

Wills and Probate

Dealing with someone's affairs
when they die



*Community
Legal Service*



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When a person dies, someone has to deal with their affairs and decide what will happen to the things they owned.

This leaflet explains what the law says about how this should happen.

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The leaflets in this series give you an outline of your legal rights. They are not a complete guide to the law, nor do they explain how the law will apply to you or to any specific situation. The leaflets are regularly updated, but the law may have changed since this was printed, so information in it may be incorrect or out of date.

If you have a problem, you will need to get more information or personal advice to work out the best way to solve it. See 'Further help' on page 15 for sources of information and advice.

Dealing with someone's affairs when they die is often distressing. But it can also seem difficult and confusing. This can be made worse by the unusual words and expressions that are used to describe who does what and the procedures when someone dies.

See 'Terms used in wills and probate matters' on page 13 for explanations of many of these words.

Why should I make a will?

When you make a will, you can say how your funeral should be dealt with, and what will happen to your possessions and assets when you die. If you die without making a will (called 'dying intestate'), it can be complicated to work out who will get what.

The Administration of Estates Act 1925 sets out who can apply to deal with your affairs if you die intestate (called 'administering the estate') and how your belongings are to be shared. But several people may have an equal right to administer your estate (for example, your children). When several people are equally entitled to act as administrator, the usual rule is 'first come, first served'. However, without a will, there may be dispute or uncertainty.

What makes a will valid?

For a person to make a valid will, they must be:

- 'mentally capable' (which means they fully understand what they are doing in writing their will); and
- at least 18 years old (though you can make a will if you are younger and on active military service).

The will must:

- have been made without 'undue influence' (for example, without a threat from someone);
- be in writing;
- be signed by the person whose will it is (the 'will-maker' or 'testator') and by two witnesses, who must all be together at the signing (see 'Who can be a witness?' below); and
- be dated when it has been signed.

No amendments or additions should be made after the will has been signed.

Who can be a witness?

Any person who is over 18 can sign as a witness. However, the witnesses should not be people who benefit from the will or who are appointed executors (or the husband or wife of one of these people). If you witness a will and you are named as someone who will benefit from it, you will lose your right to that benefit when the person dies.

Special rules apply in certain situations. For example, if a blind person or

someone who can't read or write wants to make a will, you should speak to an adviser to find out more about this. See 'Further help' on page 15 for details of where you may be able to find an adviser.

What does an executor or administrator do?

The executors are the people appointed in a will to deal with the estate of the person who has died. An administrator is the person who deals with the estate of a person who has died intestate (without a will). The executor or administrator may both be called a 'personal representative'.

If a person has died leaving a valid will, the executors can normally arrange the funeral straight away. However, there may be a delay, depending on how the person died.

The executors can also take charge of the house and possessions of the person who has died unless it passes automatically to a joint owner (for example, the person's living husband or wife). But if there is a will, they must follow what it says.

The executors must then work out whether they need to apply for probate. (See 'What is probate?' opposite.)

If there is (or could be) inheritance tax to pay, the executors must report the

value of the estate to the Capital Taxes Office. (See 'Will I have to pay inheritance tax?' on page 6.) Even if the executors believe there is no inheritance tax to pay, they must complete a form giving details of the assets and certain gifts made by the person who died.

The executors may have to deal with claims about unfair treatment if a relative or someone who is a dependant of the person who has died thinks that what they have been left in the will isn't fair, or that they have been left out unfairly (see 'What can I do if I think the will is unfair?' on page 11).

If you are an administrator acting where there is no will and you handle all the matters personally (rather than using a solicitor), you will be personally liable (responsible) if you don't follow the 'rules of entitlement' (the rules governing who gets what) correctly. For example, you cannot give more to someone the dead person liked, or refuse to pay the correct share to someone the dead person disliked, even if the dead person had discussed this before they died.

What is probate?

Probate (or more specifically 'probate of the will') is an official form that gives the executors of the will the right to deal with the assets and property of

the dead person. When you show the probate form to a bank, for example, they know they are dealing with the person who has the right to handle the estate, and they will allow you to withdraw money from the dead person's account.

When you apply for probate, you are promising the Probate Court that you will deal with ('administer') the estate as set out in the will and according to law. If you don't do this, you will be in trouble with the court (and with the people who should benefit from the will). Probate makes sure that the executors carry out their task properly.

When there is no will (or there are no executors named in the will or the executors have died), the official form is called 'letters of administration'.

Do I always need to get probate?

