

Probate and the Practical Aspects of Death

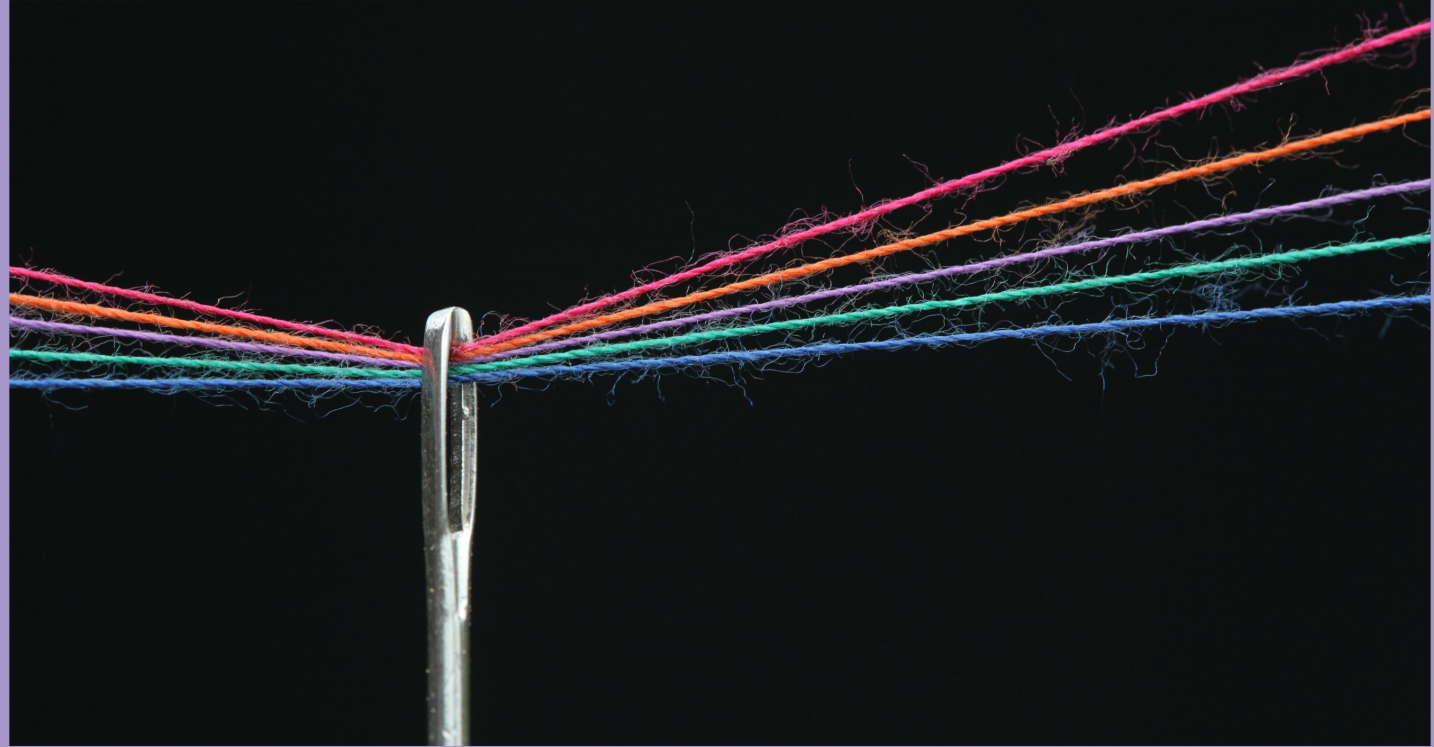


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This guide is designed to help you understand the steps that must be taken after someone has died, further explains what probate is and what the benefits are of using a qualified probate expert.

Navigating the practical matters surrounding the death of a loved one can prove a challenging task, especially if you don't know where to begin. The taboo nature of the subject means that the logistics involved after death are not often discussed. Considering that death is a given, it is important that we move beyond the uncomfortable nature of the topic and educate ourselves to the responsibilities and expectations when handling end of life affairs.



