The Probate Department

Finding the RIGHT help at the right cost

Probate Brokers

Best read on a computer so the links will take you to the relevant pages online. **See page 2 for help options and page 4 for costs you might avoid.**
Please **let me know if anything needs updating or is confusing!**

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This booklet is a collection of articles so there is some duplication, which makes it easier for those just dipping in to a particular section. It is a general guide, so should not be relied upon without proper advice. We use the term Grant of Probate interchangeably with Grant of Letters of Administration which is where there is no valid Will.

When should you ask for professional help via us?

- If there may be **arguments within the family**. Best let them blame the professionals!
- If anyone has been **left out** or specifically **excluded.**
- Where there is a **business** or **trusts** involved.
- If there may be **Inheritance Tax** to pay the work is URGENT as the deadline to pay the Tax is very tight.(If the deceased has been in the habit of making significant gifts.) Remember the transferable Residence Nil Rate Band too.
- Where foreign assets are involved e.g. US based shares, overseas property etc.
- Where there have been significant lifetime **gifts** which may increase IHT.
- Where it may be better to use a **Deed of Variation** to amend the Will to (for example) skip a generation who are well provider for to avoid the Taxman taking a second bite of Inheritance Tax and benefit younger family members.
- If the family members don't have the necessary skills or time.

The estate must be able to pay the fees of course! But that is where we come in – so save you money on probate fees. Best saving today 94% (not like for like, but a saving nonetheless!) or reducing a £100,000 quote to £46,000 on a £23m estate. We do not aim to be the very very cheapest, but very sensibly prices competent professionals.

TIP

Having just lost a close friend to cancer – 7 days from feeling unwell, induced coma and death with no prior symptoms – I am more than ever concerned that sound and regularly reviewed plans should be in place.

> A Will reviewed not less than 3 years ago.

> BOTH types of Lasting Power of Attorney - Finance & Welfare.

> These days, a full property trust (rather than property trust Wills) means the property can be sold immediately (where appropriate) without anything up to over a year before it can be sold with a Grant of Probate. It can also provide the funds to pay any IHT.

My other site, https://www.legalplanning.co.uk/ is being further developed to give guidance on such matters – as and when I have time!

Types of Probate Help Available

1) **Support as needed (typically £150 for an hour).**
2) **Obtaining the Grant, leaving the executors/ administrators to collect in the assets, pay the bills and distribute to the beneficiaries.**
3) **Full Estate Administration – all the work in 2 carried out by professionals – very prudent in disputed or complex cases.**
4) **As 3 but with home visits and full management of property management, sales, insurance – even grass cutting if needed.**

The Probate Department (brokers) specialises in finding the right professional help for your situation. Our services cost you no more than if you had gone direct to whichever firm we recommend. We do have experts available in international estates (even Scotland!), but this booklet is not intended to address those issues. We can't possibly cover all aspects in a brief booklet, so please take this as a general introduction to the topic of what to do when someone dies and Appendix 3 may be relevant.

We can also point you in the right direction for Deeds of Variation, Probate disputes and cases where there is no valid Last Will and Testament.

The first section deals with our service and how it works. After that is more general information which could mean that you don't even NEED a grant of probate. I hope you find it helpful.

Just read the sections which may be relevant to you. The Index appears on the next page.

Please remember that the death should be registered within FIVE DAYS unless the Coroner is involved – see Appendix 1. See the site for LOCAL information.

Index

Contact details of Probate Registries – update
To get probate forms 0117 930 2430 9-5 weekdays 24x7 messages – state the forms you require and your name & address. The next two numbers are VERY hard to get through to. If you are not the Executor or Administrator, they cannot speak to you, and may not do so if you have appointed a professional.

IHT issues/ forms: 0300 123 1072 Registries: 0300 303 0648 contactprobate@justice.gov.uk

Online: **Probate Registry Delays** – latest information.
Online: **How to obtain a copy of a Will which has been probated**.
Online: **How to find a Will which is needed after a death.**

Probate Forms: You can get the forms via our website (by way of download) or call the HMRC (not the Probate Registry) on 0117 930 2430 (rather than 0300 123 1072) **who will post them out to you, but they do prefer it to be done online these days try https://www.gov.uk/wills-probate-inheritance**

Appendix 1: Information needed to **register the death WITHIN 5 DAYS.**
Appendix 2: Where things go if there is **no valid Last Will?**
Appendix 3**:** When **the Coroner is involved**, which is in 42% of cases.
Appendix 4: **Death Abroad**
Appendix 5: **The Residence Nil Rate Band**
Appendix 6: **Probate Disputes**

Be Prepared We can introduce you to a firm which specialises in pre-death planning which is far more effective than trying to resolve a situation after death when there is no valid Last Will or one that is way out of date. To benefit the family, your Legal Planning Process should start before birth and can continue for up to 125 years after death. Why not contact us for an introduction to sensible ongoing Legal Planning for everyone and get some joined up legal thinking?

HOW WE CAN HELP YOU

The Probate Department (Brokers) can only offer general guidance rather than legal advice on Probate matters. We can help you decide **whether or not DIY** is the right route and support you either way. If DIY isn't right for you, we have a growing panel of Solicitors and Probate professionals who offer good advice at sensible fees, and we can match your needs to a suitable firm. You don't need a big City firm to deal with a simple case, but equally, where there are clearly complications, or tax advice is needed, you may well need a bigger firm with more areas of expertise. Too many firms dabble at Probate.

Incidentally, we ask users to keep us up to date with their experiences of the firms we introduce them too.

If things are straightforward and you are a good administrator, you may be able to apply for a Grant of Representation which gives you the legal right to deal with the person's property, money and possessions (their 'Estate') known as 'Probate'. That does NOT mean you can do what you like with the assets – you MUST either follow the instructions in the Will or the Rules of Intestacy if there is no valid Will, and failure to do so could result in a criminal conviction.

DUTIES of EXECUTORS

First duty: **DO NOT PANIC:** 7 in 10 Executors panic and rush off to the nearest firm (or worse, bank) for help.
If you really do need help – and many don't – call us, we're the experts!
Probate fees vary dramatically up to **£475** + VAT an hour and more. Probate expertise varies widely too. But some solicitors will charge a **commission** (sorry, "*responsibility allowance*") of between **0.5%** and **1.8%** of the **gross** value of the Estate **on top of** being paid their full hourly rate for the job. We know firms who charge sensible fees.

Others may charge **4** to **5%** of the **gross** value of the Estate (that means the total value of the assets of the estate **plus** the total value of any liabilities / debts such as a mortgage.)

If there is any possibility of Inheritance Tax being due, or of the Property Nil Rate Band being relevant now or when a spouse or partner dies, or a dispute, we are well placed to help, as we know the best value people to deal with things should you wish it.

Bear in mind that the work of Executor must be done with extreme care, as the Executors have a lifelong liability for any mistakes - such as missing a beneficiary or paying out to the wrong people or someone who turns out to be bankrupt!

Here are the basics: (see the relevant page for more details)

1. Unoccupied Property and Valuables – are they secure and insured? There are strict short time limits as to how long a property and its contents will remain insured if it is empty. All normal policies will be invalidated after a brief period of being empty. **Contact the insurance company straight away!** Valuables should be documented (photographing everything is ideal) and kept safe. Do this with witnesses – it is best practice anyway. Changing locks is ideal as you have no way of knowing who might have keys: no sign of forced entry and the insurer may well refuse to pay.