In some cases, you don't need to apply for probate. This is when:

- the person who has died left very little (say, belongings and money amounting to less than £5,000);
- everything they owned was held in joint names with someone to whom their share passes automatically (normally a husband or wife); or
- any bank or building society accounts that the person had contain less than £5,000 (though

banks and building societies have the right to insist on probate in this case).

However, you will need to apply for probate if the person who died had:

- any bank, building society or National Savings accounts with more than £5,000 in them;
- stocks or shares; or
- property or land (unless it is owned as a joint tenancy and so passes automatically to the other owner).

You may have to apply for probate if the person had any life insurance or term insurance policies that are paid to the estate. Some kinds of policy say that they will be paid straight to the beneficiaries of the policy (rather than to the estate), and you do not need probate for these.

You will have to apply for probate if the person who has died gave away large gifts or sums of money (which, with the person's other assets, total more than a certain amount, called the 'nil rate band') in the seven years before they died. If so, inheritance tax must be paid on the amount over the nil rate band. The amount of the nil rate band is reviewed each year – see 'Will I have to pay inheritance tax?' on page 6. Even if these gifts were not worth more than the nil rate band, their value must be added to the

assets of the dead person, because the amount of inheritance tax is based on the value of the estate plus the value of any gifts made in the seven years before they died (excluding certain annual allowances).

There is an important exception to the seven-year limit on gifts: if the person who died gave away their home but continued to live in it rent-free, its value will count towards the assets on which inheritance tax must be paid, regardless of when they gave it away.

In most cases where there is no will you must apply for 'letters of administration', which serve the same purpose as probate. You apply for a grant of letters of administration in the same way you would apply for probate. However, as with probate, you may not have to apply for letters of administration if the person's estate was not worth very much.

How do I apply for probate?

You may apply in person for probate or letters of administration, or you may instruct a solicitor, who can apply on your behalf. You apply to:

- the Principal Registry (in London); or
- a district probate registry (in other cities and many large towns).

See 'Further help' on page 15 for the number to call to find your nearest

probate registry. The registry can send you information packs. These include probate application forms and information on how to fill them in. You can also talk to registry staff if you are having difficulty filling in a probate application.

Will I have to pay inheritance tax?

Whether or not you, as the executor, have to pay inheritance tax out of the estate depends on:

- how much the property and belongings of the dead person were worth when they died;
- the value of any trust from which the dead person benefited;
- the value of certain gifts the person made in the seven years before they died, or longer if they 'reserved an interest'. (An example of reserving an interest would be if they gave away their house on the condition that they were allowed to live there free of charge or for very low rent until they died.)

If all these add up to more than a certain amount (called the 'nil rate band'), the estate has to pay inheritance tax at 40 per cent on the sum of money above this amount. The amount is reviewed every year. It is £300,000 for the year April 2007 to March 2008 and will rise to £350,000 by April 2010.

Not all gifts made within the seven-year period have to be included in the tax calculations. All gifts between husbands and wives are exempt from tax, as are those between same-sex partners in a registered civil partnership (see 'Same-sex relationships', opposite). You can also make exempt gifts in other ways, including:

- a single gift of £3,000 each year;
- any number of 'small gifts' of under £250 each to different people;
- gifts to charities or political parties;
- £5,000 to your child if they are getting married; and
- gifts that can be described as 'normal expenditure' out of your income (which means, for example, that it would not reduce your standard of living).

If you give away your house but continue to live in it without paying a proper rent (called 'reserving an interest'), the value of the house will have to be included in the inheritance tax calculations when you die, even if you made the gift more than seven years before your death.

Inheritance tax is complicated, so you should get specialist legal advice straight away if you are an executor and the Probate Registry tells you that you may have to pay inheritance tax.

The cost of legal advice will be paid out of the estate. If you get the calculation wrong without having taken advice and you pay the beneficiaries without paying the right amount of tax, you may have to pay what is owed out of your own pocket.

The executors or administrators are responsible for paying any inheritance tax that is due out of the assets of the estate, and it is due six months after the end of the month in which the person died. Some or all of the inheritance tax will have to be paid before you can obtain probate or letters of administration.

Same-sex relationships

Same-sex (gay or lesbian) couples who have registered their relationship as a civil partnership have the same tax advantages as married couples. Similarly, if a civil partnership breaks down, the couple face the same legal problems as a married couple (though a legal separation is called a dissolution rather than a divorce).

Who takes charge if there is no will?

