

WHAT HAPPENS NEXT

Your guide to the probate
process when a loved one dies.



Moore & Tibbits
Solicitors



a member of
QualitySolicitors



A guide to help you

Losing a loved one is difficult. As someone you were close to or cared for, you'll have a lot to process emotionally. The legal processes that must be followed soon after a person's death aren't entirely accommodating to those who are grieving.

In this guide, we offer information to help make this process as easy as possible. We provide an overview of the probate process, answer frequently asked questions and offer a Clear Price Guarantee if you're looking for trusted support.

Whether you're named as an executor, you'd like guidance on the Rules of Intestacy if there is no Will, you'd like to challenge or defend an inheritance dispute, having the help of one of our experienced and understanding lawyers can help take a big pressure off.



Understanding and professional probate lawyers

We can help with all the legal aspects after someone dies. If you are named as the executor in a Will then you will have a number of legal obligations and responsibilities that must be fulfilled. Dealing with the deceased's paperwork and contacting all the appropriate organisations involved can be difficult and time-consuming.

Our probate lawyers can help share the burden either by providing guidance on only the more complex issues, or offering a full-service that also takes care of the administrative tasks. Our service is tailored to your needs to help make this probate process as easy as possible.



We are local

When it comes to something as personal as dealing with the death of a loved one, it's reassuring to talk to someone face-to-face. That's the nice thing about us being local; we have convenient office locations for you to come in for a tea and to give us the opportunity to understand how we can best support you.

Alternatively, if coming into our office is not convenient for you, we can also take instructions over the phone or via email. Regardless of how you access our services, you can always expect our approachableness, efficient service and high standard of client care.

Please call us for your Free Initial Assessment or visit www.qualitysolicitors.com/moore-tibbits/services/wills-and-probate.



A QualitySolicitors Guide

Disclaimer: this guide is provided for information purposes only. We have done our best to ensure that the information contained in this guide is correct as of 17.10.19. It applies only to England and Wales. However, the guide has no legal force and the information may become inaccurate over time, due to changes in the law. It is not possible to cover every situation or point in this type of guide and some of the information is over-simplified. The information in this guide does not constitute legal advice and we will not be liable to you if you rely on this information. Before you take any action, you should find out how the law applies to you and your particular situation by taking legal advice as soon as possible (to avoid any deadlines that may apply). Please get in touch as we offer a range of affordable services and options.



Estate administration process



Practical arrangements

Trace the last Will, if there is one. An executor, or multiple executors, will be named in the Will as the person legally responsible for administering the estate and ensuring the deceased's final wishes are carried out. Register the death and arrange the funeral.

Note: If a person has died without a Will, it is known as dying 'intestate' and there are strict laws for how their estate should be dealt with. Our probate lawyers can provide tailored guidance.



Value the estate

Contact everyone connected to the estate to ensure all money, property and possessions are traced and then valued. Identify any debts, bills and loans which need to be repaid.



Pay inheritance tax

Complete the inheritance tax return forms and calculate the tax due, using all allowances. The basic tax-free allowance as at October 2019 is £325,000, excluding the 'main residence' allowance that applies to benefactors that are direct descendants. The first tax payment must be made within six months of the date of death.



Appointment by Probate Court

Apply to the Court for a grant that gives you authority to represent the estate. If there is no Will, you'll receive 'letters of administration' rather than a grant of probate.



Collect in assets

Collect in all the investments, money due, possessions and property. All items, including specific bequests, need to be valued. Deal with any legal challenges.



Estate accounts and final distribution

With everything approved, make the final payments to those benefiting from the estate and get closure letters from HMRC.



Executors and administrators have a legal obligation to search for known, unclaimed or 'lost' assets and can face financial liability for failing to do so. Moore & Tibbits offer a comprehensive Financial Asset Search that discharges these duties and risks. **Ask us about our Financial Asset Search for just £199 + VAT.**



Frequently Asked Questions

When a loved one dies, those left behind often naturally feel confused and stressed at a time when they need to grieve. That's why having a helpful guide on what needs to happen next will help. Here are answers to some of the most frequent questions that our clients have asked us.

Who is responsible for arranging and paying for a funeral or cremation?

People named in the deceased's Will as executors (or the deceased's nearest relatives if there's no Will) are responsible for arranging and paying for their funeral. The costs can usually be recouped from the deceased's estate, but it may be necessary to pay out-of-pocket first while the probate process is completed. Depending on the complexity of the estate, this could take anywhere upwards of nine months.

