

*Community  
Legal Service*



# Wills and probate

Dealing with someone's affairs when they die

CLS information  
leaflet number

# 10

**Consumers'**  
Association

When a person dies, someone has to deal with their affairs, and decide what will happen to the things they owned.

This leaflet explains what the law says about how this should happen.

- Why should I make a will? 3
- What makes a valid will? 3
- What is probate? 4
- Will I have to pay inheritance tax? 5
- Who takes charge if there is no will? 5
- Who gets the estate if there is no will? 6
- What can I do if I think there is something wrong with the will? 8
- What can I do if I think the will is unfair? 8
- What if there isn't enough money to pay for the funeral? 9
- What if there isn't enough money to pay the person's debts? 9
- Terms used in wills and probate matters 10

The leaflets in this series give you an outline of your legal rights, but they are not a complete guide to the law. If you have a problem, you will need to get more information or personal advice to work out the best way to solve it. See 'Further help' on page 11 for sources of advice.

## Why should I make a will?

When you make a will, you can say how your funeral should be dealt with, and what will happen to your possessions and assets when you die. If you die without making a will (called 'dying intestate') it can be complicated working out who will get what.

The Administration of Estates Act 1925 sets out who can apply to deal with your affairs (called 'administer the estate') and how your belongings are to be shared. But there may be people who have equal rights (for example, the adult children of someone who has died). The usual rule is 'first-come, first-served'.

Dealing with someone's affairs when they die is often distressing. But it can also seem difficult and confusing. This can be made worse by the unusual words and expressions which are used to describe who does what and the procedures which have to be followed when someone dies. See 'Terms used in wills and probate matters' on page 10 for explanations of many of these words.

## What makes a valid will?

For a person's will to be valid, they must be:

- 'mentally capable' (which means they fully understand what they are doing in writing their will); and
- at least 18 years old (though you can make a will if you are younger and on active military service).

The will must:

- have been made without 'undue influence' (for example, under threat from someone);
- be in writing; and
- be signed by the person whose will it is (the 'testator') and two witnesses, who must all be together when the signing is done. The witnesses should not be people who might be named in the will (or the husband or wife of such a person). If you witness a will and you are named as someone who will benefit from it, you will lose your right to that benefit when the person dies.

If a person has died leaving a valid will, the people who are named as the executors can arrange the funeral straight away. They can also take charge of the house and possessions of the person who has died. They must next work out whether they need to apply for probate.

## What is probate?

Probate (or more specifically 'probate of the will') is an official form which gives the executors of the will the right to deal with the assets and property of the dead person. When you show the probate to a bank, for example, they know they are dealing with the person who is allowed to handle the estate, and they will allow you to close the dead person's account.

When you apply for probate, you are promising the Probate Court that you will deal with ('administer') the estate according to law. If you don't do this, you will be in trouble with the Court (as well as the people who benefit from the will). Probate makes sure that the executors carry out their task properly.

There is a similar procedure for when there is no will (or there are no executors named in the will), except that the document is called 'letters of administration'.

If there is a risk that a relative of the person who has died might think that what they have been left in the will isn't fair, they must make a claim on the estate within six months of probate being granted.

If you were the executor, you may have to deal with this claim. If the dead person's estate is large or if they made large gifts before they died, inheritance tax may have to be paid. The executor must report the value of the estate to Inland Revenue if there is (or there could be) inheritance tax to be paid.

They must also report any gifts of more than £3,000 that the person who has died gave away before they died. Normally, this is for up to seven years before they died. But if, for example, they gave away their house on the condition that they were allowed to live in it free of charge until they died, this time limit does not apply.

## Do I always need to get probate?

In some cases, you don't need to apply for probate. This is when:

- the person who has died left very little; or
- everything they owned was held in joint names with someone whose share automatically passes to them (normally a husband or wife).

But you will need to apply for probate if the person who died had:

- any bank or building society accounts with more than £5,000 in them;
- stocks or shares; or
- property or land (unless it is owned as joint tenants and passes automatically to the other person).

You may also have to apply for probate if the person who has died gave away large gifts or sums of money (totalling £242,000 or more) before they died. If that is the case, inheritance tax must be paid on the gifts.

If there is no will, you also need to apply for 'letters of administration', which is similar to probate.

### How do I apply for probate?

The executors may apply in person for probate, or can instruct a solicitor who can apply for them. You apply for probate to:

- the Principal Registry (in London); or
- a district probate registry (these are in other cities and many large towns).

