

FuneralFinder 



What is probate?

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What is probate?

Probate is the term used to describe the process used when someone has to deal with the estate of a person who has died – e.g. collecting the money, property and possessions left and distributing it according to the Will or under the rules of intestacy. The document issued by the Probate Service is called a Grant of Representation (commonly called the Grant of Probate). This document would be required by the banks, share companies or when selling a house owned by the deceased. This document shows you have the right to act on behalf of the deceased.*

The Probate Service

The Probate Service is part of the Family Division of the High Court. It deals with probate issues when they are not contested. This mainly covers issuing grants of representation (see below).

- Probate (when the deceased person left a valid will and an executor is acting)
 - Letters of administration with will (when a person has left a valid will but no executor is acting)
- or
- Letters of administration (usually when there is no valid will, i.e. *intestacy*).

In all circumstances the person administering the Will is known as a personal representative.

The Probate office has Targets for issuing grants of representation

95% of solicitor, notary or barrister applications to be processed within 7 working days of receipt of all necessary information. Please bear in mind that it can take some time to obtain all the information necessary before the application can even be made to the Probate Office.

85% of personal applications to be processed within one month of receipt of all necessary information.

As you can see, it is usually faster to have a Solicitor apply for your grant and with some of the low prices being offered by Solicitors during the recession, you would not be saving a great deal by doing the process yourself (DIY Probate). Further, as you can become personally liable for any mistakes made, many people find they would prefer a professional does the work for them.

The Probate office also supplies copies of grants of probate and Wills and holds all grants of representation issued since 1858. You can obtain a copy of these grants and Wills for just £6.00 per document.

There is a more advanced search called a standing search whereby you can request a copy of a Will and Grant in a six month period. E.g. if someone dies within 6 months of your placing a search against their name, then upon their death, you will receive a copy of the grant and will. There is a fee of £6.00 for this service.

Do I need a grant of probate?

Is a grant needed in all cases?

No.

It may not be necessary to obtain a grant where a home is held in joint names and is passing by survivorship to the other joint owner.

Where a joint bank or building society account is held, production of a death certificate may be sufficient for the monies to be transferred to the joint holder.

Certain institutions may release monies without a grant being produced if the amount held by the deceased was small. Apply to the institutions to see if they will release monies without a grant.

If the above circumstances do not apply or if the institutions concerned inform you that a grant is required, please contact one of the addresses overleaf for further information. Staff at Probate Registries can offer procedural guidance on how to obtain a grant; they cannot provide legal advice.

Note: The guidance How to obtain probate - Form PA2 forms part of the package provided to applicants when applying for probate.

What is its purpose?

The grant is proof that the person or persons named in it are entitled to collect in and distribute the monies or other assets of the deceased and may be produced to those organisations (banks, building societies, etc.) holding such assets.

What is a grant of probate/letters of administration?

A legal document which allows the person or persons named in it to collect in and distribute the estate (property, money, possessions etc.) of the deceased.

Probate is the process of officially proving the validity of a will, but the information in this leaflet applies equally where the deceased died without leaving a will in which case the grant is called 'letters of administration'.

Important

Please read through this guidance carefully before you start to complete the required application forms. The information will help you decide whether you need probate and to fill in the forms if you do. It should answer most of your queries about probate.

If you have any difficulties completing the forms or need further guidance please contact your local Probate Registry. The staff are there to help you – but they are unable to give you legal advice. Applying for probate yourself is a fairly straightforward procedure in most cases.

The information in this guidance refers only to the law in England and Wales. If the deceased was permanently resident outside England and Wales another system of law may apply – this will be explained when we receive your application. If you need to apply for a Grant of Representation in Scotland or Northern Ireland, you should contact the court in the appropriate country.

Making an application for probate

Applications made through a solicitor

Around 70% of applications are made through a solicitor, The charges made by a probate practitioner (either a lawyer, notary or barrister) to their clients vary according to a number of factors (including the complexity of the case), but if you use the probate calculator here¹ it should give you an indication of the lowest cost you will pay.

