

A Guide to Probate



When a relative or someone you know dies and you have been nominated to take care of their estate, it can be daunting. In some circumstances, it can be more difficult because there is no Will or it is somehow invalid. However, Farnfields Solicitors can guide you through the steps to take and we can do as much or as little work as you would like us to.

What is Probate?

Probate is a document giving the Executor of a Will the permission to distribute an estate in accordance with the wishes in a Will and the law. To obtain a Grant of Probate, details of the assets and liabilities of the Estate need to be ascertained and reported to HM Revenue & Customs (even if there is no Inheritance Tax to pay). The Executor will need to complete a document giving details of the deceased and the estate and promising to deal with the Estate in accordance with the terms of the Will or as governed by the laws of Intestacy. Intestacy means where someone has died without a Will. In this case a Grant of Letters of Administration must be applied for.

First things first

Following a death, there is no immediate urgency to apply for a Grant of Probate but we would suggest that you:

1. Find out if there is a Will because it may include information on funeral arrangements. It is unusual nowadays to have a formal reading of the Will.
2. Make sure the Estate is secure i.e. the house is locked up, inform the insurance company of the death and that the property is unoccupied (if appropriate) and ensure that any valuables are stored securely, for

example at a bank. The insurance company may impose certain conditions in order to continue to insure the house if it is unoccupied.

3. You may also wish to contact the relevant agencies to see if you are entitled to any benefits as a result of the bereavement.

4. If you have any concerns, Farnfields will be able to reassure you of the steps that need to be taken and any timescales which need to be met.

Who pays for the funeral?

Generally funeral expenses will come from the deceased's assets. Some people pay for their funeral expenses before they die and this will usually be detailed in their Will.

How do I know if there is a Will?

If you are a named Executor in a Will you will normally have been asked when the Will was written. If it is not obvious, speak to close family and friends, check through paperwork for example bank statements may show a regular payment being made for storage of a Will or check if the Will is held at Farnfields, we can guide you in terms of what to look out for. There are national registers where Wills are lodged, we can provide you with further information.

What is the Executor's role?

The Executor will be named in the Will. They can be anyone from a relative or a close friend to a solicitor. Their job is to organise everything which needs to be carried out in accordance with the wishes in the Will. They may also be referred to as 'Personal Representatives' or 'PRs'.

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The Executor may need to obtain a Grant of Probate to deal with the estate dependent upon the value and type of assets within the Estate.

For smaller estates it can be relatively straight forward and, for small sums banks, building societies and other institutions may pay out the money in return for a signature on a document confirming that the person receiving it is entitled to the money.

What happens if there is no Will?

If there is no Will (known as dying Intestate) the process can be more complicated. The Estate will be distributed amongst the deceased relatives according to Intestacy rules.

The Estate will be dealt with by an Administrator – very similar to an Executor - and usually this is a relative entitled under the Intestacy rules. If there is more than one person who has an equal right to do this Farnfields will be able to advise on the set order of priority.

How long does it take to wind up an estate?

It all depends on the complexities of the estate. These are just some examples of what may delay the winding up of an estate;

- Having to search for details of the assets and liabilities of the estate and any gifts made by the deceased within 7 years preceding the date of death.
- Tracing family members and beneficiaries.
- Dealing with assets abroad.
- Settling tax liabilities.
- Selling assets.
- Dealing with disputes.



Who pays for any legal fees?

The Personal Representative is ultimately responsible but they will collect the Estate assets (money and property) and pay for funeral expenses, administration costs (including legal fees), debts and any taxes from the Estate. It is important to note that, if an Estate is subject to Inheritance Tax a Grant of Probate cannot be issued until at least some of the Inheritance Tax has been paid.

Are there time limits for administering an estate?

Yes, for example interest on Inheritance Tax is charged from 6 months following the end of the month in which the death occurred. We can advise you on the time limits and any associated paperwork that needs to be filed.

Excellence

Farnfields is Lexcel accredited – a Law Society quality mark for excellence. Many of our lawyers are members of STEP (a worldwide professional association for those advising families across generations, promoting best practice and professional integrity) and Solicitors for the Elderly (an independent, national organisation of lawyers who provide specialist legal advice for older and vulnerable people, their families and carers).

Our team is here to help you. We appreciate that there are a lot of questions and concerns you may have following a bereavement and we are pleased to offer you a free initial interview at no obligation. If you do decide to instruct us, we can do as much or as little work on your behalf as you would like and talk you through the Probate process.



Our friendly lawyers will put you at ease and explain everything clearly using plain English.

For confidential, expert advice please email us at info@farnfields.com or contact one of the following offices:

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