2. Register the death of the Testator **(the person who has died).** Obtain copies of the Death Certificate - almost certainly many copies will be required not only before the funeral takes place but also for each of the funds which may have to be released or transferred such as bank accounts, insurance policies, stocks and shares, property etc. Many institutions are very slow at returning Death Certificates or don't return them at all, so the Executor has to go back and ask for additional copies which are much more expensive than those bought at the time of registration.

3. **Arrange the funeral. See** Local Pages**.** The cost will normally be the first expense paid for from the deceased's Estate. Always check that the Testator did not have a pre-paid funeral (we always recommend them**.) The deceased's bank may be willing to pay for some or all of the funeral bill from the clients account if it has sufficient funds provided they are asked in advance.** They will NOT pay the bill if it has already been paid. Some people have Life Insurance that may help towards the cost – it may show up as a monthly payment from the bank, though some policies only require payments until (say) age 85, and

other policies can be made paid up earlier. Look for policy documents or try our Trace a Funeral Plan service which cover many prepaid plans or the Unclaimed Assets Search.

4. **Find the Will.** For clients who have joined our associated Peace of Mind Service, this is easy - if not you will have to keep looking until you find the signed Last Will and Testament - do make sure it is the most recent one, as a new Will cancels an old one, and you may find an older version, which can cause all sorts of problems.

5. If you are confident in your administrative skills and understanding, read on. Otherwise call us on **03 300 102 300 and we will find you the right help at sensible cost..**

6. **Request the necessary forms – call HMRC on 0117 930 2430** (they are open 9-5 Monday to Friday) or leave a message out of hours specifying the forms you need and you name and address**,** or download them from the internet. Please do NOT ring the Probate Registry for forms. 0300 123 1072 is the IHT Helpline.

7. **Once you have the paperwork,** there is a lot of background work to be done before you can apply for the Grant.

8. **Arrange to open a Personal Representative's bank account.** This will be used to receive money due to the Estate and any loan arranged to pay an Inheritance Tax and/or Probate fees. NEVER use your own account.

9. **Inform all relevant persons and organisations** - banks, building societies life assurance companies, employers, local authorities, Inland Revenue, benefit agencies etc.

10. **Arrange for a valuation of the Estate.** This will include the house and its contents other personal effects, investments in savings plans, shares, life policies, building societies etc. Draw up a detailed schedule of all the testators' assets. Try http://www.mylostaccount.org.uk/ and https://www.gov.uk/find-pension-contact-details and for a more comprehensive paid search https://www.theprobatedepartment.co.uk/how-to-search-for-unclaimed-assets/. There are others.

11. **Draw up a full list** of debts and amounts that must be paid from the proceeds of the Estate. These will include mortgages, income and capital gains taxes, bills, credit cards, loans and overdrafts. Don't miss any out or you could end up paying them – personally. In some cases, it is prudent to advertise for debts in the London Gazette and local paper: sometimes more widely, especially of a business is involved. If you miss any debts, you could end up personally liable, so the "Section 27" adverts are like an insurance.

12. **When Inheritance Tax is due.** The Executor's account of the Estate goes first to the Inland Revenue and **4 weeks later** to the Probate Registry (or things *will* go wrong.) The Grant **cannot** be issued until the tax is paid or the Taxman has agreed to an arrangement. There will be circumstances where part of the Estate has to be sold to pay Inheritance Tax and if this is the case banks can arrange loan facilities to pay the tax straight away. Otherwise, it may be possible to pay in instalments, however, interest will be applied to the outstanding balance. Payment of the agreed instalment (which may be everything) is required within 6 months of the end of the

month following the month the person died in. This will almost certainly be before probate is granted, giving you full access to the estate, but many institutions will release money direct to HMRC before probate if asked in time.

13. **Complete the forms required** by the Inland Revenue Capital Taxes Office so that it can be established whether any Inheritance Tax is due. Do be very careful, as there can be massive penalties if the Taxman finds out more tax should have been paid - and you may have to pay penalties personally! If the IHT 400 and any of its many schedules are required, these **must** be submitted to HMRC (NOT the Probate Registry) 4 weeks before the probate application is sent in. I know that is a repeated waning – for a good reason!

14. **Complete the Probate forms** and send them to the Probate Registry scanning office at Harlow. Sending them to a Registry will result in further delays. Ensure Post It notes are attached to anything 2 sided or only 1 side will be scanned, resulting in a STOP delay. Similarly, **put a note on the outside of the envelope**. DO NOT make any marks on the Will (such as resting on it when writing a Post It) or that will cause delays.

15. **Provided that the case is fairly straightforward, in theory you should get your grant a couple of months later. HOWEVER do chase after 16 weeks as it is common for issues or errors to arise which mean the application is STOPPED, and that can dramatically increase the length of time if problems are not solved. Usually is will be a missing bit of information or the IHT Clearance Documents not being tied up to the correct probate application.** Only the executors can chase, and, if there is a professional applying, the Registry may not speak to the actual executors. Pestering professionals who have no control over the situation can be VERY expensive, especially if beneficiaries do too.

16. **Copies of the Grant of Probate/ Letters of Administration** should be sent to everyone who owes money to the Estate. The Executors now have the authority and an obligation to pursue any debts due to the estate. Hopefully you have asked for plenty of copies, as many firms will only accept a “sealed” formal copy, not a scan or photocopy. If you need extra sealed copies, email me for my Guide.

17. **When the Grant of Probate/ Letters of Administration** has been received and enough money collected in, the genuine bills can be paid. When you are sure they have all been paid, the Estate can be divided according to the Will, which you will need to interpret correctly. You must prepare and sign accounts showing who has received what from the distribution. You must be able to show that you acted in accordance with the terms of the Will in case anyone attempts to make a claim against the Estate. If you are unfortunate enough to have an undischarged bankrupt amongst the beneficiaries, you could be in for a few problems: always check before paying anything out. Beneficiaries who receive a share of the estate are entitled to a copy of the Estate Accounts, unlike those who receive a specific amount or thing.

18. **All papers including the Grant of Probate** / Letters of Administration **and the accounts** must be stored safely for a period of 12 years.

Do I Have To Act If Appointed As An Executor?

Up to four Executors (if that many have been appointed) can act together. In most cases, one or two will actually do the work, as long as the others are happy with this. Once appointed, Executors cannot be removed (which is why we never recommend appointing banks or Solicitors who may refuse to be removed unless their full fee is paid - even if they have done no work - fortunately the Courts have made it clear that this is unacceptable, so professions will usually stand down UNLESS they are concerned that things may not be dealt with properly or they have already started work.)

You can refuse to accept the appointment or (in most cases) delegate the work via us or a bank or another Solicitor and pay the fees from the Estate. What you can't do is cut out another executor without their specific agreement. Sadly, many people try to! If any chose not to act, best advice is normally to put them down as Power Reserved, so they can come back should you (for example) become incapacitated or just unable to cope.

What if I Don't Want to Apply for the Grant?

Executors may give up their rights to Probate or they may reserve the right, called Power Reserved, to apply for Probate in the future. This requires more thought than is often given.

This option is often used when the Executors live in different parts of the Country or it is not convenient for one of them to attend the interview due to work commitments.

Only the Executor(s) who apply will be named on the Grant and only their signature will be required to release the deceased person's assets for transfer or sale. It is sensible to have at least two Executors named on the Grant.