The fee payable to the Probate Service if using a solicitor is £45 plus £1.00 for each additional copy of the grant, but where the value of the estate is £5,000 or less, no charge is made by the Probate Service.

Processing applications

Seven main stages are involved in processing each application:

1. The solicitor meets the client and takes necessary details or the client supplies information.
2. The solicitor contacts all the banks, obtains valuations and prepares an accurate record of the deceased estate (this is the time consuming part as often banks and stockbrokers may need to be contacted along with obtaining valuations on property and on pensions etc.).
3. The solicitor prepares the papers for the client to swear the oath.
4. The client swears the oath in front of an independent solicitor or commissioner for oaths .
5. The solicitor sends the papers to a Probate Registry for processing together with the original Will, the Fee and Inland Revenue Account (the Inland Revenue account is the return made to show the value of the estate and needs to be recorded accurately or the executor can become liable).
6. Staff at the Probate Registry examine the papers, and a grant of representation is issued and sent to the solicitor, notary or barrister once the Registry is satisfied as to the validity of the application.
7. The solicitor collects all the money & assets and distributes it according to the will or under the rules of intestacy.

With effect from 1 January 2009 two (2) copies of the sworn will and codicils (if applicable) must be supplied in A4 size with the grant application papers.

¹ www.funeralfinder.co.uk/probate-calculator

Making an application for probate

Applications made in person

Around 30% of applications are made by people directly (not using a solicitor). The fee payable to the Probate Service when making a personal application is £105 plus £1.00 for each additional copy of the grant, but where the estate is £5,000 or less, no charge is made.

Processing applications

The applicant can obtain information, guidance and both the Probate Service and HMRC forms from this site or from the Probate Registry, Probate and Inheritance Tax Helpline (telephone: 0845 3020900)

- The applicant completes the forms and sends them to the Probate Registry together with the original will (if there is an original) and two copies, an official copy of the death certificate and the fee. Forms are required from both HMCTS and HMRC.
- Copies of the original will must be supplied in A4 size black and white, good quality, clear and legible.
- The copies should not be stapled and do not need to be certified by a solicitor.
- If it is necessary to take the will apart in order to copy it please enclose a covering letter with the application informing the registry that this was done and that the will has been restored to the same condition that it was before it was copied and nothing has been further attached or detached
- Staff at the Probate Registry examine the application and prepare the necessary papers
- The applicant attends an appointment at the Probate Registry or Probate Office for interview, and to swear the oath
- A grant of representation is issued and posted to the applicant once the Probate Registry is satisfied as to the validity of the application

Lodging a Caveat

What is a Caveat?

A caveat is a procedure to prevent a grant of probate being issued, without giving the caveator (the person who enters the caveat) the opportunity to speak with the person applying for Probate, or to make representations to the Court about the matter.

In what sort of circumstances are caveats used?

It is not possible to give a comprehensive list but a caveat is often used to create a “breathing space” to enable the caveator to make enquiries to determine whether there are grounds to oppose an application for Probate, or to bring matters in relation to the estate before the Court: these are a few typical examples:

- there is some allegation concerning a Will e.g. it is not the last Will, the deceased was not “of sound mind” when it was made, it was not properly signed and witnessed, it has been tampered with in some way.
- there is dispute about whether a Will exists
- the person intending to apply for Probate may not be entitled to do so
- there is a dispute between two or more people equally entitled to apply for Probate
- allegations that the person applying for the Probate is not a “fit and proper” person

Is a caveat the right thing to do in my particular case?

Registry staff are unable to give advice about whether to enter a caveat, or what subsequent steps should be taken. They can tell customers what procedures are available to them, but cannot advise on the appropriateness of any of these. If you are in any doubt or need any advice, you are recommended to consult a solicitor.

If you simply need to know when Probate has issued, or need a copy, then the caveat procedure is not appropriate: what you require is a “standing search” which will provide you with a copy of the Probate when it issues. Please ask for a copy of the standing search leaflet.

How do I enter a caveat?