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1. What is Probate?

Probate is the legal right to deal with someone's property, money and possessions upon their death. It is applied for through the court and must be done by the personal representative of the person who has died.

2. How does the process begin?

In order to begin the probate process the personal representative for the deceased must apply to the high court for a *Grant of Representation*. This grant is what gives the representative(s) the authority to deal with the deceased's estate and establishes the validity of the will, or confirms that the deceased died without making a will. The person or persons named on the *Grant of Representation* are legally responsible, and ultimately liable, for the administration of the estate.

3. Personal Representatives

There are two types of personal representative:

- An 'executor'. Appointed in the will. Often a family member, close friend or legal representative chosen by the deceased as part of their end of life planning.
- An 'administrator'. When there is no executor named in the will, no one is willing to act as an executor, or the deceased had no will.

4. When is probate needed?

Not all estates require probate and not all possessions are subject to the process. If you're dealing with anything other than a very small or simple estate, it's likely that you will need to apply for probate. This is especially likely to be the case if the person who has died was single, or if their spouse or civil partner died before them.

You will need to apply for probate to:

- Sell a property on behalf of the estate
- Distribute items as laid out in the will
- Manage items of investments and property that requires a legal proof of title
- You need to show a Grant of Probate to an organisation or bank which holds accounts of the deceased for them to release any funds.

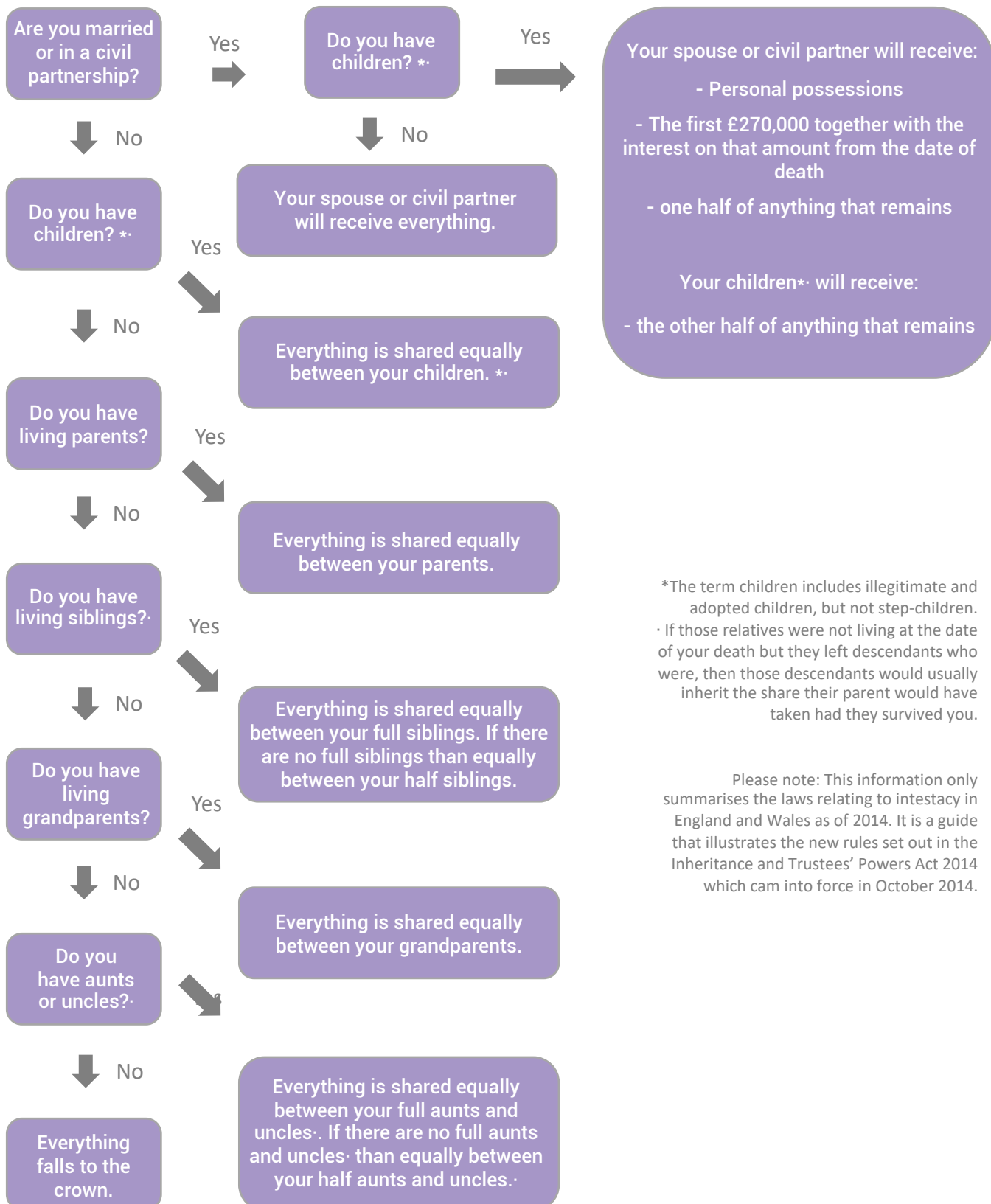
5. When will probate not be needed?