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 you should complete their details on form PA1 (Section C). They will send you a form for them to sign after they receive your application. If the person entitled to the Grant has already signed a General Power of Attorney, file the original document with your application. If its is an Enduring Power of Attorney (EPA) or a Lasting Power of Attorney (LPA) just send a copy as otherwise it will probably be shredded.
Please note that **any authority conferred by a Power of Attorney dies with the person**. The Executors then need to take over, and apply for their own authority via

the Grant of Probate.

Is A Grant Of Probate/ Letters of Administration Always Needed?

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

- The home is held in joint names as Joint Tenants and is passing by survivorship to the other joint owner(s). This can be the case for married couples and those in a legal civil partnership. However, if the tenancy has been severed and the owners are "Tenants in Common" then the property is owned in shares and does NOT pass automatically, so Probate will be needed. I have often used this device for "blended" families so the partners are looked after during their lifetime, but the shares of the property (on the second death) pass down to the children of each partner separately. With people living longer and remarrying often in retirement, this is becoming increasingly common. Call me for information.

- 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 to the other joint owner. However, a Grant could still be needed to access assets held in other bank accounts or insurance policies. Where a person is a mere signatory, and has made no contribution to the account, such transfer is generally not legal, though perhaps not spotted by banks.

- The amount held in each account was modest – see HERE. 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.

BUT if a Grant is needed for any part of the estate, the WHOLE estate must be included for probate application purposes.

If none of the circumstances above apply, a Grant may be required.

You should 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 can 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 person's spouse or partner as Tenants-In-Common. Tenancy-in-common is a written or registered agreement between two people who own a joint asset (usually land or buildings) to "sever" the ownership so each owns (normally) one half. If you aren't sure about this, you could consult us. You can check at the Land Registry – though not all Severances are registered, so it will only prove that (maybe) the property is owned as Tenants in Common, but not that it is not. It used not to be the thing to register severances, which can now prove problematic.

You cannot complete a sale on any property owned by a deceased person until the Grant has been issued. Properties named in a Will should not be put up for sale without advising prospective purchasers that they cannot Exchange Contracts until a Grant has been obtained.

Think twice before spending money on property which is to be sold after death, as if it increases the value over that at the date of death, Capital Gains Tax will be payable on the increase in value by the executors on behalf of the estate. If they have distributed the estate before the tax situation is discovered, they could end up paying the CGT bill themselves!
Clearly, it would be irresponsible not to carry out works to preserve and protect the structure**.**

Financial Asset and Liability Search

Locating all the assets and liabilities of the deceased is a requirement when administering an Estate. If there are any debts that remain unidentified and are not paid off as part of the estate funds the Creditor could seek redemption, and recovery, from the Executor, as part of their ongoing personal liability to the Estate and/or the Beneficiaries of the Estate once the Estate funds have already been distributed.

In addition, if there are any assets which have not been identified, this may mean that Beneficiaries do not receive their full entitlement. Discovery of assets/debts after distribution has already happened causes additional fees to re-open and distribute appropriately and potentially Tax issues.

Whilst a search of the deceased's paperwork will help in locating some of these assets and liabilities, locating all accounts, loans, pensions, savings, shares, investments, and life insurance which have been held throughout the lifetime of the Deceased is extremely unlikely to be fully revealed.

We recommend a Financial Asset and Liabilities search providers is instructed. They will conduct a search of over 350 financial databases across the UK to reveal details of any records held. These financial institutions have a set period to respond, and the search allows distribution of the Estate to happen providing comfort and peace of mind that all assets of the Estate have been accounted for and calculated appropriately.

Please tick one option:

- I wish for a quote for an Financial Asset and Liability Search
  https://www.theprobatedepartment.co.uk/how-to-search-for-unclaimed-assets/

- I do not wish to proceed with a Financial Asset and Liability Search and as the Executor/Administrator, I understand that there is a potential financial risk I hold if an unknown Asset or Liability becomes known in the future which affects the distribution of the Estate.

Protection against Unknown Creditors
Section 27 Legal Notice

A Section 27 Legal Notice is a two month advertisement placed in the London Gazette, containing the details of the deceased and the executor/administrator of the estate.

This advertisement acts as a notification to financial institutions/person(s) with claims (or interest in) against the estate of the deceased so that they can come forward with a claim.

This enables the executor/administrator to demonstrate that all measures have been taken to adhere to due diligence and all efforts have been made to locate creditors before distribution.

You also have the ability to place a local/regional posting alongside the London Gazette posting for additional peace of mind which is strongly recommended.

Please tick one option:

- I wish to receive a quote for a Section 27 Legal Notice with the London Gazette Only. (not recommended)
- I wish to receive a quote for a Section 27 Legal Notice with the London Gazette and a regional posting.
  https://www.theprobatedepartment.co.uk/the-gazettes-importance-in-probate/
- I do not wish to proceed with Legal Notice posting(s) and as the Executor/Administrator, I understand that there is a potential financial risk I hold in the event that a Creditor seeks recovery of their losses.

Will Search

Where there is a Will

Whilst a Will of the deceased has been located there is a risk that this is not the most recent Will. This means that the Estate could be distributed in accordance with the wrong provisions, which could result in a re-distribution of the Estate being required causing all sorts of problems if the benefiairies are different – and have spent their inheritance.

When there is no Will

Whilst a check has been performed to locate a Will of the Deceased and this has been to no avail, there is a risk that a Will was made by the Deceased which has not been located.

We recommend that a Will Search is performed. This will look at the database of registered Wills in the UK, and if there is no flag, will check with Will Writers directly as to whether a Will is held.

This search has an extensive reach, covering over 10 million records and seeks to locate a Will unknown to the Estate. Should a Will be located which alters distribution, the Executor will be personally responsible and/or the Beneficiaries of the Estate may be caused a financial loss.

Please tick one option:

- I wish to receive a quote for a Will Search
- I do not wish to proceed with Will Search and as the Executor/Administrator, I understand that there is a potential financial risk to me in the event that an unknown Will is located which affects the distribution of the estate.

The role of an executor or personal representative carries with it great responsibility. If anyone involved in administering an estate makes a mistake, it could create liabilities for all the executors, personal representatives and beneficiaries. These risks can usually be insured against via a range of probate insurance policies.

Probate Insurances

https://www.theprobatedepartment.co.uk/probate-insurances-protecting-executors/

Insuristic has written a probate insurance guide which may be useful for you. You can find out more here.

Probate Quotes: How much can we save you? It costs nothing to find out.

Probate Property Insurance (Unoccupied Property)

Executors are responsible for arranging suitable property insurance. If a claim would have been covered under an insurance policy but the insurance was either not in place

or did not respond to a claim because of a breach of policy conditions, it will usually mean the executors have to put things right out of their own pocket. Particularly as the beneficiaries will seek to be reimbursed for any uninsured losses.

Insuristic has developed a product designed specifically for insuring unoccupied properties in probate. You can find out more or get a quote from Insuristic here.

Section 27 Indemnity Insurance

A Section 27 Notice only provides protection to the executors if an unknown creditor makes a claim against the estate. In the absence of insurance, this debt could be left to the beneficiaries to settle. Section 27 Insurance will respond if a claim from an unknown creditor is received after the estate is distributed. The insurance policy can be arranged with or without a Section 27 Notice and will cover any legal costs and award. This will give peace of mind to the beneficiaries, knowing if there is a claim, they have nothing further to pay.

You can find out more or get a quote from Insuristic here.

Early Distribution Probate Insurance

Most beneficiaries would like to receive their inheritance as soon as possible. With Early Distribution Insurance you can distribute the estate during the 6-month waiting period. The policy protects executors, personal representatives and beneficiaries if a claim is made. Peace of mind for all involved.

