probate registry.

## **Complete the HMRC tax form**

When you apply for a grant, you will need to complete a tax form **whether or not inheritance tax is owed**. You should use form **IHT205** if no inheritance tax is payable. If form **IHT205** is not applicable to you, please contact HMRC for form **IHT400**.

For help completing the forms, you can contact the Probate and Inheritance Tax Helpline on 0845 30 20 900.

Please note, no grant can issue until either it has been confirmed by you that no inheritance tax is payable, or that, if inheritance tax is payable, HMRC has confirmed to the Probate Service that the grant can issue.

## **Options for swearing the oath**

As part of the application process you will need to swear an oath to confirm the information you have provided in the application form is true to your best knowledge and belief. The oath will also set out the legal requirements expected of you as the holder of the grant. The oath, which is a document containing all the necessary information to support the application, will be prepared for you by Probate Service staff, and you can choose to swear it either:

- at the office of any commissioner for oaths (usually a solicitor's office) convenient to yourself; or
- by attending at one of the probate venues listed in leaflet **PA4** (we will send you the oath and details of how to arrange the appointment).

**Please note, it will usually take no more than five minutes to swear the oath. You may wish to take this into consideration when deciding which option you wish to take.**

## **Before a commissioner for oaths**

If you choose to go to a commissioner of oaths to swear the oath in support of your application you may be able to swear your papers closer to your home or place of work than if you attend at a probate venue. Commissioners of oaths are often solicitors but they will have no involvement either in your application or the administration of the estate; your only contact with them will be for the formal swearing of the oath – usually no more than five minutes.

The first named applicant will be sent the oath which must then be taken to a solicitor of their choice before whom they wish to swear the oath. All applicants who wish to be named on the grant will be required to swear the oath. We will send further instructions on the process to follow when we send you the oath.

A charge of £5 for each oath and £2 for each exhibit is made by the solicitor for this service. An exhibit is any document referred to in the oath and will usually be a copy of the will (if one was left). You will need to contact the solicitor to make appropriate arrangements to swear the oath. If you are outside England or Wales, different charges may apply and you may wish to check the fee beforehand and also contact the Probate Registry for further information on how to do this.

If you choose this option you should write '**solicitor's office**' in the box labelled '**interview venue**' on the first page of the form **PA1**.

This option may not be applicable in all cases and it may be necessary for you to attend an appointment at the registry. Should this apply in your case, you will be contacted by the Probate Service.

### **At a probate venue**

If you attend a probate venue, there is no additional charge for swearing the oath, and the arrangements for you to swear the oath will be made by probate staff. The leaflet **PA4** provides more information on the locations for swearing the oath if you choose this option.

The locations highlighted in bold on the PA4 have limited opening times, as an appointment date for that venue will only be set once a minimum of 50 applications wishing to attend have been received. When selecting a venue your appointment will be fixed for the next available date. It may be that an earlier date can be given at the main registry and this will be discussed when you call.

If you choose to swear your oath at a probate venue you should write your preferred location in the box labelled '**interview venue**' on the first page of the form **PA1**.

### **Decide how many official sealed copies of the grant of representation you need**

Organisations like banks and building societies need to see sealed copies of the grant before they can release assets to you. They won't accept unsealed photocopies.

Therefore, if you want to deal with the estate quickly, you may want to order enough sealed copies of the grant to send to all the organisations you are dealing with at the same time.

If there are any assets held outside England and Wales, those asset holders may require a copy of the grant to be provided in a different format – usually referred to as a sealed and certified copy.

It is still possible to obtain further sealed copies of the grant for official use after it has issued. You will need to write to the probate registry which issued the grant. However, these will cost more than those ordered at the time of application (see **PA3** – fees list), so it is important to decide before you apply for the grant how many copies you will need.

### **Make sure you enclose the correct documents**

You will need to enclose:

- An official copy (**not** a photocopy) of the death certificate issued by the Registrar of Births Deaths and Marriages or a coroner's certificate.
- The **original** will and any codicils (or any document in which the deceased person expresses any wishes about the distribution of his or her estate). **Keep a copy of any will or codicil you send us**. Please do not attach anything to the will by staple, pin etc. or remove any fastenings from the will.
- Three clear and legible A4 copies of the will and any codicils.

- Any other documents specifically requested by the Probate Service or on the form **PA1**.
- The appropriate HMRC form for your application.
- A cheque made payable to 'HM Courts & Tribunals Service' for the fee, and including the cost of the number of additional copies you have requested. See the fees list on leaflet **PA3**. (We cannot process your application until the fee has been paid.)