If you, as next of kin (or someone else with similar powers), believe that someone who has died has left a will, but no one can find it, you can take steps to find out if they made one.

These can be:

- searching the belongings of the person who has died for any evidence that they made a will (for example, a letter from a solicitor);
- phoning or writing to solicitors and banks that the person might have used;
- applying to the Principal Probate Registry to see if the person who died left their will there; and
- placing advertisements in newspapers and legal journals.

If there is no will, the person's estate will be shared out under the 'rules of intestacy'. These rules set out:

- who deals with the estate; and
- who benefits from it.

The person who will deal with the estate is the closest living relative to the dead person, chosen in this order:

1. The husband, wife or registered civil partner of the person who has died (but not their unmarried or unregistered partners).
2. Their children (aged over 18) or their children's descendants (for example, grandchildren, if they are over 18).
3. The dead person's parents.
4. The dead person's brothers or sisters

with the same mother and father, or descendants of the brothers or sisters.

5. Their half-brothers or half-sisters (who had either the same mother or the same father) or their descendants.
6. Their grandparents.
7. Their uncles and aunts 'of the whole blood' (this means brothers and sisters of their parents, as long as they had the same mother and father themselves) or their descendants.
8. Their uncles and aunts 'of the half blood' (this means brothers and sisters of their parents if they had only the same mother or father) or their descendants.
9. The Crown (the state) if there are no relatives.

If several people have an equal right to deal with the estate (for example, brothers and sisters), letters of administration will normally be given to the first of these people who applies for it.

However, there can be a problem when, for example, the dead person has several brothers or sisters who all want to be in charge of the funeral or administration. If they cannot agree about this themselves, they must apply to the Probate Court, which will decide who will take responsibility. This process is complicated and you would probably need help from a solicitor.

Remember, too, that legal disputes cost a lot of money and take time to resolve. The costs will probably be taken out of the estate, if the court agrees to this. But otherwise, you risk being left with a large bill.

Who gets the estate if there is no will?

Any inheritance tax must be paid. After that, all debts (including mortgages and other loans) must be repaid, whether the dead person has made a will or not. After that, the Administration of Estates Act 1925 sets out who gets what in every situation where there is no will. Some of the more common situations are as follows.

If there is a husband, wife or civil partner, but no other relatives

The husband, wife or registered civil partner gets everything (but their unmarried or unregistered partner gets nothing).

If there is a husband or wife and children

The husband or wife gets:

- the 'personal chattels' (see 'Terms used in wills and probate matters' on page 13);
- the first £125,000; and
- a life interest in half of what is left

(for example, the income or interest if the money is invested, but not the money itself). The capital (the original amount) passes to their children when the surviving husband or wife dies.

The children of the deceased, including illegitimate and adopted children, share between them:

- half what is left straight away, if they are 18 or over; and
- the other half when the surviving parent dies.

Stepchildren get nothing (unless they are named in a will). If one of the children has already died, leaving children of their own, their share will pass to those children (that is, the grandchildren of the person whose estate is being dealt with).

If there is a husband, wife or civil partner, and relatives (but no children)

The husband or wife gets:

- the 'personal chattels' (see 'Terms used in wills and probate matters' on page 13);
- the first £200,000; and
- half what is left.

The parents of the dead person, or, if they have died, the brothers and sisters or their descendants, share the other half of what is left.

If there are children, but no living husband, wife or civil partner

The children share everything equally. If one of the children has already died, leaving children of their own, those children will share what their parent would have inherited if the parent had been alive. If the children are under 18, their share will be looked after by personal representatives acting as trustees until they reach 18.

If there is no husband, wife, civil partner or children

Everything will pass to the next available group of relatives, in the same order as that for applying for letters of administration. This means:

1. the parents of the dead person;
2. brothers or sisters of the dead person who have the same mother and father, or their descendants;
3. half-brothers or half-sisters (who had either the same mother or the same father), or their descendants;
4. grandparents;
5. uncles and aunts 'of the whole blood' (this means brothers and sisters of the parents of the dead person, as long as they had the same mother and father themselves), or their descendants;
6. uncles and aunts 'of the half blood'

(this means brothers and sisters of the parents of the dead person who had only the same mother or father), or

7. the Crown (the state).

One common area of misunderstanding is over what happens when a person dies without a will, leaving children or brothers and sisters, but one of these children or brothers or sisters has already died, leaving children or grandchildren of their own. In this situation, those children or grandchildren will get the share that their parent would have got, had they been alive.