You can find out more or get a quote from Insuristic here.

Missing Will Insurance

If a newer will is found after the estate is distributed, it can lead to a costly legal process and redistribution of the estate. Missing Will Insurance enables the estate to be distributed and protects any future liabilities of the executors, personal representatives and beneficiaries. Beneficiaries can relax safe in the knowledge that if another will is discovered, they won't need to repay any of their inheritance.

You can find out more or get a quote from Insuristic here.

Missing Beneficiary Probate Insurance

Missing Beneficiary Insurance allows the estate to be distributed without any future liability if a missing or unknown beneficiary comes forward to claim against the estate. It protects the liabilities of the executors, personal representatives and beneficiaries. The beneficiaries can relax safe in the knowledge that they won't need to repay any of their inheritance if another beneficiary comes forward.
You can find out more or get a quote from Insuristic here.

Probate Insurance Guide

The role of an executor or personal representative carries with it great responsibility. If anyone involved in administering an estate makes a mistake, it could create liabilities for all the executors, personal representatives and beneficiaries. These risks can usually be insured against via a range of probate insurance policies.

Who Can Apply for Probate of Probate or Letters of Administration?

It isn't necessary for everyone left money or property in a Will to apply for Probate. Usually, it is the Executor(s) named in the will in most circumstances.

However, if the person entitled to the Estate is under 18, two people are legally required to apply for Probate. If this is the case, we will let you know when we receive your application.

You can apply for Probate 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 and will Renounce);
- **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). Common law partners cannot apply for Probate.
  - Sons or daughters (excluding step-children) including children adopted by the deceased. (Children adopted out of the 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 the Grant of Probate / Letters of Administration.

In some circumstances, Creditors can apply for a Grant of Probate, and that could potentially be a way of a so-called common law spouse to take some action.

If you are not sure whether you are entitled to apply for a Grant, you should still complete and return the forms and they will tell you. If you were a distant relative, you would need to supply a brief family tree showing your relationship to the deceased person.

When more than one person wants to apply for a Grant, they may make a joint application. A maximum of four applicants is allowed.

Where will I find the Will – Assuming That There Is One

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 persons possessions. If you cannot find it, then the Rules of Intestacy will potentially apply, and the Law will decide how the assets are to be distributed and who has the right to sort things out. More information.

If you do not send the Will with your application to the Probate Registry, it will take longer to deal with and you will be potentially liable if you distribute the estate incorrectly, even if you did not realise you had. The Probate Registry will **not** return the original Will to you, as it becomes a public record once they have approved it. They will, however, send you an official copy of the Will with the Grant of Probate.

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. If Inheritance Tax is due, you normally have to pay at least some of the tax **before** the Probate Registry can issue the Grant.

Sometimes substantial savings can be made after a death, but advance planning is always best. A tax expert can ensure as much as possible is passed on to your chosen beneficiaries and even tie it up in such a way that it is closely controlled to avoid it being wasted, or lost in divorces etc.

The issue of the Grant does not mean that HMRC (Inheritance Tax) 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 (Inheritance Tax) will charge interest on unpaid tax from this due date whatever the reason for late payment.

Where the IHT is due on a property, it may be possible to pay it in instalments until the property is sold.

Once again, we would remind you that we can introduce you to suitable firms to help.

Probate Tips

Tip 1: Register the death as soon as possible

see also the Local Pages

Ask for extra copies of the Death Certificate to speed the work of Probate. Most creditors will want to see the Death Certificate before they will give the Executors any information at all. When you do send the Death Certificate to banks, insurance companies etc, many will take weeks to return it, and some never will. Further certificates can be obtained afterwards, at the same cost, but it is a nuisance! We would typically suggest at least 6 copies, though they are not cheap these days. More if the Estate is complicated.

Tip 2: Use the "Tell Us Once" Service when registering (again, see Local Pages)

Ask if the Registrar' office is connected in to the **"Tell Us Once" Service** which notifies all relevant Government Departments in one go. Saves a lot of time. More on that shortly. There is a video introduction via our website on the Local page.
More on registering a death - Appendix 1, below.

Tip 3: Funerals

a) The Undertaker – read b) before acting. See Local Pages.
Most Undertakers are part of big national chains, despite the names on the door, which may mean that they are under some pressure to hit sales targets. Just make sure that you are aware of all the options and don't be guilt tripped or railroaded into going for more expensive options you don't want. If you do use a particularly good independent family run undertaker, please let us know as we're trying to add a list of good ones in each Local Page on the website.
More time spent on ways to make the funeral as pleasantly memorable as possible - we often find that giving away small remembrances is very positive.

b) Paying for the Funeral – how to claim on a funeral plan – before you arrange the funeral.
Many people with foresight arrange **pre-paid funeral plans,** so you should check to see if you can find any relevant documentation. Others arrange insurance plans that provide a lump sum towards the funeral, the most common of which is Axa Sun Life. Personally, I prefer prepaid funeral plans, though I am not aware of anyone who still offers independent advice on the choice of plan. If you take out a policy for £2,000 and inflation has doubled the cost of the funeral, then a pre-paid funeral plan probably offers better protection against inflation.

Common plans are Golden Charter, Golden Leaves, Co-Op, Dignity etc. There are more names here – they are only the names, but you can Google the sites and email them. How to Find a Funeral Plan.

Most banks will pay for the funeral out of the deceased's bank account or savings account if there is sufficient money, so it is always worth asking, as it avoids the family feeling they have to find the money themselves at what may not be the easiest of times. But don't expect the bank to pay if the bill has already been paid, or to allow for a wake - they won't and you will end up footing the bill, at least in the short term.

If you or the deceased cannot afford **a** funeral, **check out the Social Fund here.**

c) Funerals Thoughts

From our experience, it is very, very easy to upset people as everyone seems to know what the deceased wanted in terms of arrangements - but they all know something different.
This can lead to heated and even violent exchanges, so tread delicately.
The best thing is to have specific instructions from the deceased, and perhaps the second best (if you are the spouse or child) is to agree specific instructions with those close to the deceased - if handled sensitively and you really do implement what the deceased would have wanted rather than what you want, then it may save a lot of grief. Just try not to tread on anyone's sensibilities. And please don't persuade children or anyone else to see the body to say goodbye unless they REALLY want to or it is an essential part of your religion - it can scar them for life.

Tip 4: Intermeddling

If you are not the properly appointed Executor in the Will, or there is no Will, then you can lumber yourself with the job and associated liabilities by acting as if you were the Executor (Administrator if there is no Will) - the legal term is "intermeddling." Acts of charity, humanity or necessity are usually ok, for example arranging the funeral (see previous tip) ordering food for dependents etc as is moving property into a safe place. Going beyond this can make you liable and, if you are an Executor, make it impossible for you to stand down. So be very careful to do the minimum that is essential at this stage.

Tip 5: Personal Liability

Remember that the Executors retain a permanent and PERSONAL liability for any mistakes - for example, making an incorrect tax return, or not tracking down a beneficiary. The Taxman in particular can and will levy very substantial penalties if you accidentally or deliberately mislead him about any tax that might be due.

Tip 6: The Will

Just over half of us have a valid Last Will and testament when we die.
A substantial number of Wills are never found, and many are never signed correctly (which means they are not valid). If there are overseas assets, you have to be especially careful that an overseas Will does not exist which might have cancelled the UK Will - not at all uncommon.
If you can't find the Will, ask the local Law Society to circulate their members with the name, address and date of birth of the deceased and the Society of Will Writers (01522 687 888) to do the same. It won't always work, but you do need to try. Some Wills are stored by the Principal Probate Registry whose details can be found along with other suggestions at Will Custodian Ltd. http://www.WillCustodian.co.uk.