The executors should check to see if the deceased had taken out a private funeral plan, a funeral or life insurance policy that will pay out for funeral costs, or a workplace or personal pension scheme that offers a lump sum payment towards funeral expenses.

Whilst banks may temporarily freeze the deceased's bank account, they may be prepared to release funds to help pay for a funeral.

GOOD TO KNOW:

- › No funds to pay for the funeral? You may be eligible for financial assistance from the Government's Social Fund.

Find out more, visit www.gov.uk/budgeting-help-benefits

What if there's no Will in place?

If a person has died 'intestate' (without a Will), then the rules of intestacy will determine how the estate will be divided, who can inherit and how much. In this case, contact us and we can carefully explain what happens next.

What if there's a Will, but it can't be found?

Wills in England and Wales do not have to be registered, meaning it can be difficult to find a person's Last Will and Testament if you do not know who or which law firm drew it up, or indeed if there are a number of law firms in the area where the deceased lived. If no Will is found, we'll work with you to compile evidence to produce to the Probate Court in an effort to prove what the Will said and that it was signed lawfully. If satisfied with the evidence we produce, the Court will usually allow the terms of the missing Will to stand.

What are an executor's legal duties and responsibilities?

When someone dies, the assets they leave behind are collectively called their 'estate'. Executors are legally responsible for:

- Identifying everything in the estate — for example, cash from bank accounts, insurance policy proceeds and pension payments
- Valuing the assets — specialist valuers may be needed to value some assets, such as the home or shares in a family company
- Calculating any debts or liabilities of the estate — mortgages, loans, credit cards and so on
- Completing inheritance tax forms and dealing with any inheritance tax due
- Applying for a Grant of Probate
- Paying funeral costs (or reimbursing whoever has already paid them)
- Making distributions to beneficiaries in accordance with the terms of the Will. You may need to pay a tracing service to find some beneficiaries
- Drawing up estate accounts for the beneficiaries so they can see that everything has been accounted for
- An executor can also act as a trustee if the Will sets up a trust — for children under 18, for example

Executors have a legal duty to secure the estate for the benefit of the beneficiaries and they are personally liable if it is not dealt with correctly.

What happens with gifts to children?

Where a Will (or intestacy) results in a gift to children who are under 18, a trustee will usually need to be appointed. The trustee will manage and protect the gift on the child's behalf until they reach 18 (or older if a later age is specified in the Will).

GOOD TO KNOW:

➤ [If your role as executor is proving too much for you, please talk to us as we can help share the burden.](#)

How long will it take to administer an estate?

It might be possible to sort out a relatively simple estate with no inheritance tax to pay in a few of months. In more complex cases it might take longer, sometimes a year or more before the whole process has finished.

Going through the deceased's paperwork and contacting all the appropriate organisations involved can be laborious and time-consuming, which is why some people prefer to instruct us to take care of the full process.

However, if you'd like to keep costs down and you have the time to deal with the less complex issues, we're happy to advise on and complete only on the more complex issues such as inheritance tax calculations and completing forms.

Applying for a Grant of Probate

To obtain the legal right for yourself to deal with the estate of someone who has died, you'll have to formally apply to the Probate Registry and obtain what's known as a 'Grant of Probate'. The application fee (as of 26/01/2022) is £273, whether you apply yourself or if a legal adviser makes the application on your behalf and the estate is over £5,000 (there is no fee for estates less than £5,000). Extra copies of the probate grant are available for £1.50 each; it is a good idea to order several copies as a number of institutions will only accept a verified copy as proof.

An important part of the probate process is to assess the size and complexity of the estate you're dealing with. Obtain a copy of the original Will, which will often include specific larger assets and approximate values.

Wherever the person held a current asset or liability, each institution should be sent a certified copy of the death certificate and asked to submit a final statement. Many banks are prepared to release funds to help pay for a funeral straight away, but most assets remain frozen until you have formally been granted probate. Once the certificate has been seen by an institution, and with the permission of the person who has supplied it, that organisation can keep a photocopy of the certificate in their files and return the original certificate.

Where an estate includes a property, get a written valuation by an estate agent or surveyor to help HMRC assess whether inheritance tax (IHT) is likely to be payable.

