

Basic Guidelines

When a person dies somebody has to deal with their estate (the money, property and possessions left) by collecting in all the money, paying any debts and distributing the estate to those people entitled to it. The term probate often means the issuing of a legal document to one or more people authorising them to do this.

The Probate Registry issues the document, which is called a grant of representation.

There are three types of grant of representation:

1. Probate - issued to one or more of the Executors named in the deceased's Will;
2. Letters of Administration (with a Will annexed) - issued when there is a Will, but there is no Executor named, or when the Executors are unable to apply, or do not wish to be involved in dealing with the estate;
3. Letters of Administration - issued when the deceased has not made a Will, or any Will made is not valid.

The term grant is used in this section to mean whichever type of grant of representation the Executors or personal representatives may need.

The need for a Grant

Organisations holding money in the deceased's name need to know to whom that money should be paid, and the grant is proof that the person named in it may collect the money. The estate left when a person dies passes to the people named in his or her Will. If there is no valid Will it passes to his or her next of kin. The distribution of the estate to the correct people is the responsibility of the person named in the grant. The grant is proof to anyone wishing to see it that the person named in it is entitled to collect in and distribute the estate.

The Executors will need a grant to transfer or sell a property held only in the deceased's name. A house must NOT be advertised for sale too soon after the owner's death as a sale cannot be completed until the Executors have obtained the grant. The date of issue of the grant cannot be guaranteed to coincide with the final stages of any sale.

When a Grant is not needed

Sometimes a grant is not needed and the Executors may wish to ask anyone holding the deceased's money whether they will release it to the Executors without seeing a grant. If they agree they may attach conditions. It is for the Executors to decide which is the cheaper or easier option. The following are examples of when a grant may not be needed:

There are organisations who may release the money to the Executors without a grant if the amount held is small and there are no complications. Among these are Insurance Companies and Building Societies.

The Executors will not usually need a grant when a house is held in joint names and it is clear that the house automatically becomes the property of the surviving owner. If the Executors are in doubt on this point they may need to enquire whether a grant is needed to change the ownership.

Who is entitled to a Grant?

There are rules which govern who may be given a grant, and whether or not one is issued may depend on the circumstances in a case.

If there is a Will with named Executors they are the first people entitled to a grant.

If there are no Executors or the Executors are unable or unwilling to apply, the next person entitled to a grant is any person named in the Will to whom the deceased gives all his estate, or the remainder after gifts have been paid.

If the deceased has not made a valid Will, application for a grant should normally be made by his or her next of kin in the following order of priority:

1. Husband or wife
2. Sons or daughters
3. Parents
4. Brothers or sisters
5. More distant relatives

A grant cannot be issued to any person under the age of 18. If there are no Executors and potential beneficiaries are not sure whether they are entitled to apply they should still complete and return the forms and the Probate Registry will let them know.

When more than one person is entitled to a grant the Executors may all obtain a grant together, however there is a maximum of four applicants allowed. In most cases only one person needs to obtain a grant, but there are circumstances when the Executors and another person may need to obtain a grant together. If this is the case the Probate Registry will let them know as soon as possible after they have received the application.

If the representatives are asked by someone else to apply on their behalf, a note should be sent with the application giving the details of that person, and the reason why they are not applying. If it is not possible to issue the grant to the Executors the Probate Registry will explain the reasons.

How to Apply for a Grant

The five stages for applying for a grant are:

1. obtain the application forms
2. choose where the Executors or Personal Representatives wish to be interviewed
3. complete the application forms
4. return them, with the death certificate and the original Will to the appropriate Probate Registry
5. attend the interview

The Forms to Use

The following forms may be obtained from the nearest Probate Registry.

The Probate Application Form - this form asks for details of the deceased and Executors or personal representative as applicants.