We recommend Will Custodian for storage as not only do they give the Testator and the Executors nice laminated certificates of storage, which won't get lost as easily as a single letter from a Solicitor, they also actively help people to keep their legal planning up to date. The Law, Tax and Personal Circumstances change all the time, so even a 3 year old Will may be out of date.

Tip 7: A Will With Trusts or Beneficiaries Under 18

This means a Trust will automatically be created which complicates matters, so you are more likely to need our help. If the Trust runs past the age of 18 life gets more complicated still.
Trusts started back in the days of the Crusades, where Knights might be away from home for years, and needed someone to run their estates while they were away - on trust. There were a few problems to start with until the Courts started to formalise the Law of Trusts, and now Trusts are a part of every day legal planning:

- To protect children, at least until they are 18
- For tax planning purposes
- To protect homes from being sold by Local Authority to pay care fees
- To avoid disputes from people claiming dependence on the deceased - an increasingly common issue which can cost a fortune to defend against. Let us hope this won't be an issue with the person you are dealing with as it could be years before everything is sorted.

We had a case a while back where the widower decided to ignore professional advice and carry out Probate himself: not only did he open himself up to a charge of theft (from his own children) he created a potential tax charge - quite unnecessarily - of over £100,000. There was no evil intent in this case at all, and none of the family were unhappy - fortunately.

The lesson is that you should take professional advice if there is any form of Trust in the Will oe estate that you are dealing with.

Tip 8: What If there is no Will?

If there is no Will (known as dying Intestate) the process is more complicated and the **Rules of Intestacy** will decide who benefits. An application for a Grant of Letters of Administration (an official document, issued by the Court, which allows Administrators to administer the Estate) will need to be made. And everything doesn't go to the spouse, and NOTHING goes to a long-term partner without a legal battle (unless the property is jointly owned, and then it will depend on the type of joint ownership.)

The person to whom Letters of Administration is granted is known as the Administrator. The Administrator is the person who has the legal right to deal with the affairs of the person who has died, and is determined by a set order of priority. The Administrator will usually be a close relative 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.

Bear in mind that jointly owned assets often pass automatically to the surviving owner on production of a Death Certificate, but there are traps for the unwary where this may not be the case.

Tip 9: Life & Pensions - Claiming the Benefits

Very often the institutions will be the ones who insist that a full Grant of Probate is applied for - I know in my fathers' case we had to do so before one life company would release a £1,500 investment.

Many **life insurance policies** are written in Trust, which means that the policy has been earmarked for certain beneficiaries and is controlled by the appointed Trustees. This will usually mean that it is NOT part of the estate for Probate purposes (a blessing). If you can't find a copy of the Trust Deed, ask the persons IFA or the life company for a copy, though they will probably want a copy of the Will and an original Death Certificate before they will give you a copy, especially if you are not one of the Trustees. Ring them first and ask what they want from you.

Not all life policies are in Trust - some older ones are "assigned" to the mortgage lender, often a lender who no longer exists or who no longer has a mortgage on the house. If you are lucky and the policy is assigned, sending the Death Certificate may wipe out the mortgage. That said, very few life policies are assigned these days, and if they are neither assigned nor in Trust they may well just form part of the Estate, except where they are Joint Life policies where generally the proceeds will go to the survivor if it is not in Trust.

Many investments are (legally) life policies - normally known as Investment Bonds - so the same may apply to them - ask the family IFA (if you haven't got one, we know lots of them!)

Tip 10: This one is for Beneficiaries and Executors

I know this is a bit early, but it might affect exactly when you pay out beneficiaries. It may even be appropriate to do a Deed of Variation to create a Trust to look after a potential beneficiary to avoid them losing State Benefits, though this would been cheaper and better organised in the Last Will and is not always possible.

Many State Benefits are means tested - which may mean that receipt of a lump sum inheritance disqualifies them from receiving it. Many don't realise this, and if they don't, they could end up in Court, so please do warn them.

With **prior** planning it is possible to avoid this issue - email our Will Writing colleagues

Tip 11: Claim Bereavement Payment, Bereavement Allowance or Widowed Parent's Allowance

You may be able to get a one-off payment or regular payments if you have been bereaved. A Bereavement Payment is a one-off lump sum based on your late husband or wife's national insurance (N.I.) contributions. It used to be called Widow's Payment.

Widowed Parent's Allowance is a regular payment which you may be able to get if you are a parent whose husband, wife or civil partner has died and you have a dependent child or young person (aged 16 and under 20) for whom you receive Child Benefit. It used to be called Widowed Mother's Allowance.

Bereavement Payment, Bereavement Allowance and Widowed Parent's Allowance are available in England, Scotland and Wales only.

The Bereavement Benefits link below provides more information on these payments and allowances.
Bereavement benefits (money, tax and benefits section)

What to do after someone dies in England and Wales - an informal guide.

1. **In the first few days:** (link is to Local Pages for Local information)
   - Get a medical certificate from the GP or hospital Doctor. You'll need this to register the death then:
   - Register the death within 5 days (8 days in Scotland). Use the "Tell us once" service that reports the death to most Government organisations. The Registrar will normally give you the documents you need for the funeral. The information you will need is listed in Appendix 1. Always ask for more copies of the Death Certificate than you think you will need, as they are more expensive later on: most asset holders and creditors will need one. Then
   - Arrange the funeral you can use a funeral director or arrange it yourself. The Undertaker can normally remove the body, but the documents mentioned above are required before the funeral takes place. If the Coroner is involved, their approval is needed. Do make sure everyone is informed as not being notified is the start of many a family feud. If there is a prepaid funeral plan, you **must** check with them before appointing an undertaker unless they are specified in the plan schedule.

You don't need to deal with the Will, money and property straight away, though clearly anyone the deceased owes money to should be informed as soon as possible to avoid upsetting letters. It is better to advise pension providers sooner rather than later to avoid having to pay back over payments later on.

2. **If the Coroner is involved,** see Appendix 2. It's more common than people realise with around 43% of deaths referred to the Coroner, whose contact details will be on our Local Pages.

3. **Arrange the funeral.**

The funeral can only take place after the death is registered. Most people use a funeral director, though you can arrange a funeral yourself. We're trying to build up a list of local funeral directors – they can add themselves on the relevant Local Page free. Please note that the person instructing the funeral director is liable for their bill, though it will normally be paid from the Estate (if the deceased had money in the bank, the bank will often agree to pay the funeral director DIRECT – but only if agreed in advance). Be very careful to follow the instructions correctly if there is a prepaid funeral plan.

Funeral costs can include:
- Funeral directors fees
- Things the funeral director pays for on your behalf (called 'disbursements' or 'third party costs'), e.g. crematorium or cemetery fees, or a newspaper announcement about the death, perhaps flowers, order of service, church fees etc.
- Local Authority burial or cremation fees.

Funeral directors list all these costs in their quote.

The funeral can be paid for:

- From a prepaid funeral plan or insurance policy if they had one. There is a basic free search facility on our site (but best to phone likely providers) if you think there is one but can't find the paperwork:
- By you, or other family members or friends (which can be repaid by the estate after probate has been granted, if there are sufficient assets.)
- With money from the person's estate (e.g. savings) getting access to this is called applying for a 'Grant of Representation' (sometimes called 'applying for Probate') though in some cases, money may be released from bank or other savings accounts DIRECT to the funeral director but you must ask in advance if this is possible (if there are adequate funds). Banks etc will not reimburse Executors if they pay first, they will have to wait until Probate is granted.
- You can apply for a Funeral Payment if you have difficulty paying for the funeral but we understand it takes ages and is often refused leaving people in debt.

