



**A F F I N I T Y**  
L e g a l   G r o u p

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**[www.affinitywills.co.uk](http://www.affinitywills.co.uk)**

We hope you find these Guidance Notes helpful.

Please note that this information has been compiled as a general guide based on current information available and therefore may be subject to change. We cannot guarantee the accuracy but hope the general overview will give you some understanding of the process of dealing with Wills & Probate.

We would stress if you are in doubt in respect of any part or parts of the process then you should seek professional legal advice.

Your consultant at Affinity Wills Ltd. would be pleased to put you in touch with suitably qualified legal practitioners.

## Guidance Notes for Executors

The notes below are designed to give you an overview of the responsibilities and tasks that are involved in being an Executor. Do not worry if you feel that help is required as Affinity Wills Ltd and associated companies are able to offer assistance at a fee to be agreed at the time of your request.

### Responsibilities:

- The administration of an Estate in accordance with the terms of the Will.
- Obtaining the Grant of Probate (If the estate has a value in excess of £5000).
- General distribution of the assets.

### Obligations:

Find out the nature and value of the assets of the Estate - You can do this by simply reading the Will and where necessary getting a professional valuation. With regards to dealing with Financial Institutions you will be asked to produce certified copies of the Death Certificate.

Find out if the deceased had any debts - Check the Deceased's papers carefully to ascertain this. We also suggest that you advertise in the London Gazette and a local paper to make any creditors aware. This helps to avoid the Executor having any personal liability for unknown debts.

Prepare Accounts - This will assist you in assessing any potential liability to Inheritance Tax that the Deceased may have after all their debts have been cleared. Please bear in mind that Inheritance Tax must be paid before a Grant of Probate may be issued, and therefore we suggest that a line of credit is established as soon as possible to pay the amount due if required.

Lodging Forms - Ensure that you establish what forms are required by both, the Inland Revenue and Probate Office and that you complete and return these as promptly as possible.

Swearing the papers - A Solicitor or Notary Public will swear the papers for you so that you may submit for Probate.

Pay the Inheritance Tax bill - This should be paid as soon as possible to enable you to obtain a Grant of Probate.

Receive a Grant of Probate - This will be granted once application forms are accepted.

Obtaining Assets - Once a Grant of Probate has been received send an authorised copy to the relevant institutions requesting assets that are held belonging to the Deceased. (You may be asked for a certified copy of the Death Certificate as well).

Selling Property - You are obliged to obtain the best possible price available at the time on behalf of the Beneficiaries for any assets sold. The Beneficiaries may want a say in when assets are to be sold.

Paying Debts - These should be settled as soon as possible, ensuring that you have been as thorough as possible to ascertain their value.

Complete a Tax Return - You will need to complete a Tax Return having calculated any Income Tax and Capital Gains Tax liability. (You may need the assistance of an accountant.)

Pay any Legacies and Bequests - These should be paid in accordance with the Will.

Deal with the Residue - This means that you divide the remaining assets between the Beneficiaries as per the Will, or if stipulated by the Will invest the assets for the Beneficiaries.

## **Duties:**

As soon as the person dies for whom you have been appointed an Executor you become responsible for their affairs. If you are not the only Executor then the responsibility is shared and all decisions have to be unanimous.

You are not obliged to act as Executor, however if you choose not to do so then you must resign before attempting to deal with any matters.

Once you become involved then you can be held personally liable to pay any debts or moneys owed, therefore you need to check that there are sufficient funds to cover these liabilities.

Having become an Executor you then need to find as much information out about the Deceased's affairs as possible.

You then need to ensure that the death has been registered with the Registrar of Births Deaths and Marriages, and make funeral arrangements with an Undertaker. (Don't forget to check the Will and any Letter of Wishes for special requests).

Following registering the death you then need to go about obtaining Probate as mentioned above.

You may need to obtain a Probate Loan to pay Inheritance Tax liabilities if applicable. Please note ensure that there is sufficient in the estate to repay the loan otherwise you may be personally responsible.

You must treat all Beneficiaries equally and show no bias. They could sue you if this is not the case.

You must not make a personal gain for carrying out the role of an Executor.

You must keep accounts. You may be asked by the Beneficiaries to prove that you have acted in a proper manner.

You have a legal responsibility to make sure that all Tax owed is paid.

