

Wills and Trusts

There are 3 things you must do in the first few days after someone dies.

- align** Get a medical certificate from a GP or hospital doctor. You'll need this to register the death.
- align** Register the death within 5 days with the local Registry Office. You'll then get the documents you need for the funeral.
- align** Arrange the funeral - you can use a funeral director or arrange it yourself.

1. Overview

When someone dies, you may be able to apply for a 'grant of representation'. This gives you the legal right to deal with the person's property, money and possessions (their 'estate'). The right to deal with the estate of someone who's died is called 'probate'.

You can apply yourself or use a solicitor.

Most cases follow the same basic process.

- align** Check if there's a will - this normally states who sorts out the estate; if there's no will the next of kin can apply.
- align** Apply to get a 'grant of representation' - this gives you the legal right to access things like the person's bank account.
- align** Pay Inheritance Tax - this is only paid if the estate's worth over £325,000 and is part of applying for a grant of representation - once you've paid any tax due, you can collect the assets.
- align** Collect the assets - e.g. money from the sale of the person's property.
- align** Pay any debts - e.g. unpaid utilities bills.
- align** Distribute the estate - this means giving any property, money or possessions to the people entitled to it ('beneficiaries').

When a grant of representation may not be needed

You don't normally need a grant if the estate either:

- align** passes to the surviving spouse/civil partner because it was held in joint names – e.g. a savings account
- align** doesn't include land, property or shares

You should contact the organisation holding the money - e.g. the bank or building society. They may ask for proof of death - e.g. the death certificate after the death has been registered. Each financial institution has its own rules - you may still need to apply for a grant.

2. If the person left a will

You can apply for a grant of representation if you're the 'executor' of the will - the person named to deal with the estate. If more than one executor is named in the will, the probate application form and guidance notes explain what to do.

You should contact your local Probate Registry if either:

- align** no executor is named in the will
- align** none of the named executors are willing or able to apply

The Probate Registry will explain what you need to do. An executor doesn't necessarily get any of the estate.

3. If the person didn't leave a will

The person's next of kin - e.g. the spouse (or civil partner) or children - can usually apply for a grant of representation. The law decides who inherits the estate if there's no will (see Intestacy)

Partners and ex-partners

If you're the partner of the person who's died but weren't married to them (or in a civil partnership) you can't apply. You're also not automatically entitled to get any of your partner's estate. You should get legal advice to find out about your rights.

If the person was separated but not yet divorced (or had their civil partnership dissolved), their spouse (or civil partner) would inherit some or all of the estate - and must apply for the grant.

4. Joint property and bank accounts

Joint bank and savings accounts

If you have a joint account with the person, what's in it automatically passes to you. You don't need a grant of representation.

Joint property

What happens to the person's property depends on how it was owned. If the property was:

- align** held under 'joint tenancy' - the surviving owner inherits the whole property automatically
- align** owned as a 'tenancy in common' - the person's will (or the law if there's no will) states who inherits their share
- align** owned outright by the person - the terms of their will(s) state who inherits (or the law if there's no will)

Contact the mortgage company, the Land Registry or get legal advice if you're unsure of how a property is owned.

5. Applying for a Grant of Representation

You can apply for a Grant of Representation yourself or use a solicitor. There are 4 steps.

- align** Complete a probate application form.
- align** Complete an Inheritance Tax form.
- align** Send your application.
- align** Swear an oath.
- align** Complete a probate application form

You can either:

- align** fill in the probate application form PA1 yourself
- align** call the Probate and Inheritance Tax helpline to get help filling in the form

Probate and Inheritance Tax helpline
Telephone: 0300 123 1072
Monday to Friday, 9am to 5pm
Find out about call charges

Complete an Inheritance Tax form

You must also work out how much the estate is worth. Depending on its value, there may be tax to pay - called Inheritance Tax. You must complete an Inheritance Tax form - even if you think no tax is owed.

If there is tax to pay, you normally have to pay at least some of it before a grant of representation is issued to you.

Send your application

Send your application to your local probate office. You should include:

- the probate application form PA1
- the Inheritance Tax form
- an official copy of the death certificate
- the original will and 3 copies - and any codicils (additions or amendments to it)
- the application fee of £105 - a cheque made payable to HM Courts & Tribunals Service (there's no fee if the estate is under £5,000)

You can pay for extra copies of the grant (£1 each) - this means you can send them to different organisations at the same time.

Swear an oath

The probate office will send you an oath and details of how to arrange an appointment. You'll need to swear the oath at either:

- the office of a commissioner for oaths (usually a solicitor)
- a local probate office

The oath is a promise that the information you've given is true to the best of your knowledge. You should get the grant through the post within 10 working days of swearing the oath. If it's not possible to issue a grant, the Probate Service will explain why in writing.

6. Once the grant's been issued

Contact organisations to get hold of the person's assets

You should send a copy of the grant to relevant organisations (e.g. the person's bank). They should then 'release' the assets so you can transfer them into the executorship account.

If the person had a pension, contact the organisation - a surviving spouse (or civil partner) may be entitled to money from it.

Pay any debts or outstanding payments

Once you've contacted all the organisations, pay off any debts the person had. This could include:

- outstanding bills
- tax owed

As the executor or administrator you have a legal responsibility to pay off any debts or outstanding payments before distributing the estate. You can use money from the estate to pay any solicitor's fees as part of the probate process.

Distribute the estate

Once all debts and taxes have been paid, you can distribute the estate as detailed:

- in the will
- using the law, if there's no will

After this you should prepare the estate accounts. These must be approved and signed, by both you and the main beneficiaries.

Beneficiaries may have to pay Income Tax if the assets they inherit generate income for them.

7. If you inherit property. You have responsibilities if you inherit property.

Selling the property

You may have to pay Capital Gains Tax if you sell inherited assets which have gone up in value since the person died. This includes inherited property.

Get advice from the Capital Gains Tax helpline.

Capital Gains Tax helpline

0300 200 3300

Monday to Friday, 8am to 8pm

Saturday, 8am to 4pm

If another owner is still living there

If another owner is still living there you need to agree with them whether:

they will continue living there

the property will be sold

Their right to remain may be stated in the will, if there is one.

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