Moving a body for a funeral abroad

You need permission from a Coroner to move a body for a funeral abroad – including Scotland. Apply at least 4 days before you want the body to be moved.
Find a local coroner using the Coroners' Society of England and Wales website or Local Pages.
There is a different process in Scotland and Northern Ireland.

4. Dealing with tax and benefits

HM Revenue and Customs (HMRC) and the Department for Work and Pensions (DWP) should contact you about the deceased's tax, benefits and entitlements if you used the "Tell Us Once" service.
Contact the following organisations if you didn't use the "Tell Us Once" service.

- HM Revenue and Customs (HMRC), who will work out whether the right amount of tax has been paid by the deceased. They'll let you know what tax they need to collect or repay and whether you need to fill in a Self Assessment tax return on the person's behalf, e.g. when the Estate continues to receive income

You can also use HMRC's bereavement tool to work out which forms to fill in and where to send them.

- Inheritance Tax may be due on the person's Estate after they die.
- National Insurance (N.I.) Contributions Office to cancel the person's N.I. payments if they were self-employed or paying voluntary N.I.
- Child Benefit Office if a child or the parent dies. You need to do this within 8 weeks of the death.
- Tax Credit Office if your partner or a child you're responsible for dies within 1 month of the death.
- Department for Work and Pensions (DWP) to cancel the person's benefits and entitlements, e.g. State Pension. They'll also check if you're eligible for help with funeral costs or other benefits. 0345 606 0265 Textphone: 0345 606 0285 Welsh language: 0345 606 0275.

5. Grant of Representation ('Probate')

If there is a valid Last Will and testament then an Executor will have been appointed to deal with the Estate by the Will. Once they take up their duties they must finish the job, though they can appoint professionals (such as ourselves!) to help them, or delegate the whole job to the professionals.

If there is no valid Last Will after a proper search, then the closest relative/s will have the right to apply for a Grant of Letter of Administration and the beneficiaries will be decided by the Rules of Intestacy. This often causes problems - for example, where a parent is survived by several children, they all have an equal right to apply, but they might not entirely trust each other.

6. **Death abroad** - see Appendix 3

7. Bereavement Support - this link may help.

Appendix 1 **Register a death WITHIN 5 DAYS** (you may wish to print this page and the next)

Deaths reported to the Coroner: wait to hear from the Coroner's Officer before you go the registrar. If the death requires an Inquest you will not need to register the death.

Who may register the death?

- a relative
- someone who was with the person when they died
- someone who lives at the address where the person died
- someone who is arranging the funeral (but not the undertaker)

The more information you can give the Registrar, the less work there is to do later. There are links to as many Registrars of Births Deaths and Marriages as we can find on the Local Pages (if you find an out of date one, please let me know – they do change!) You need permission from the next of kin, the Executor, the Administrator or anyone who was claiming joint benefits or entitlements with the deceased, before you give their details. You'll need the following information about the deceased – it is on a separate page in case you wish to print it:

Medical certificate showing the cause of death (signed by a Doctor): if this is not available, contact the Registrar for advice.	
Full name, including maiden name and any others they may have been known by.	
Date of birth and where	
Date of death and where	
Occupation	
National Insurance number	
Driving licence number	
Passport number	
Legal spouses full name and occupation (even if deceased) If still alive, their date of birth and if available National Insurance Number	
Details of any benefits or entitlements they were getting, e.g. State Pension	
Details of any local council services they were getting, e.g. Blue Badge	
Name and address of their next of kin	
Details of the principal Executor or Administrators: Name: Address: Telephone numbers: Email:	
Also take, if available: Birth Certificate (which will show place of birth), Marriage Certificate	

Organisations "Tell Us Once" will contact

- HM Revenue and Customs (HMRC) to deal with tax and cancel benefits.
- Department for Work and Pensions (DWP) to cancel benefits, e.g. income support.
- Passport Office to cancel a passport.
- The Local Council to cancel housing benefit, council tax benefit, a Blue Badge, inform council housing services and remove the person from the electoral register.
- They will also tell the Driver and Vehicle Licensing Agency (DVLA) to cancel the deceased's driving licence. You'll still need to send DVLA any registration certificates (V5C).

You'll have to let the relevant organisations know about the death yourself if your local register office doesn't offer the "Tell Us Once" service or you choose not to use it. Naturally there will be many other organisations outside the Government whom the Executor will need to notify as part of their duties

Appendix 2

What happens to an estate when the deceased dies without a valid Will?

Many people do not realise the implications of not having a Will (if you don't have an up to date one, feel free to contact us). When an individual dies without a valid Will, their Estate will pass under the **Rules of Intestacy**. These are a fixed set of rules which determine who will inherit the assets of the deceased; they also set out the order of priority. Whether someone will inherit depends on their relationship with the deceased, whether closer family members are still living and the value of the deceased's Estate.

Very often, individuals think they do not need a Will as their spouse will just inherit everything. However, if an individual dies Intestate (with no valid Will), their surviving spouse will not necessarily inherit all of their estate. The surviving spouse would only receive all of the assets if the individual died without leaving any children, parents, siblings, nephews or nieces (or their children) or if the estate was under £275,000 (£322,000 from 26 July 2023). If any of those family members survive the deceased then the following rules would be applied.

Surviving legal spouse and children

Spouse entitled to:

- Personal chattels (e.g. jewellery, clothes and cars)
- The first £270,000 of the estate (£322,000 for deaths after 26 July 2023).
- Half of the remainder of the estate

Children entitled to:

- Half of the remainder of the estate shared between them in equal shares

If there are children but no surviving spouse the children would be entitled to the whole of the estate in equal shares. The children would inherit the assets absolutely on attaining age 18.

Surviving spouse and parent(s) of the deceased

Spouse entitled to:

- everything

Parent(s) entitled to:

- Nothing

For other circumstances go to:
https://www.gov.uk/inherits-someone-dies-without-will

Other considerations

Only individuals married/ civil registered at the date of death qualify as spouses who will inherit under the Intestacy Rules. In the event of divorce, until the point that the Decree Nisi becomes Absolute, the surviving spouse will still automatically be entitled under the Intestacy Rules. Unmarried individuals who are cohabiting will not benefit from the estate of their deceased's partner under the Intestacy Rules and this also applies to step-children.

Genuine Dependents who have not been provided for may have a case under the Inheritance Act – have a look at https://www.theprobatedepartment.co.uk/contest-a-will/inheritance-act-claims/

An Intestate Estate may pay more Inheritance Tax than would otherwise have been the case if the deceased had made a valid Will. In the case of a married couple, it used to be common practice for each spouse to pass assets equal to the Nil Rate Band at death to taxable persons (i.e. children) and to leave the remainder of the estate to the surviving spouse. This is no longer usually tax efficient, so contact us for a brief chat as Deed of Variation may be appropriate. The Residents Nil Rate Band turned inheritance tax planning on its head from 2017, and few people have a service like the ***Peace of Mind Service*** supporting them.
https://www.theprobatedepartment.co.uk/deed-of-variation/

Summary

Making a Will ensures that an individual's Estate is distributed in line with their wishes. It is also a step forward in protecting wealth from Inheritance Tax in the most efficient manner. Regular review of Wills is recommended to ensure that they are up to date and take into account events which have occurred or assets that have been acquired since the most recent Will was drafted.