See 'Further help' on page 11 for the number to call to find your nearest probate registry. It also has information packs which it can send you. These have probate application forms and information on how to fill them in. You can also talk to registry staff if you are having difficulty in filling in a probate application.

### Will I have to pay inheritance tax?

Whether you have to pay inheritance tax depends on:

- how much the property and belongings of the dead person were worth when they died; and
- how much any gifts they gave to people in the seven years before they died were worth (or longer if they 'reserved an interest' in them – for example, if they gave away their house on the condition that they were allowed to live there free of charge until they died).

If both of these add up to more than a certain amount, inheritance tax will have to be paid at 40 per cent on the extra. The amount is currently £242,000, but is reviewed every year.

There are many allowances which can reduce this tax. The most important is that, if someone leaves everything to their husband or wife, they

don't have to pay inheritance tax. But inheritance tax is complicated and if you are an executor and the Probate Registry tells you that you may have to pay inheritance tax, get specialist legal advice straight away. The cost of legal advice will be paid out of the estate.

### Who takes charge if there is no will?

If you (or someone else) believes that someone who has died has left a will, but no one can find it, you can take steps to find out if they made one by:

- phoning or writing to solicitors and banks which the person might have used;
- placing advertisements in newspapers and legal journals;
- searching the belongings of the person who has died for any evidence that they made a will (for example, a letter from a solicitor); and
- applying to the Principal Registry to see if the person who died left their will there.

If there is no will, the person's estate will be shared out under the 'rules of intestacy'.

These rules set out:

- who deals with the estate; and
- who benefits from it.

The person who will deal with the estate is chosen in a set order, according to who exists. They are:

- 1. The husband or wife of the person who has died (but not a partner they were not married to).
- 2. Their children or their descendants (for example, grandchildren, if they are over 18).
- 3. Their parents.
- 4. Their brothers or sisters with the same mother and father.
- 5. Their nieces and nephews.
- 6. Their half brothers or half sisters (who had either the same mother or the same father).
- 7. Their grandparents.
- 8. Their uncles and aunts 'of the whole blood' (this means brothers and sisters of their parents, as long as they had the same mother and father themselves).
- 9. Their uncles and aunts 'of the half blood' (this means brothers and sisters of their parents who had only the same mother or father).
- 10. The Crown (the state) if there are no relatives.

'Letters of administration' serves the same purpose as probate if there is no will. You apply for letters of administration in the same way you would apply for probate. As with probate, you may not have to apply for letters of administration if the person's estate was not worth very much.

If an administrator deals with all the matters personally (rather than using a solicitor to do

this), they will be personally liable if they don't follow the 'rules of entitlement' (the rules governing who gets what) correctly.

If several people have an equal right to deal with the estate (for example, brothers and sisters), letters of administration will normally be given to the first of these people to apply.

However, there can be a problem when, for example, the dead person has several brothers or sisters who all want to be in charge of the funeral or administration. If they cannot come to an agreement about this themselves, they would have to apply to the Probate Court, which will decide who will be responsible. This process is complicated and you would need help from a solicitor if you were in this position.

Remember, too, that this process costs money. The costs may be taken out of the estate, if the court agrees to this. But otherwise, you risk being left with a bill.

### Who gets the estate if there is no will?

The Administration of Estates Act 1925 sets out who gets what in every situation, but, as an example, some of the more common divisions are set out below.

#### **If there is a husband or wife, but no other relatives**

The husband or wife gets everything (but an unmarried partner gets nothing).

**If there is a husband or wife and children**

The husband or wife gets:

- the 'personal chattels' (see 'Terms used in wills and probate matters' on page 10);
- the first £125,000; and
- a life interest in half of what is left (for example, the income or interest if the money is invested). The capital (the original amount) passes to their children when the surviving husband or wife dies.

The children get shared between them:

- half what is left straight away, if they are 18 or over; and
- the other half when the surviving parent dies.

Stepchildren get nothing (unless they are named in a will). If one of the children has already died, leaving children of their own, their share will pass to those children (that is, the grandchildren of the person whose will is being dealt with).

**If there is a husband or wife and relatives (but no children)**

The husband or wife gets:

- the 'personal chattels' (see 'Terms used in wills and probate matters' on page 10);
- up to £200,000; and
- half what is left.

The parents, brothers and sisters of the dead person or their descendants share the other half of what is left.

**If there are children, but no living husband or wife**

The children share everything. If one of the children has already died, leaving grandchildren they will share what their parent would have inherited if they'd been alive.

