



PROBATE GUIDE

When a person dies, someone has to deal with their affairs. This is called administering the estate.

If the person who has died leaves a will

If the person who has died leaves a will, it will usually name one or more people to act as the executors of the will – that is, to administer their estate. If you are named as an executor of a will you may need to apply for a grant of probate. A grant of probate is an official document which the executors need to administer the estate. It is issued by a section of the court known as the Probate Registry.

If there is no will

If there is no will (known as dying intestate) the process is more complicated. The Administration of Estates Act 1925 sets out who can act as administrator – that is, who has the legal right to deal with the affairs of the person who has died, if there is one. There may be more than one person who has an equal right to do this. Anyone who has this right can apply to the probate registry for a grant of letters of administration. This is an official document, issued by the court, which allows administrators to administer the estate. In some cases, for example, when the person who benefits is a child, the law says that more than one person must act as administrator.

Some more legal terms you may come across

Personal Representatives This means executors or administrators. If there is more than one personal representative they must work together to decide matters between them.

Grants of Representation This includes grants of probate (when there is a will) and grants of letters of administration (when there is no will). Often people just refer to probate even if there is no will.

When a grant of representation is needed

A grant of representation is not always needed, for example, if the person who died has left less than £5,000 in total, or owned everything jointly with someone else. In other cases, some financial organisations, such as banks, may agree to pay funds to a personal representative without a grant of representation – it is always worth asking.

Usually a grant of representation will be needed when the person who has died left more than £5,000.00, stocks or shares, a house or land or certain insurance policies.

How to get a grant

You can ask a Solicitor to apply for the grant of representation on your behalf or you can apply in person at a district probate registry. If you apply in person, you will have to go for an interview at your local probate registry and fill in application and tax forms.

Responsibilities of personal representatives

Personal representatives are responsible for making sure that the estate is administered correctly. If there is a will, the personal representative must make sure that the wishes of the person who has died, as set out in their will, are followed. If there is no will, you must follow the rules of intestacy (set out in the Administration of Estates Act 1925). You should ask your solicitor to explain these.

Inheritance tax

Personal representatives are also responsible for finding out if inheritance tax is due as a result of a person's death. If it is, the personal representative has to make sure that it is paid.

Whether inheritance tax needs to be paid can depend on:

1. How much the property and belongings of the dead person were worth when they died
2. The value of any gifts that they gave before they died, and who they gave these gifts to
3. The value of certain trusts from which the dead person benefited: or
4. Which people benefit under the will or the rules of intestacy.

Additional Help and Advice

If you have any queries in relation to Probate, Wills, Powers of Attorney or any other matter please contact Martin Hilton or Duncan Carter on 01228 888999, or e-mail dcarter@bpkcumbria.co.uk or visit us at Bell Park Kerridge, Clifford Court, Cooper Way, Parkhouse, Carlisle, CA3 0JG or 4 Main Street, Cockermouth, CA13 9LQ.