Sadly, many Wills are not regularly reviewed and tax changes can make previous planning achieve the opposite effect – increasing the tax burden. Will Custodians **Peace of Mind Service** helps with that whilst you are still in the land of the living.

What about people who *should* have been provided for?

They may well have a valid claim against the Estate and this should be dealt with rather than ignored. We can help. More in Appendix 6.

Is a Will Valid? (Just a general comment – not a guide!)

Essentially, a Will needs to be signed in front of two independent witnesses who then sign and add their detail. The deceased must also have understood what he or she was signing and been aware of the nature and extent of their assets and of those people whom they should consider leaving something too. It should also be dated.

A Will is cancelled by a subsequent Will or by a marriage / civil partnership which was not provided for in the Will. This is a complex area, with many interacting issues. We can assist.

Appendix 3 When a death is reported to a Coroner.

Please do not be alarmed if the Coroner is involved: 43% of deaths are referred to the Coroner. Contact details for Coroners are on our Local Pages.

A doctor may report the death to a coroner if the:

- Person who died was not visited by a medical practitioner during their final illness
- Medical certificate isn't available
- Person who died wasn't seen by the doctor who signed the medical certificate within 14 days before death or after they died
- Death occurred during an operation or before the person came out of anaesthetic
- Medical certificate suggests the death may have been caused by an industrial disease or industrial poisoning
- Cause of death is unknown
- Death was violent or unnatural
- Death was sudden and unexplained

The Coroner may decide that the cause of death is clear. In this case:

- The Doctor signs a medical certificate.
- You take the medical certificate to the Registrar.

The Coroner issues a certificate to the Registrar stating a post-mortem isn't needed.

Post-mortems

The Coroner may decide a post-mortem is needed to find out how the person died. This can be done either in a hospital or mortuary.

You can't object to a Coroner's post-mortem but if you've asked the Coroner must tell you (and the person's GP) when and where the examination will take place.

After the post-mortem

The Coroner will release the body for a funeral once they have completed the post-mortem examinations and no further examinations are needed.

If the body is released with no Inquest, the Coroner will send a form ('Pink Form form 100B') to the Registrar stating the cause of death. The coroner will also send a 'Certificate of Coroner form Cremation 6' if the body is to be cremated.

If the coroner decides to hold an inquest

A Coroner must hold an Inquest if the cause of death is still unknown, or if the person:

- Possibly died a violent or unnatural death
- Died in prison or police custody

You can't register the death until after the Inquest. The Coroner is responsible for sending the relevant paperwork to the Registrar.
The death can't be registered until after the Inquest, but the Coroner can give you an interim
Death Certificate to prove the person is dead. You can use this to let organisations know of the death and apply for Probate.

When the Inquest is over the Coroner will tell the Registrar what to put in the register.

Appendix 4 Death Abroad

You must register a death with the Local Authorities in the Country where the person died. In many Countries you can also register the death with the UK authorities.
The "Tell Us Once" service is not available for deaths abroad.

The other major consideration is **whether there is insurance cover to bring the deceased home**. If not, costs can be very high and it may be worth considering a local cremation or burial with just a memorial service in the UK.

There are different rules for bringing the person's remains home, depending on whether you:

Bring the body home for burial or cremation but

- You must get a certified English translation of the Death Certificate
- Get permission to remove the body, issued by a Coroner (or equivalent) in the Country where the person died
- Tell a Coroner in England if the death was violent or unnatural
- Ask for advice from the British Consulate, Embassy or High Commission in the Country where the person died.
- Contact a Register Office
- Once the body is home, take the Death Certificate to the Registry Office in the area where the funeral is taking place. As the death has already been registered abroad, the Registrar will give you a 'Certificate of no Liability to Register'. Give this to the funeral director so the funeral can go ahead.

Have the person cremated abroad and bring their ashes home
When leaving a country with human ashes you will normally need to show:

- The Death Certificate
- The Certificate of Cremation
- Each country has its own rules about departing with human ashes and there may be additional requirements. Contact the country's British Consulate, Embassy or High Commission for advice.
- You'll need to fill in a standard customs form when you arrive home.
- Contact your airline to find out whether you can carry the ashes as hand luggage or as checked-in luggage. They may ask you to put the ashes in a non-metallic container so that they can be x-rayed.

A coroner will usually hold an Inquest in England or Wales if the cause of death is unknown or if it was sudden, violent or unnatural.

You need a Certificate from the Coroner (form 'Cremation 6') if the person is to be cremated.

You should not have the person cremated abroad if you want a Coroner at home to conduct an inquest into their death.

Appendix 5 The Residence Nil Rate Band (RNRB)

The maximum RNRB available is £175,000, theoretically, it will increase in line with the Consumer Price Index after April 2028.

- The property must have, at some point, been occupied by the deceased as a residence.
- The RNRB is limited to the net value of the property; that is, after any outstanding mortgage or charge has been deducted.
- The RNRB will be available ONLY when the 'qualifying interest' is transferred on death to direct descendants.
- In general, the transfer must be outright but transfers into some types of trust are acceptable. This excludes Discretionary Will Trusts.
- The deceased's RNRB will be set off against the residence before the standard Nil Rate Band is set off against the balance of the Estate, including any value of the residence in excess of the RNRB.
- Any RNRB that is not used on first death can be transferred to a surviving spouse or civil partner. This is the case regardless of when the first death occurred and whether the deceased could have used their RNRB or not.
- The amount of unused RNRB (expressed as a percentage of the amount available) will be applied to uplift the survivor's RNRB entitlement on second death.
- If the first death occurred before 6 April 2017, the only check that is required is the £2 million taper threshold.
- The £2 million taper threshold will also increase in line with the CPI from 6 April 2021.
- Where the value of the deceased's net estate exceeds £2 million, the RNRB will be reduced by £1 for every £2 above that limit.

Appendix 6 – Probate Disputes
Can I dispute a Will?

Families seem to disagree more and more with the Will or Intestacy Rules (they apply if there is no valid Will) when someone dies, but does it make sense to do anything about it?

Can a Will be contested? Yes it can, but there are time limits and serious risks. There are all sorts of reasons people may decide to contest a Will, but the earlier you challenge a will, the better, and you may save tens of thousands of pounds. No one really wants the main winners to be the lawyers! Once Probate has been granted, you can still challenge a Will, but a six-month time window is on the way to closing, after which it is less likely that your claim will even be considered. Just email details in the form at the foot and we'll contact you for a quick informal chat. Or give us a call on 03 300 102 300. Some reasons for the probate to become contentious (contentious probate is the trade jargon for disputing the estate in the UK). It is dangerous territory to stray into with no advice or an inexperienced firm. Sometimes there isn't really a dispute, as the changes can be agreed – see Deed of Variation. If there is no agreement, read on and find out how to challenge a Will or intestacy – we can put you in touch with a suitable solicitor if you feel you have a genuine case – or need to defend against such a claim.

There is a Free Probate Claim Checker on our site:
https://www.theprobatedepartment.co.uk/contest-a-will-free-probate-dispute-claim-checker/

Can I dispute a will?

Here are some of the grounds for contesting a Will in England and Wales (please bear in mind this site covers issues in England and Wales – the law north of the border is totally different and in NI slightly different):

Contesting a Will as you have unreasonably been left out of it.

A classic example would be a husband leaving a wife penniless – quite apart from the next heading, it is on the face of it quite unreasonable!