**If there is no husband or wife or children**

Everything will pass to the next available group of relatives, in the same order as that for applying for letters of administration. This means:

- 1. The parents of the person who has died.
- 2. Brothers or sisters who have the same mother and father.
- 3. Half brothers or half sisters (who had either the same mother or the same father).
- 4. Nieces and nephews.
- 5. Grandparents.
- 6. Uncles and aunts 'of the whole blood' (this means brothers and sisters of their parents, as long as they had the same mother and father themselves).
- 7. Uncles and aunts 'of the half blood' (this means brothers and sisters of their parents who had only the same mother or father).
- 8. The Crown (the state).

One common area of misunderstanding is what happens when a person dies without a will, leaving children or brothers and sisters, but where one of these children or brothers or sisters has already died, leaving children or grandchildren of their own. In this situation, those children or grandchildren will get the share that their parent would have, had they been alive.

## What can I do if I think there is something wrong with the will?

The most common reason for a will not being valid is when the person whose will it is (the testator) has not had their signature witnessed or the witnesses were not together when the will was signed. And if one of the witnesses is a beneficiary to the will, they lose the right to what they would have been given (though the will is still valid).

You can lodge a 'caveat' at a probate registry to stop probate or letters of administration being granted if:

- you think there is something wrong with the will; or
- someone is applying for letters of administration when they don't have the right to.

However, you will need specialist legal advice if you are in this position.

It is difficult proving the will is not valid because:

- the person was not mentally capable when they made the will; or
- they made the will under undue influence.

You would normally need medical evidence to show they were not mentally capable. You would need specialist legal help to do this.

If you get married, your will is automatically made not valid, unless you make it 'in consideration of marriage' (that is, if you mention your forthcoming marriage in the will). If you get divorced, all that happens is that anything that you specifically mention as going to your ex-husband or ex-wife is ignored.

## What can I do if I think the will is unfair?

If you are not happy because of what you have been left by someone who has died (or more correctly, where you haven't been left with 'reasonable financial provision') you may be able to make a claim under the Inheritance (Provision for Family and Dependents) Act 1975. But you can do this only if you are:

- the husband or wife of the person who has died;
- the former husband or wife of the person who has died, if you have not remarried or given up your claim when you got divorced;
- a partner who lived with the person who has died for at least two years immediately before they died;
- a child of the person who has died;
- a person who was treated as a child of the family by the person who has died when they were married (normally, any stepchildren); or
- someone who was being totally or partly maintained (supported financially) by the person who has died.

If you think you may be entitled to claim against the estate because you fall into one of these categories, you should get legal advice. Claiming against an estate is complicated, and there are time limits and other conditions you need to know about. You must lodge your application within six months of probate or letters of administration being granted.

## What if there isn't enough money to pay for the funeral?

If you ask a funeral director to conduct the funeral, you have made a contract agreeing to pay for the funeral. So the executor or administrator should do this, and make sure that there is enough money in the estate to pay for the funeral. Otherwise, you should be willing to pay for any of the bill that won't be covered by the estate.

The person who takes responsibility for arranging the funeral has to be claiming the appropriate means-tested benefit in order to be eligible for a Funeral Payment grant from the Social Fund of the Benefits Agency. For more information about this situation, contact the Department of Social Security.

## What if there isn't enough money to pay the person's debts?

When someone dies, their debts don't die with them. They have to be paid out of the person's estate. If there is not enough money to pay for all the debts, they must be paid in a particular order. This is:

- 1. the funeral expenses and 'testamentary' expenses (those to do with dealing with the will);
- 2. the Inland Revenue;
- 3. Customs and Excise;
- 4. Social Security; and
- 5. unpaid pension contributions or wages.

This can be done rather like a bankruptcy or by the personal representatives.

If all the debts can be paid, but there isn't enough money left to pay everything set out in the will, the legacies (those where a specific amount is mentioned) will be paid first, and other people mentioned will get what is left over.

If there is not enough to pay all the legacies, the people entitled to the legacies will get a proportion of what they have been left, depending on how much money is available. The other people mentioned in the will will get nothing.

## Terms used in wills and probate matters

**Administrator** The person who deals with (administers) the estate of a person who has died intestate (without a will).

**Bequest** A gift of a particular object (for example, an item of jewellery).

**Child** In will or intestacy issues, a child of the person who has died includes adopted and illegitimate children, but not stepchildren (unless they are specifically mentioned).

**Common-law spouse** This term has no legal force, although a partner who lived with the person who died may be able to claim a share of the estate.

**Devise** A gift of a house or land.

**Estate** All the assets and property of the person who has died, including all houses, cars, investments, money and belongings.