If you have difficulties seek professional advice as this may save you more than it costs.

### **In Summary the Main Duties of an Executor:**

- Help the Deceased's family to make the necessary arrangements.
- Study the Will and arrange a meeting with the Deceased's family.
- Safeguard all assets
- Notify the Beneficiaries
- Value all the assets.
- Collect all the income due to the Estate.
- Prepare and submit all the necessary paperwork.
- Obtain a Grant of Probate.
- Settle Taxes due.
- Settle Legacies.
- Distribute the Estate.
- Set up and administer any Trusts.
- Prepare and submit final accounts.

# Guidance Notes for Trustees

The notes below are designed to give you an overview of the responsibilities and tasks that involved in being appointed as a Trustee. Do not worry if you feel that help is required as Affinity Wills Ltd and associated companies are able to offer assistance at a fee to be agreed at the time of your request.

## Responsibilities:

- The administration of a Trust in accordance with the terms of the Trust Deed.
- Make investments on behalf of the trust in accordance with the Trust Deed.
- Ensure that the Trust is wound up in accordance with the Trust Deed at the appropriate time.

## Obligations:

You are responsible for ascertaining the nature and value of the assets of the Trust and apply them as per the instructions within a Will / Trust Deed.

Ensure that you are aware of, and utilise the wide-ranging powers contained within a Will / Trust Deed. These powers may include:

Buying and selling of assets.

Payment of Taxes.

Lending of funds to a Beneficiary.

Borrowing money.

Insuring property.

Providing funds for education of any child Beneficiaries.

Carry out the requirements of any Trust arrangements documenting as necessary  
(Taking professional advice where necessary)

## Summary:

You have a responsibility to ensure that the Trust is run as per the Will / Trust Deed. You will have varying powers according to the Trust Deed; ensure that you are aware of these and that you do not exceed them. You have a duty to manage the Trust as if it was your own property and therefore if you need to employ additional expertise then do so. Please bear in mind that in the event of fraudulent or negligent behaviour a Beneficiary may have the right to seek legal redress.

**Remember if you are in doubt seek professional legal advice for any part of the process. Affinity Wills Ltd will be pleased to put you in contact with suitable professional help.**

# A GENERAL GUIDE TO OBTAINING PROBATE

A guide for lay applicants acting independently. This covers England only. This is meant to be a general guide only and though believed to be accurate, there may have been changes and therefore we cannot guarantee accuracy of all information.

For general enquiries, please telephone the Probate & Inheritance Tax Help-line Monday to Friday 9.00 to 5.00, on 0800 731 3071 (calls are free).

## What is Probate?

When a person dies somebody has to deal with their Estate (the money, property and possessions) by collecting in all monies, paying all debts and distributing the Estate to those people legally entitled to it.

The term Probate often means the issuing of a legal document to one or more people authorizing them to act in this capacity.

The Probate Registry issues the document, which is called a Grant of Representation.

These are three types of Grant of Representation:

1. Probate - Issued to one or more of the Executors \* named in the Deceased's Will.
2. Letters of Administration (with Will) - Issued when there is a Will, but there is no Executor named, or when the Executors are unable to apply, or do not wish to be involved in dealing with the Estate
3. Letters of Administration - Issued when the Deceased had not made a Will, or any Will made is not valid

(\* People named in the Will to deal with the Estate)

The term Grant will be used to mean whichever type of Grant of Representation you may need.

## Why is a Grant necessary?

Organizations holding money in the Deceased's name need to know to whom that money should be paid, and the Grant is proof that the person named in it may collect the money.

The Estate left when a person dies passes to the people named in his or her Will. If there is no valid Will it passes on to his or her next of kin.

The distribution of the Estate to the correct people is the responsibility of the person named in the Grant.

The Grant is proof to anyone wishing to see it that the person named in it is entitled to collect in and distribute the Estate.

## Is a grant always needed?

Sometimes a grant is not needed and you may wish to ask anyone holding the deceased's money whether they will release it to you without seeing a grant. If they agree they may attach conditions. It is for you to decide which is the cheaper or easier option.

These are organizations that may release the money to you without a grant, if the amount held is small and there are no complications. Among these are insurance companies and or building societies

You will not usually need a grant when a house is held in joint names and it is clear that the house automatically becomes the property of the surviving owner.