After assessing the size and composition of the estate, you should be in a position to complete a probate application form, which we can help you to complete and send on your behalf. The application will need to be sent with the original Will, the death certificate, and one of the forms below:

- use an 'IHT 205' if the estate is valued below the IHT threshold (currently £325,000)
- use an 'IHT 400' if the estate is valued above the IHT threshold (also used in Scotland) or £650,000 where an unused nil rate band is available.

Note that HMRC will also require details of gifts made by the deceased in the seven years prior to death, because these might affect the amount of IHT payable.

What happens if the person who died lived abroad, or if they owned property or other possessions in another country?

Foreign rules as to who benefits can be very different from our own. There may also be a separate Will covering those foreign assets.

Where necessary, your lawyer will work with foreign lawyers to protect the property and ensure it is dealt with in accordance with the applicable law.

What if we don't want the executor who was named in the Will?

Occasionally the executor appointed by the Will may be inappropriate or not wish to act. Anyone that has a beneficial interest in or is owed money from the estate can request that an executor renounce their appointment, so long as this is done before the estate is administered.

GOOD TO KNOW:

- If you need one-off advice on a particular issue, try our [Ask the Legal Expert service](#). We offer up to 45 minutes of advice for the low fixed fee of £99 plus VAT.

When is inheritance tax payable?

Generally this tax is payable where the total value of the estate (property, possessions and money) is over the minimum tax-free threshold, which is currently £325,000.

There are exceptions. Gifts made to a husband, wife or civil partner are tax-free, including passing on a home. If a home is left to children (including adopted, foster or step-children) or grandchildren, the tax-free threshold can increase to £500,000 (as of April 2020) if an estate is worth less than £2 million. There are also special rules covering gifts to charity, which can reduce the amount of tax due. Our lawyers can help you work out the correct inheritance tax payable.

Some inheritance tax has to be paid before probate is granted, which may cause cashflow problems. Your lawyer will be able to discuss options which may include arranging a bank loan, or advancing money from the estate to pay for this.

What if the Will or intestacy rules are unfair?

It's possible for certain people to challenge the amount they are due to receive under Will, or under the intestacy rules if there is no Will. Such challenges are often made on the basis that it is insufficient to meet their needs and doesn't reflect the obligations and responsibilities the person who died had towards them.

Whether you are the person who wants to challenge what will be received or whether you are an executor or administrator (with legal responsibility for sorting out the estate) facing a challenge, we recommend you take legal advice.

If you are making a claim for a provision in the Will, as per the Inheritance (Provision for Family & Dependents) Act 1975, there is a strict six-month time limit that applies from the date the Grant of Probate was issued.

Such disputes can often be resolved by agreement, but if not will need to be considered by the Court. Either way we recommend you take legal advice swiftly to ensure that your position is protected.

Additionally, a Will can be challenged on the basis that the person who made the Will did not have the necessary mental capacity to understand what they were doing when they made their Will. Again, we'd recommend you take specialist legal advice to assess whether there is likely to be sufficient evidence to show that the Will should not be followed.

If you are thinking of making a challenge – or needing to defend against one – the best starting point is to contact Moore & Tibbits for a Free Initial Assessment.

GOOD TO KNOW:

- Different time limits apply to different causes of actions. It is therefore essential to seek legal advice as soon as possible to ensure you are not too late to make a claim.



Who are Moore & Tibbits?

Your local legal experts

Moore & Tibbits is a well respected law firm, celebrating 185 years of legal service in the centre of Warwick.

Our reputation is based on a reliable, flexible, personal, first class service combined with the use of modern technology which is why our clients come back to us repeatedly for all their legal needs.

We maintain rigorous professional and ethical standards and this is reflected in the Law Society's practice management accreditation (LEXCEL) which we have been awarded as well as membership of the Law Society's Conveyancing Quality Scheme.

The first time you talk to one of our legal experts is free – so you can talk to us and not worry about a big bill the moment we say "hello". When we work for you, we promise "no hidden costs". You will know exactly what to budget. You can always talk directly with your lawyer. Communication is important. That's why we never use legal jargon when simple words will do. And if you have a question, call us, it is never an inconvenience.

Whatever your legal query is, our friendly, expert lawyers are here to help.



Next steps

Make us your first call to help you deal with a loved one's estate. To find out more about how we can help, call us for a Free Initial Assessment on **01926 491181**.

Moore & Tibbits Solicitors



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Changing the way you see lawyers.

 **01926 491181**  www.qualitysolicitors.com/moore-tibbits

34 High Street, Warwick, Warwickshire, CV34 4BE

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