Contesting a Will under the Inheritance Act.

Wives, husbands and sometimes others may be entitled to expect reasonable provision under the Will. So might anyone who has been financially or otherwise looked after by the deceased. So if you provided rent free accommodation for your old Nanny, and left her exposed to be thrown out onto the streets, she might have a case. Similarly obviously young children, maybe mistresses or whatever the male version of that is. Children have no automatic right to inherit however. See Ilott v Mitson. We're often asked if a step child can challenge a Will, and there is no reason why they can't, given the right grounds. Equally, leaving a person you have habitually provided for during your life – disabled child, common law spouse, mistress etc could potentially lead to a justified claim. Not that it is generally straightforward!

Challenging a Will through Lack of Mental Capacity.

Contesting a Will under these circumstances is common. In effect what you need to prove is that the person making it did not have enough understanding of what they were doing to be capable – under Law – of making a legally valid Will. This is ONLY at the time the document

was made and signed, a subsequent decline in mental capacity would not affect the validity of the document, though other issues might. It is far from easy to prove.

Disputing a Will because of Undue influence.

One of the commonest reasons to contest a Will. What you need to be able to show is that someone has wrongly influenced the person making it (the "Testator" to their benefit or to the benefit of another person. Undue influence is not easy to prove in general. However, where the person allegedly doing the influencing is a person on whom the testator (person whose Will it was) is very dependent then it is perhaps easier to convince the Court. In some cases the burden of proof may actually be reversed especially where the person concerned is a carer.

Contest a Will by Alleging Duress.

Another common reason for disputes. Where a Will is made "under duress" it means that the person was effectively forced to make it under threat of some sort – real or perceived. An example would be a beneficiary threatening to put the testator into a care home unless they leave them their cash! Surprisingly often, solicitors allow a beneficiary to be in the room when a Will is discussed, which could easily amount to "undue influence" as it is hard to disappoint someone who is in the room with you. Potentially useful grounds to challenge if proof is available.

Contest a Will or Intestacy because the Executor is behaving improperly..

There are plenty of executors or administrators who deliberately or otherwise do not follow the law when it comes to distributing to the correct beneficiaries, prefereing to keep the money themselves. Or maybe sell a property well below market value, possibly to a friend, or maybe on the advice of a les than honourable estate agent. Valuables often vanish – but sometimes the valuables are not actually valuable, and a bit of openness would have prevented there from being a problem. The trouble is that executors don't have to keep beneficiaries or possible beneficiaries informed. Right at the end, the actual beneficiaries should receive an account of what has been paid out and brought in, but it may not be too accurate. This is a really dificult area, and often does lasting damage to family relationships, even once the executor discovers they have been at fault. But it is best to raise the issues early.

Wrongly witnessed Wills are generally invalid….

You can contest one on the basis that the formalities of signing it were not complied with – for example, the witnesses were not both present at the same time with the testator when they signed the Will. This is a complex area as people fail to follow the very simple guidelines, and the Courts are called upon to decide if enough has been done to make it valid – or not.

Challenging a Will due to Promissory Estoppel

A classic example of this is the farmer who uses a child as cheap labour for years on the basis that they will inherit the farm, then leaves it to someone else. In effect, a contract exists between the farmer and the child that in return for cheap labour, the child will inherit the farm (or whatever it is.)

Another Will found –

People are very careless with their legal planning affairs (if you don't want to be, we suggest you visit this site to avoid your will being contested!) Each successive new Last Will and Testament normally cancels the previous one automatically, but often people forget where the old one is kept (and indeed the current one) so the wrong one may be found initially. So one set of executors may in all innocence try to obtain probate on an old one. When the correct one turns up later, then there are grounds for contesting a dispute, clearly!

Has it been invalidated?

This can be a reason to contest a Will. The commonest issue is that the Will has been cancelled by a subsequent marriage as it was not (clearly) made in expectation of that marriage. People can live together for years, having made their Last Wills in the early days – then get married, which will usually cancel them. If the Wills are not brought back to validity by way of a codicil reviving them, then the Rules of Intestacy may well apply and have a quite different result from that intended. Foreign Wills often accidentally cancel UK ones and vice versa.

Will destroyed – could it still be valid?

Just because a Will has been destroyed does not necessarily mean it is no longer valid! There have been cases where Wills have been shredded, thrown into the rubbish and they have remained legally valid, though often not without contesting the Will or intestacy which would otherwise have been brought into effect. Best not to do that though, as the presumption is that it was destroyed deliberately by the testator. We recommend the Peace of Mind Service for greater security, reviews and knowing when updates are needed and avoiding the situation where crucial documents are missing.

How to challenge a Will or Intestacy – if it makes sense to do so?

Like most things, you can contest a Will without professional help. However, contentious probate is a very complex process and it can end up being pretty personal and vicious too. If you get it wrong, it is very easy to end up paying the other side's costs, even if you win! Most people would prefer to make it less personal by employing an experienced contentious probate lawyer. Keeping the family together should always be a consideration – people are raw and do not always react reasonably when anyone challenges a Last Will and testament.

However, contesting a Will is sometimes a complete waste of time as it can bankrupt the estate or the person the Judge considers does not have a well thought through claim to challenge a Will. So we recommend that you pay for a professional review before you waste (potentially) tens of thousands of pounds or more with little prospect of success.

Who pays if a Will is challenged?

Who pays for the process is not straightforward, thought it is within the Judges decision if it goes to Court. The Judge will weight the decision and award costs as he or she things fit, so even a winner can end up paying costs. A claim which is merely wishful thinking is likely to result in both sides cost being awarded against the wishful thinker, so don't challenge a Willin Court just beacuse you think it is unfair – that is not in itself a ground for successfully contesting a Will.

Contentious Probate Solicitors near me.

This is a common search, but be aware that many solicitors are not probate experts, and very few are expert on contentious probate. It really makes very little difference these days where the firm is located; that is why were are fussy about the firms we introduce you too.

No Win No Fee Contentious Probate Solicitors.

The costs can be very high, so no win no fee solicitors will only accept very good claims, and for a sizeable amount. So the claim would normally have to be worth £100,000 plus. we are happy to take the details and pass them on to one who may consider taking it on for you.

Can I challenge a Will after Probate has been granted?

Many will changes arise after probate has been granted, for the simple reason that the facts are often unknown before that as the executors chose not to make full details of how the estate is to be distributed. But the document becomes public property after the grant, and anyone can download a copy of both the Last Will and Testament and the Grant. But there is a time frame of 6 months in which claims are expected to be made from when the Grant is issued. Claims after that time may not be considered unless a Judge can be convinced there is a good reason for the late application, so it is as well to put in a standing search for the copies. But always remember that not every estate requires probate, so just waiting for it to be issued may be a waste of time.

Contact us to discuss arranging an informal review before you decide to contest a Will or Intestacy.

Contentious Probate is EXPENSIVE and if the Judge feels you case is weak, you will probably end up paying the costs of the other side as well as your own.

Stephen Pett and The Probate Department (brokers) are not probate lawyers and do not give probate advice, just general signposting and suggestions as to which competent and reliable lawyers with the relevant specialist knowledge might be helpful to you at sensible fees.

- Steve was a non-solicitor partner in a firm of probate and estate planning solicitors for many years, and is also a Regional Chairman of the Society of Will Writers for around 15 years (so far).
- He wrote a book on Inheritance Tax Planning – now in need of updating if the time is ever available and writes widely on the topic of Estate Planning and Probate.

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