

Estates and Probate: An introduction

When someone dies, it can be a deeply distressing time for their close friends and family. Unfortunately, in this difficult period, it also becomes necessary to sort out the property and affairs of the person who has passed away. This can be an emotional and challenging process, requiring a lot of work, but it is important to remember that there is help available.

This help guide aims to introduce you to some of the concepts you will come across when dealing with your loved one's estate and conducting it through probate.

If you would like to read a more general guide to help you when someone has died, please download our free eBook: ['What to do when someone dies: A guide to your legal responsibilities'](#).

What is an estate?

A person's estate can be thought of as all the property, money, land, shares, possessions, intellectual property, and other assets which they own at the time of their death.

An estate will also include the debts which the person who has died owed to other people and may include rights to recover debts which others owed to them.

However, in some cases, the question of what is and isn't included in a person's estate may be complicated slightly. A person may apparently 'own' certain things which do not form a part of their estate. For example, an asset over which they have been granted a life interest through a life interest trust would not be part of their estate. Our separate help guides on [life interest trusts](#) provide more information on why this is.

What is probate?

The legal process by which an estate is handled after someone has died is referred to as probate.

Handling the estate property, and the estate's financial affairs, entails taking control of the assets, gathering them together, valuing them, settling debts owed by the estate, paying any inheritance tax which may be due, and then distributing the estate according to the deceased person's Will or the intestacy rules.

Legal authority is needed to handle the estate assets, and this often means applying for a Grant of Probate or a Grant of Letters of Administration. More information on these is provided below.

Most estates will need to go through this formal probate procedure. Only in rare cases, such as where the value of the estate is very low, will probate not be required. Even then, some financial institutions may insist upon you obtaining the relevant grant from those mentioned above to deal with your loved one's accounts.

What happens when there is a Will?

If the person who died left a Will, it will appoint one or more Executors. They will be responsible for managing the estate.

In most cases, the Executors will have to apply for a Grant of Probate to give them the authority to do deal with everything. In order to make the application however, the Executors will have to submit various details about the estate – such as the value of its assets, its debts and other liabilities, and the amount of inheritance tax to be paid.

Once a Grant of Probate has been issued, the Executors can start making arrangements to distribute the estate according to the terms of the Will. Additionally, the Will may set up trusts which need to be administered correctly.

If you have been appointed as an Executor, this might all sound quite daunting. However, Roche Legal can help you if you need advice or guidance about any of your duties. We can offer as much or as little assistance as you need to make sure that the estate and any trusts are administered according to the law.

What happens when there is no valid Will?

If the person who died did not leave a Will, or they did make a Will but it was invalid, there will be no Executors to handle the estate. Instead, one or more people will have to apply to be appointed as an 'Administrators' for the estate.

Administrators are unable to apply for a Grant of Probate so, to obtain their legal authority, it may be necessary for them to apply for a Grant of Letters of Administration.

Administrators will have largely the same role and duties as Executors, however, there will be no Will setting out who is entitled to receive the estate assets. In this situation, the Administrators will distribute the estate according to the Intestacy Rules.

More details on the Intestacy Rules, as well as a useful flowchart showing who inherits when someone dies without a Will, can be found in [our Intestacy Rules Guide](#).

Getting professional guidance

If you feel you would like professional guidance in dealing with a loved one's estate, or you need advice on your own situation, there are many ways in which Roche Legal can help you.

Whether you are acting as an Executor or an Administrator, we can assist you with the entire estate administration process. We can also advise you about any inheritance tax which may be due.

Perhaps you also need help managing disputes or disagreements in the family? If so, we act as a neutral party, taking the stress out of the situation.

If you are considering applying to be an Administrator but you are unsure about taking on the role, we can obtain the Grant of Letters of Administration on your behalf.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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