Probate will not be necessary when:

- Any property and accounts of the deceased were held jointly with someone who is still living, and inheritance tax is not applicable.
- The estate is worth less than £5,000
- There is no Grant of Probate required to release funds from any banks or organisation that have accounts of the deceased.
- The estate consists of cash and personal property which is not specifically allocated in the will

6. Rules of Intestacy

If a person dies without a will in place they have died 'intestate.' The role of the personal representative and the order in which the estate is distributed falls subject to these rules.



*The term children includes illegitimate and adopted children, but not step-children.
· If those relatives were not living at the date of your death but they left descendants who were, then those descendants would usually inherit the share their parent would have taken had they survived you.

Please note: This information only summarises the laws relating to intestacy in England and Wales as of 2014. It is a guide that illustrates the new rules set out in the Inheritance and Trustees' Powers Act 2014 which came into force in October 2014.

7. What happens before Probate begins?

Register the death

First, you must register the death. This should be done at the registrar's office in the area where the death occurred. This is normally done within five days of passing, unless a coroner's report is required. If a coroner's report is not required, you must take a medical certificate showing the cause of death and signed by a doctor with you.

If available take along any supporting evidence such as birth certificate, driving license, passport, marriage certificate, proof of address and national insurance number as it will assist the registrar in identifying the deceased.

It is recommended that you purchase extra copies of the death certificate when you register the death. They are often required during the probate process, and it can be complicated and time consuming to get them after this initial appointment at the registrar's office.

Inform all government organisations of the death

There is a useful tool to help you with this on the gov.uk website which allows you to report the death to organisations such as DWP, DVLA and the passport office.

'Tell Us Once' Service - <https://www.gov.uk/after-a-death/organisations-you-need-to-contact-and-tell-us-once>

Locate the will

If there is a will and the will names an executor, that person can apply for probate.

If there is no will, the deceased has died 'intestate'. This means the deceased's estate is shared out according to the rules of intestacy, which is predetermined by government law. The most 'entitled' person can apply to become the administrator of the estate and apply for probate. This will be the closest living relative, normally the wife or civil partner, followed by any children 18 or over. (see section 8)

Assets and liabilities

Identify all the deceased's assets, which includes property, investments and possessions. This value must be at the time of the death.

Also, their liabilities are the debts ranging from loans to utility bills. This would then determine the value of the estate. You must know the value of the estate in order to begin the probate process.