### **Where should I send my application?**

You should send your application to the probate registry of your choice (see leaflet **PA4** for the address). You can choose any venue for your appointment to swear the oath, **but your application must be sent to the main Probate Registry responsible for that venue**. You may wish to send your application by registered or recorded post.

### **Processing the application**

When we receive your application, we will examine it and if we have all the information/documentation to enable us to process your case, we will send you a letter (usually within 10-14 days of receiving your application) acknowledging receipt of your application and providing you with a copy of the oath you will need to swear.

If you have opted to swear the oath at a local solicitor you should contact that solicitor to make appropriate arrangements. We will send further instructions on the process when we send you the oath.

If you have opted to swear the oath at a probate venue, we will send the oath to you and then you can call to arrange a date convenient for you.

If you are applying for a grant with someone else and they cannot come with you, we can arrange for them to swear the oath separately at a different location if necessary. This will, however, increase the time it takes to issue your grant.

We will contact you if, after examining your application, we have any queries. If we do contact you, and you are unable to provide us with the further information and/or documentation we require, it is possible an order may be made that your application is not suitable to be dealt with as a personal application. If this is the case, you will need to instruct a solicitor or probate practitioner to make the application on your behalf.

We may require you to sign additional documents or contact other people – for example, a witness to a will – so that we can interview them or obtain their signatures on documents to help with your application.

### **What happens when I swear the oath?**

You will be asked to sign the prepared oath and to swear, or affirm, before the commissioner of oaths or probate officer that the information you have given is true to the best of your knowledge. You will be given the opportunity to swear on the religious book of your choice.

### **What happens after I have sworn the oath?**

If you have sworn the oath at a local solicitor, you should return it to the registry. Once we



have the oath, provided we have all the necessary documentation, we will send you the original grant and copies of the grant (if you have requested them) and return the original death certificate to you, usually within seven working days. You can arrange to collect the documents in person if you want. If you wish to do this, please confirm this in a covering letter when returning the sworn oath.

We retain the original will, as it becomes a public record.

## **After the grant has issued**

When the grant has been issued you will receive information about your role as the executor (**PA97**).

Your duties are to:

- collect the estate ( money, property, etc);
- pay debts, funeral expenses etc;
- pay the balance to the persons who are legally entitled to it; and
- keep receipts and a record of what you have done.

You will have the legal right to ask any person or organisation holding the deceased person's assets to give you access to those assets. These assets can then be released, sold or transferred in accordance with the deceased person's wishes or in accordance with the law if the deceased person left no will or codicil(s).

Please note, once issued, all grants of representation, and copy wills which have been proved are public records. Copies of grants and wills can be requested by anyone, on payment of the appropriate fee (see **PA3**).

The responsibility of the Probate Service ends when the grant is issued, and we cannot advise you on how to administer the estate. If you have any questions about this, you may wish to take legal advice.

## **Useful contacts**

### **For general information on wills and probate:**

[www.gov.uk/after-a-death/overview](http://www.gov.uk/after-a-death/overview)

### **To access the online forms and leaflets:**

[hmctsformfinder.justice.gov.uk](http://hmctsformfinder.justice.gov.uk)

### **To find the addresses of the regional probate registries:**

[hmctscourtfinder.justice.gov.uk](http://hmctscourtfinder.justice.gov.uk)

### **For information about inheritance tax and online forms:**

[www.hmrc.gov.uk/inheritancetax](http://www.hmrc.gov.uk/inheritancetax)

### **For more detailed information about probate and inheritance tax:**

Probate and Inheritance Tax Helpline: 0845 3020900



## **Probate forms and leaflets**

- PA1 Probate application form
- PA1A Probate application form (guidance notes)
- PA2 How to obtain probate (leaflet)
- PA3 Probate fees list (leaflet)
- PA4 Directory of probate registries and interview venues (leaflet)
- PA7 How to deposit a will with the Probate Service (leaflet)
- PA7A Withdrawing your will from the Principal Probate Registry (form)
- PA8 How to enter a caveat (leaflet)
- PA8A How to enter a caveat (form)
- PA9 How to enter a general search (leaflet)
- PA10 How to enter a standing search (leaflet)
- PA1S Application for a probate search (form)
- PA1T Application for a standing search (form)

## **HMRC Inheritance Tax forms**

- IHT205 Return of estate information
- IHT206 Return of estate information (guidance notes)
- IHT400 Inheritance Tax Account