Account of the Estate - this form asks the Executors to give a full account of the deceased's estate. The Executors should try to obtain the full value of all items shown, including any interest or bonus which will be paid. Any money due from the deceased's employer should be

included. The full market value of any house should be shown, although a professional valuation is not normally required. The value of household goods, jewellery and belongings should be shown as the amount for which they should be sold.

To be sent with the forms

When the Executors return the forms they should also send;

1. The death certificate
2. The original Will (or any document in which the deceased expresses any wishes about the distribution of his or her estate)

The Probate Registry advise the Executors to make and keep a copy of any Will they send with the forms.

The Executors must send the forms and any other post either to the Probate Registry where the Executors wish to be interviewed or to the Probate Registry which controls the local offices where the Executors wish to be interviewed.

For the nearest Probate Registry please check your Yellow Pages. For an information pack call The Probate Registry on 020 7947 6983 or visit www.courtservice.gov.uk

Post must NOT be sent to the local offices which will delay the application.

The Executors must attend at least one informal interview to enable a grant to be issued. The Executors must state on the probate application form which is the most convenient place for the Executors to attend. After the Probate Registry have received the application they will send the Executors an appointment for an interview. The interview can take place either at a Probate Registry or at one of its local offices.

Why the Interview is needed

The purpose of the interview is to confirm the details the Executors have given and to answer any queries the Executors may have. To complete the application the Executors will be asked to sign a form of oath, and to swear or affirm before the interviewing officer that the information the Executors have given is true to the best of their knowledge. In most cases only one interview is required.

If the application is complicated there may be additional documents to be signed, or the Executors may be asked to contact other people (for example a witness to the Will) so that the Probate Registry can interview them or obtain their signatures to documents.

Fees for obtaining a Grant

In all cases a fee has to be paid. The amount of the fee depends on the size of the estate involved, and cannot be worked out until the details are confirmed at the interview. The grant will not be issued until the fee is paid.

Paying Tax

In cases where Inheritance Tax is payable a grant cannot be issued until tax has been paid.

The issue of the grant does not imply that all values submitted are agreed by the Inland Revenue and correspondence may take place when the account is returned to the Capital

Taxes Registry.

Tax becomes due 6 months after the end of the month in which the deceased died. Interest is charged on unpaid tax from and including the due date whatever the reason for late payment. If the Executors have any queries about tax and interest which they want to deal with before they apply for a grant, they should contact The Capital Taxes Registry on 0115 974 2400 or visit www.inlandrevenue.gov.uk/cto

After the Interview

After the interview the grant will be prepared by the Probate Registry and sent to the Executors by post. The interviewing officer should be able to give the Executors an estimate of how long it will be before the grant is issued. When the Executors receive the grant they should show it to any person or organisation holding the deceased's money or property who has asked to see it.

The money and property will then be released to the Executors. Copies of the grant may be obtained from the Probate Registry and are only valid if they bear the impressed seal of the Court. If the Executors have any questions about the figures in the estate, or the amount of tax payable, they should contact the Capital Taxes registry.

Responsibilities of the Probate Registries

The Probate Registry is responsible for making sure that an applicant is entitled to be given a grant, and that any Will produced appears to be properly made. If there is any doubt as to whether the Will left by the deceased is valid, or where it appears a Will has been altered or amended the Probate Registry may wish to interview at least one of the witnesses. The Probate Registry has to prepare the documents needed to complete the application and to issue the grant itself. The responsibility of the Probate Registry ends when the grant is issued.

Professional Executors

As you can see from the guidelines above, obtaining probate can be extremely complex. For this reason, it is worth considering appointing a professional executor to handle their estate on behalf of their executors.

Independent Will Makers has teamed up with Kings Court Trust Corporation plc.

Kings Court Trust Corporation are probate and Trust specialists. They provide a range of services and can:

- Handle the estate on the client's behalf
- Save the estate money, leaving more to be distributed to the beneficiaries
- Handle the creation and administration of Trusts and Powers of Attorney
- Provide a dedicated and professional team to handle the executors responsibilities and liabilities