You may do this yourself, or through a solicitor. If you are doing it yourself, you can write to, or attend at any Registry (see the Probate Registry Directory), with the information needed, and the fee of £20. Cheques should be made payable to HM Courts and Tribunals Service.

Can I enter a caveat by phone or fax?

No; The Probate Registry must have a written request, and the £20 fee.

Does a special form have to be completed?

Not necessarily, a letter is sufficient, so long as it contains all the information needed.

Lodging a Caveat

What information is needed?

- a signed request, asking for a caveat to be entered
- the full name and date of death of the deceased, as recorded in the register of deaths, (in addition, you may also give us any other names used by the deceased).
- the last permanent address of the deceased.
- your own name and address.

You do not need to produce the death certificate.

What happens to this information?

While your caveat remains in force, the information is used to prevent Probate being granted in the estate without you being informed. By comparing caveat records with Probate applications, records relating to the same estate are identified.

What if my caveat is urgent and I am unable to obtain the information from the death certificate in time, or if the death has not been registered, or has been registered abroad?

The Probate Office will normally accept whatever information you give them, (however, you must appreciate that your caveat will identify other records in the estate only where the first and last names are identical, to those in a Probate application and where the date of death in your caveat is within three days of the date of death in the application).

Can I change any of the details in my caveat?

Yes, you can do this at any time, by writing to confirm the changes you require, as soon as you realise that an amendment is needed.

When should the caveat be entered?

Once you decide that you want to enter a caveat, you should do so immediately. You should not wait until you think someone has applied for Probate, or is about to apply.

Who can enter a caveat?

Anyone can enter a caveat, if you enter it personally, you need to have an address in England or Wales. You cannot enter a caveat jointly with another person: where two or more persons wish to enter a caveat, they must do so separately.

Lodging a Caveat

How long does a caveat last?

Six months from the date it is entered. In the month before it is due to expire, you may apply to extend it for a further period of six months. It costs a further £20 to extend a caveat.

Is there a reminder towards the end of the six months?

No. If a caveat is not extended it simply expires, but if you wish, you may enter another.

What happens when a caveat stops an application for Probate?

The person applying for Probate is informed of your caveat and given your details.

What happens next?

It is up to yourself and the person applying for Probate to make contact with each other, hopefully to resolve any differences, and agree a way forward.

Can I cancel the caveat?

You can withdraw it at any time by writing to the Registry (and returning the acknowledgement letter that you were given when it was entered), provided that an “appearance” (mentioned below) has not been entered. If an appearance has been entered, the caveat may only be withdrawn by order of a Registrar.

What if there is no agreement?

This is where matters become more complicated and you are strongly recommended to seek legal advice. The question of costs may arise and there is a possibility that you could become liable to pay not only your own costs but those of the other person as well. The matters mentioned below are dealt with only in the most general of terms. If you are acting without a solicitor, and require information about any of these steps you should contact the Registry where the caveat was entered, but please bear in mind that the staff cannot give you any advice on how you should proceed.

The person applying for Probate may issue a “warning” against you. This requires you to formally state your interest in the estate. If you fail to respond, he can apply to have your caveat removed. If you respond and enter an “appearance”, the caveat will remain in force indefinitely, until matters are finally resolved.

- either you or the person applying for Probate may issue a summons which will be heard by the District Probate Registrar
- either you or the person applying for Probate may commence a Probate action (court proceedings) in the estate.

Lodging a Caveat

Civil Partnership Act 2004

The Civil Partnership Act 2004 came into force with effect from 5th December 2005 and may affect some applications for a Grant of Representation.

A civil partnership is defined as a partnership between people of the same sex which has been registered in accordance with the Civil Partnership Act 2004.

If the deceased died after the 5th December 2005 and is survived by a civil partner please provide the following information with your application:

- The name of the deceased's civil partner
- The date of registration of the civil partnership

You should also inform us if the civil partnership had been dissolved or annulled before the deceased died. We will need to see a copy of the final order dissolving or annulling the civil partnership.

If you have any queries about this please contact your local probate registry.



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