You can use the online checker tool to assist you: <https://www.gov.uk/valuing-estate-of-someone-who-died>

Funeral arrangements

Though the family will usually make the funeral arrangements, this may be something that the personal representative or their agents will need to do. In law, the executor has the right and duty to dispose of the remains of the dead and if there is no family to make these arrangements, it may very well fall to them.

Dependents and Guardianship

The deceased may have dependents which they maintain or take care of. The personal representative will need to ascertain what arrangements have been put in place to care for them.

Powers of attorney and deputyships

If the deceased had appointed an attorney under a *power of attorney*, or the Courts had appointed a Deputy, they should be notified of the persons passing as their powers cease on death.

Notices to creditors and other claimants

Creditors have six years to bring an action for unpaid debts, but a personal representative will not want to wait that long before distributing the estate. Any liability will accrue even if the personal representative was unaware of the unpaid debt or liability at the date of distribution of the estate.

To learn more about this process as well as how you as personal representative may protect yourself from personal liability to beneficiaries and creditors where they have distributed the estate and there are unpaid debts and liabilities visit :

<https://www.legislation.gov.uk/ukpga/Geo5/15-16/19/contents>

Security of property

If the deceased has left a property that will now remain empty you need to ensure that this is kept safe. Some of the steps you might need to take are:

- Register of all items held in the property
- Remove and storage of all valuable items. Keep a register.
- Notify insurers that the property is empty
- You need to show a Grant of Probate to an organisation or bank which holds accounts of the deceased for them to release any funds.
- Turn off the heating system and drain the pipes
- Collect any keys, change locks and/or the code on the key safe

9. When there is no personal representative

When a will does not name an executor(s), no one steps forward for the task, or the named executor cannot, does not want to or dies* during the process the task of managing a person's estate is subject to the below hierarchy:

- The executor
- Any residuary legatee or devisee holding in trust for another person
- Any residuary legatee or devisee [including one for life], or if there is undisposed of property those entitled under the intestacy rules (see next page)
- The personal representative of any residuary legatee or devisee [absolutely entitled] or entitled under the intestacy rules
- Any other legatee or devisee or any creditor of the deceased. (where those with a life interest take precedence over those with a contingent interest)
- The personal representatives of those in category 5 above. (excluding those with a life interest or one holding assets in trust)

** Note: if the executor dies during the probate process and they have a named executor in their will, that person will become executor of the original estate and a new grant is not needed.*

10. Preparing your estate

One of the best things you can do for your loved ones is taking the time and effort required to have your estate prepared for when the inevitable happens. Having a valid and accurate Will is certainly part of this process however there are a few additional steps you can take in order to make this difficult time a little bit easier for your loved ones:

- 1 – Make sure the person you have named as your executor is aware of this and comfortable with all that the role entails.
- 2 – Let your executor and/or other close family or friends know where they can find a copy of your Will. If you choose Bigmore Wills & Probate for your will writing needs we will keep a copy on file.
- 3 – Be sure your executor and/or other close family or friends have a list of any and all monthly bills, subscriptions, bank accounts, investment portfolios, safety deposit boxes and any other assets which are part of your estate. Whether they are subject to probate or not. This can also be kept with your Will at Bigmore Wills & Probate.
- 4 – Keep a list of your account passwords, access codes, reminder questions and answers, etc, and be sure your executor and/or other close family or friends knows where this list is kept. This can also be kept with your Will at Bigmore Wills & Probate.

Having a Will is the best way to keep the process of death as simple as possible for your family. If probate is required, it's possible to deal with the application yourself, providing you feel confident in completing all the required tasks and paperwork. DIY probate can be time consuming and at times, the work involved can be complex. It also holds a level of risk because you can be held personally accountable if there are any mistakes.

For this reason many people prefer to choose a probate expert such as Bigmore Wills and Probate to carry out the application for them. Our service is market leading, both in terms of quality of care and price. We know how difficult the death of a loved one can be and we are there to support you how ever we can.

Should you have any questions on either a Will or the probate process please do not hesitate to reach out to our team. We know that the most important aspect of our business is You, which is why we always put the client and their needs first.



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