Similar rules apply so that, for example, where an uncle has already died leaving children, those children will get the share the uncle would have got if he had been alive.

What can I do if I think there is something wrong with the will?

The most common reasons for a will not being valid are when:

- the person who made the will did not get their signature witnessed;
- the witnesses were not together when the will was signed; or
- the person who made the will got married after making their will.

Also, if one of the witnesses is a

beneficiary to the will, they lose the right to what the will says they should have (though the rest of the will is still valid).

You can lodge a 'caveat' at a probate registry to stop probate or letters of administration being granted if:

- you think there is something wrong with the will; or
- someone is applying for letters of administration when they don't have the right.

However, you will need specialist legal advice if you are in this position.

Other reasons may make a will invalid, including:

- the person was not mentally capable when they made the will; or
- they made the will under 'undue influence' from some other person.

It is difficult to prove that a will is invalid. You would normally need medical evidence to show a person was not mentally capable when they made their will, and you would need specialist legal help.

If you get married or register a civil partnership, your will automatically becomes invalid, unless you mention your forthcoming marriage or civil partnership in the will.

If you get divorced or dissolve your civil partnership after making a will,

anything that you specifically mention in the will as going to your former husband, wife or partner is ignored. The rest of the will is still valid.

What can I do if I think the will is unfair?

If you are unhappy because you have been left out of a will altogether or because you have been left without 'reasonable financial provision', you may be able to make a claim under the Inheritance (Provision for Family and Dependents) Act 1975. But you can do this only if you are:

- the husband, wife or civil partner of the person who has died;
- the former husband or wife of the person who has died, if you have not remarried or given up your claim when you got divorced;
- a partner who lived with the deceased for at least two years immediately before the death;
- a child of the person who has died;
- a person who was treated as a child of the family by the person who has died when they were married (normally, a stepchild); or
- someone who was totally or partly maintained (supported financially) by the person who has died.

If you think you may be able to claim

against the estate because you are in one of these groups, you should get legal advice. Claiming against an estate is complicated, and there is no guarantee that a court will agree with your claim. The result depends on the circumstances of the case. There are time limits and other conditions you need to know about. You must lodge your application within six months of probate or letters of administration being granted. You could face a large bill if the court refuses your application or does not decide that the costs should come out of the estate.

What if there isn't enough money to pay for the funeral?

By asking a funeral director to conduct the funeral, you make a contract agreeing to pay for the funeral. This means that, if you are the executor or administrator, you should do this only after you have made sure that there is enough money in the estate to pay for the funeral. Otherwise, you should be willing to pay any part of the bill that won't be covered by the estate.

If you need to arrange a funeral when there is not enough money in the estate to pay for it and you are receiving a means-tested benefit, you may be eligible for a Funeral Payment grant from the Social Fund. For more information about this, contact your local Social Security Office (see 'Further help' on

page 15 for details of how to contact them).

What if there isn't enough money to pay the person's debts?

When someone dies, their debts don't die with them. They have to be paid out of the person's estate.

If you are administering an estate, you must make sure you have paid all the debts before you pay the beneficiaries. If you are not sure what the debts are, you need to advertise in the London Gazette and a local paper for anyone who may have a claim on the estate, and then wait two months before paying the beneficiaries. The London Gazette is a weekly government publication that contains various legal notices (see 'Further help' on page 15 for its phone number). You could become liable (responsible) for the debts if you pay the beneficiaries without having cleared all the debts first. You may also have to submit a tax return for the person who has died.

If there is not enough money to pay all the debts, they must be paid in a particular order:

1. the funeral expenses and 'testamentary' expenses (those to do with dealing with the will);
2. any debt secured by a mortgage on property;

3. HM Revenue and Customs;
4. the Department of Work and Pensions, who deal with social security (you may have to refund any over-payment of benefits);
5. unpaid pension contributions or wages.

If all the debts can be paid, but there isn't enough money left to pay everything set out in the will, the legacies (those where a specific amount is mentioned) will be paid first, and the other people mentioned will get what is left over.

If there is not enough to pay all the legacies, the people entitled to the legacies will get a proportion of what they have been left, depending on how much money is available. The other people mentioned in the will, who are supposed to get the remainder, will get nothing.

Terms used in wills and probate matters

Administrator The person who deals with (administers) the estate of a person who has died intestate (without a will).

Bequest A gift of a particular object (for example, an item of jewellery).

