



Your Guide to Probate

How can we help you?



Your guide to probate

When a person dies, someone has to deal with their affairs. This is called 'administering the estate'.

If there is a Will

If the person who has died leaves a Will, it usually names one or more people to act as the executors of the Will - that is, to administer their estate. If you are named as an executor of a Will you may need to apply for a grant of probate. A grant of probate is an official document, which the executors may need in order to administer the estate. It is issued by a section of the court known as the probate registry. Humphries Kirk can advise on, and help you apply for, a grant of probate.

If there is no Will

If there is no Will (known as dying intestate) the process is more complicated. 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.

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. Humphries Kirk will be able to provide you with information on the set order of priority.

Explanation of some legal terms you may come across when administering an estate

■ Personal Representatives (PRs)

This means executors or administrators. If there is more than one Personal Representative they must work together to decide matters between them. Disagreements between Personal Representatives can cause expensive delays.

■ Grants of representation

This includes grants of probate (when there is a Will) and grants of letters of administration (when there is no Will). Often people just refer to probate even if there is no Will.

When a grant of representation is needed

A grant of representation is not always needed, for example, if the person who died:

- has left less than £5,000 in total; or
- owned everything jointly with someone else.

However, some financial organisations may require a grant before giving you access even to a small amount of money.

Usually, a grant of representation will be needed when the person who has died left:

- more than £5,000;
- stocks or shares;
- a house or land; or
- certain insurance policies.

How to get a grant

You can ask Humphries Kirk to apply for a grant of representation on your behalf.

Responsibilities of Personal Representatives

Personal Representatives (PRs) are responsible for making sure that the estate is administered correctly. If there is a Will, the PR must make sure that the wishes of the person who has died, as set out in their Will, are followed. If there is no Will, you must follow the rules of intestacy (set out in the Administration of Estates Act 1925).

If a PR acts without obtaining legal assistance they may end up being held personally liable for losses incurred by the estate. For example, if the estate monies are distributed to the beneficiaries and a debt is found months later or an individual makes a claim against the estate, the PR may have to pay the debt or the Claimant.

For more information please refer to our '20 Probate Pitfalls' guide.

Inheritance Tax

PRs are also responsible for finding out if Inheritance Tax is due as a result of a person's death. If it is, the PR has to make sure that it is paid.

Whether Inheritance Tax needs to be paid can depend on:

- how much the property and belongings of the deceased were worth when they died;
- the value of any gifts that they gave before they died, and who they gave these gifts to;
- the value of certain trusts from which the deceased benefited; or
- which people benefit under the Will or under the rules of intestacy (the beneficiaries).

You can find out more by looking at the HM Revenue & Customs website at www.hmrc.gov.uk or by contacting your nearest Humphries Kirk office (details on the reverse of this leaflet) and speaking to one of our probate experts.

Likely timescales

Dealing with the affairs of someone who has died can take a long time. It is not unusual for it to take up to a year, perhaps longer if things are not straightforward. Many organisations may be involved in the process, for example, banks, building societies, insurance companies and HM Revenue & Customs.

The estate cannot be dealt with until all claims to it have been received. Individuals have six months from the date when probate was granted to make claims against the estate.

Other things that may affect the time taken are:

- whether the financial affairs of the person who died were in order;
- what the person who died owned and where it is;
- whether the person who died had an interest in a business or a farm;
- what the Will or the rules of intestacy say;
- whether there are any legal disputes (claims against the estate or claims by the estate);
- whether Inheritance Tax needs to be paid; and
- making sure that all HM Revenue & Customs files are closed and that matters relating to Income Tax, benefits agencies and pensions have been sorted out.

Arguments between family members, beneficiaries or PRs can also delay matters. Any disagreements must be sorted out before the affairs of the person who died can be settled.

Costs

Charges can vary considerably and can depend on what is involved in administering each individual estate. It is often not possible to know immediately what may be involved and how much advice and help is needed, however Humphries Kirk will be able to tell you what the costs are likely to be before carrying out any work by having a meeting to discuss matters.

It's important to remember that the cost of dealing with the estate is usually paid from the estate. However, cost is not the only consideration. It is equally important to work with a solicitor who is approachable and sympathetic, and whose advice you understand and trust.

Humphries Kirk is one of the most successful solicitors in the south and beyond - with seven offices in Dorset and Somerset, consulting rooms in London and a network of trusted lawyers worldwide.

A heritage of helping and protecting

In over 300 years of looking after the interests of families and individuals we have demonstrated that when it comes to expert legal advice, few firms can match the experience and expertise we can offer. When you come to see us, we make sure that you get to talk to someone who really listens to what you have to say - someone who takes the time to get to know you and your individual circumstances.

Only by understanding the complete picture can we give you complete and authoritative legal advice. In the case of probate, we will look after your needs with the dedication, thoroughness and thoughtfulness that the situation demands.



Your guide to probate

Private Clients

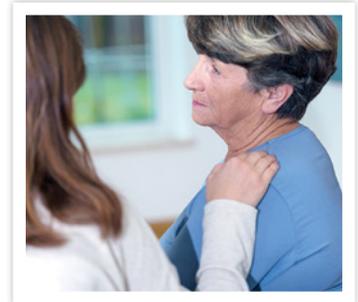
A personal approach to legal advice

Trust is the most important aspect when it comes to legal matters.

We believe it is essential that we take time not only to review your legal issue, but also get to know you. From business to personal affairs, a complete understanding of your circumstances and objectives is the starting point. Once we can see the bigger picture, we can focus on the detail.

Talk to us about:

- Arbitration
- Buying and selling your home
- Care Is Our Concern
- Children
- Cohabitation
- Consumer law
- Contested Will and estate claims
- Debt recovery
- Divorce and financial advice
- Domestic violence
- Inheritance tax advice
- Landlord and tenant
- Lasting Powers of Attorney
- Litigation
- Living Wills
- Personal injury
- Prenuptial agreement
- Tax and succession
- Trusts
- Wills and probate



For more detailed advice on **probate** and how it can affect you and your personal circumstances, **please contact your nearest Humphries Kirk office**

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