**Executor** The person appointed in the will to deal with the estate of a person who has died.

**Inheritance tax** The tax which may have to be paid when the total estate of a person who has died is more than a certain amount (currently £242,000).

**Intestate** A person who dies without having made a will.

**Issue** All the descendants of a person (children, grandchildren, great grandchildren and so on).

**Legacy** A gift of money (usually a specific amount).

**Letters of administration** The document issued to the administrators by the Probate Registry to authorise them to deal with the estate.

**Minor** A person under 18.

**Next of kin** The person entitled to the estate when a person dies intestate (without a will).

**Personal chattels** Personal belongings, including jewellery, furniture, wine, pictures, books and cars (but not money, investments, property or business assets).

**Personal Estate (Personalty)** All the investments and belongings of a person apart from land and buildings.

**Personal representative** A general term for both Administrators and Executors.

**Probate of the will** The document issued to executors by the probate registry to authorise them to deal with the estate.

**Proving the will** Making the application for probate to the probate registry.

**Probate registry** A court within the Family Division of the High Court which deals with Probate matters. The Principal Registry is in London and there are district registries in other cities and some large towns.

**Real estate (realty)** Land and buildings owned by a person.

**Residue** What is left to share out after all the debts and specific bequests and legacies have been paid.

**Specific bequests** Particular items gifted by the will. They may be called 'specific legacies'.

**Testator** A person who makes a will.

**Will** The document in which you say what will happen to your possessions on your death.

## Further help

A Citizens Advice Bureau can offer advice and help with a range of problems. Your local Citizens Advice Bureau is listed in the phone book. Information is also available on its website at: [www.nacab.org.uk/cabdir.ihml](http://www.nacab.org.uk/cabdir.ihml)

### Probate registries

There are probate registries in cities and larger towns. The central enquiry line will tell you where your nearest registry is, and can also answer questions and send you information about applying for probate or letters of administration.  
phone: 0870 241 0109

### Benefits Agency

For more information about getting financial help if the person who died did not have enough money to pay for their funeral, contact your local Benefits Agency office. It is listed in the phone book under 'Benefits Agency'. Benefits Agency information is also available on the Department of Social Security website at: [www.dss.gov.uk](http://www.dss.gov.uk)

## The Community Legal Service

The Community Legal Service (CLS) is run by the Legal Services Commission, a public organisation which has replaced the Legal Aid Board.

A key aim of the CLS is to make sure that people find the right legal help easily and can be confident of the service they get. All legal services providers in the CLS must meet quality standards set by the Legal Services Commission before they can display the CLS logo (shown on the front cover of this leaflet). The CLS also includes a scheme for funding civil cases (formerly legal aid).

There are CLS Information Points in local libraries and many other public places, which have information leaflets and the CLS Directory of Services. The Directory lists lawyers and advice centres which have met the CLS quality standards, and many others.

You can also phone 0845 608 1122  
(minicom: 0845 609 6677)

to find out about advice centres and lawyers in your area, or visit the CLS website at: [www.justask.org.uk](http://www.justask.org.uk).

### About this leaflet

This leaflet is one of a series produced by Consumers' Association for the Legal Services Commission (LSC). Consumers' Association (CA) is the largest independent, not-for-profit consumer organisation in Europe. CA is committed to empowering consumers to make informed decisions about goods and services. For more information, visit CA's website at: [www.which.net](http://www.which.net)

To find out more about the LSC, visit the [www.legalservices.gov.uk](http://www.legalservices.gov.uk) website, or contact your regional LSC office. Its address is in the phone book. There are also leaflets about LSC funding on the website or from the LSC leaflet line on 0845 3000 343.

This leaflet was written by  
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This leaflet is one of a series produced in 2001.  
The leaflets are also available online, at  
[www.legalservices.gov.uk](http://www.legalservices.gov.uk)

- 1 Dealing with debt
- 2 Employment
- 3 Divorce and separation
- 4 Renting and letting
- 5 Buying and selling property
- 6 Losing your home
- 7 The Human Rights Act
- 8 Claiming asylum
- 9 Welfare benefits
- 10 Wills and Probate**
- 11 Dealing with the police
- 12 No-win, no-fee actions
- 13 Problems with goods and services
- 14 Medical accidents
- 15 Equal opportunities
- 16 Racial discrimination
- 17 Personal injury
- 18 Rights for people with disabilities
- 19 Community care
- 20 Education
- 21 Immigration and nationality
- 22 Mental health
- 23 Alternatives to court
- 24 Family mediation

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