Child In will or intestacy matters, the children of the person who has died include adopted children and illegitimate children (children born to

parents who were unmarried), but not their stepchildren (unless they are specifically mentioned).

Common-law spouse This term has no legal force, although a partner who lived with the person who died for two years before their death might be able to claim a share of the estate.

Devise A gift of a house or land.

Demise A lease of a house or flat.

Estate All the assets and property of the person who has died, including all houses, cars, investments, money and belongings.

Executor The person appointed in the will to deal with the estate of a person who has died.

Inheritance tax The tax that may have to be paid when the total estate of a person who has died is more than a certain amount (currently £300,000).

Intestate Without a will, or a person who dies without having made a will.

Issue All the descendants of a person (children, grandchildren, great-grandchildren and so on).

Legacy A gift of money (usually a specific amount).

Letters of administration The document issued to the administrators by the Probate Registry to authorise them to deal with the estate.

Life interest The right to receive the income or benefit from a property or capital sum (but not the capital sum itself) for life.

Minor A person under 18.

Next of kin In will or intestacy matters, the person entitled to the estate when a person dies intestate (without a will).

Nil rate band The value of an estate up to which inheritance tax is not payable.

Personal chattels Personal belongings, including jewellery, furniture, wine, pictures, books and cars (but not money, investments, probate or business assets).

Personal estate (personalty) All the investments and belongings of a person apart from land and buildings.

Personal representative A general term for administrators and executors.

Probate of the will The document issued to executors by the probate registry to authorise them to deal with the estate.

Proving the will Making the application for probate to the probate registry.

Probate registry A court within the Family Division of the High Court which deals with probate and administration matters. The Principal Registry is in London and there are district registries in other cities and some large towns.

Real estate (realty) Land and buildings owned by a person.

Remainder man The person who gets the property or capital sum after the death of the person holding a 'life interest'.

Residue What is left to share out after all the debts, inheritance tax and specific bequests and legacies have been paid.

Specific bequests Particular items gifted by the will. They may be called 'specific legacies'.

Testator A person who makes a will. Testatrix is sometimes used to mean a female will-maker.

Will The document in which you say what will happen to your money and possessions on your death.

Further help

Community Legal Service Direct

Provides free information direct to the public on a range of common legal problems.

Call 0845 345 4 345

If you qualify for legal aid, you can also get free advice from a specialist legal adviser about benefits and tax credits, debt, education, employment and housing. You can also find a local legal adviser or solicitor.

Click www.clsdirect.org.uk to find out more.

Probate registries

There are probate registries in cities and larger towns. The Probate and Inheritance Tax Helpline will tell you where your nearest registry is, and can also answer questions and send you information about applying for probate or letters of administration.

phone: 0845 302 0900

There is also a list of probate registries on the Courts Service website:

www.hmcourts-service.gov.uk/cms/1163.htm

Social Security

For more information about getting financial help if the person who died did not have enough money to pay for their funeral, contact your local Social Security office. It is listed in the phone book under 'Job Centre Plus'. Ask for leaflet SB16.

Law Society

phone: 020 7242 1222

www.lawsociety.org.uk

The London Gazette

phone: 0870 600 5522

www.gazettes-online.co.uk

Citizens Advice

Your local Citizens Advice Bureau is listed in the phone book

www.citizensadvice.org.uk/cabdir.html

The Community Legal Service

The Community Legal Service has been set up to help you find the right legal information and advice to solve your problems.

You can get help through a national network of organisations including Citizens Advice Bureaux, Law Centres, many independent advice centres and thousands of high street solicitors. All of these services meet quality standards set by the Legal Services Commission. Look for the Community Legal Service logo, shown below.

Many of the organisations offer some or all of their services for free. If you cannot afford to pay for advice you may be eligible for financial support through the Community Legal Service Fund (Legal Aid). You can order leaflets about funding from the LSC Leaflet line on 0845 3000 343. You can also use a Legal Aid eligibility calculator on the website: www.clsdirect.org.uk

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The Legal Services Commission (LSC)

The Community Legal Service and the Community Legal Service Fund are managed by the Legal Services Commission. To find out more about us visit our website at www.legalservices.gov.uk or find the details for your local Legal Services Commission office in the phone book.

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The leaflets are also available online at: www.clsdirect.org.uk

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The leaflets are also available in Welsh, Braille and Audio.

To order any of these leaflets contact the LSC leaflet line on **0845 3000 343** or email LSCLeaflets@ecgroup.uk.com or fax 020 8867 3225.



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