If you are in doubt on this point you may need to ask a solicitor whether a grant is needed to change the ownership.

You will need a grant to transfer or sell a property held only in the deceased's name.

Do not advertise any house for sale too soon after the owner's death, as a sale cannot be completed until you have obtained the grant. The date of issue of the grant cannot be guaranteed to coincide with the final stages of any sale.

## Am I entitled to a grant?

There are rules, which govern who may be given a grant, and whether or not one is issued may depend on the circumstances in each individual case.

The following points are a brief guide for you:

If there is a will with named executors they are the first people entitled to a grant.

If there are no executors or the executors are unable or unwilling to apply, the next person entitled to a grant is any person named in the will to whom the deceased gives all his estate, or the remainder after the gifts have been paid.

If the deceased has not made a valid will, his or her next of kin should normally make application for a grant in the following order of priority:

- |                         |  |
|-------------------------|--|
| 1. Husband or Wife;     | 4. Brothers or Sisters; *  |
| 2. Sons or Daughters; * | 5. More distant relatives.   |
| 3. Parents;             | (* Or if any have died in the lifetime of the deceased then their sons or daughters may apply) |

A grant cannot be issued to any person under the age of 18. Illegitimate relatives other than sons and daughters may not be entitled to a grant.

A maximum of four applicants can apply for a grant but in most cases only one person needs to obtain a grant. There are circumstances when you and another person may need to obtain a grant together, if this is the case we will let you know as soon as possible after we have received your application.

If you are asked to apply on behalf of someone else please send a note with your application giving details on, and the reason why they are not applying. If it is not possible to issue the grant to you we will explain the reasons.

## How do I apply for a grant?

1. Obtain the application forms; (choose an office nearest to you and they will send you the forms you need)
2. Choose where you wish to be interviewed; (choose the office nearest you)
3. Complete the application forms;
4. Return them, with the death certificate and the original will (registered post) to the probate registry
- 5 Attend the interview

## **What forms are involved?**

The following forms may be obtained from your nearest probate registry

The probate application form - This form asks for details of the deceased and yourself as applicant.

Account of the estate -This form asks you to give a full account of the deceased's estate. You should try to obtain the full value of all items shown, including any interest or bonus, which will be paid. Any money due from the deceased's employer should be included. The full market value of any house should be shown, although a professional valuation is not normally required. The value of household goods, jewellery and belongings should be shown as the amount for which they could be sold.

## **What should I send?**

1. The Death Certificate;
2. The original Will (or any document in which the deceased expresses wishes about the distribution of his/ her estate). (You should make and keep a copy of any Will and documents you send)

## **Where do I send the forms?**

You must send your forms and any other post either to the probate registry where you wish to be interviewed or to the probate registry, which controls the local office where you wish to be interviewed

Please do not send any post to local offices.

You must attend at least one informal interview to enable a grant to be issued.

You must state on the probate application form at section 1 which is the most convenient place for you to attend.

After we have received your application we will send you an appointment for interview.

The interview can take place either at probate registry or at one of its local offices

It is important that you do not address any post to local offices, as this will delay your application. You may hand your forms in at the probate registry or local office when it is open.

If you are applying for a grant with someone else who is unable to attend for interview at the place you have chosen, arrangements may be made for their attendance at a different place. However, this will mean that the issue of your grant will take longer.

## **Why do I have to be interviewed?**

The purpose of the interview is to confirm the details you have given and to answer any queries you may have.

To complete your application you will be asked to sign a form of oath, and swear or affirm before the interviewing officer that the information you have given is true to the best of your knowledge.

If your application is complicated there may be additional documents to be signed, or you may be asked to contact other people (for example a witness to the will) so that we can interview them or obtain their signatures to documents. In most cases only one interview is required.

## **When will I be interviewed?**

You will be given the earliest available date for interview at the probate registry or local office of your choice.

The number of applications waiting to be dealt with varies and it is difficult to say how soon you will be interviewed.

No appointment can be given until the probate registry has examined your application.

If we are unable to send you a notice of appointment within two weeks of receiving your application you will normally be sent an acknowledgement of your application.

## **What about duty or tax?**

(Inland Revenue's website <http://www.inlandrevenue.gov.uk/cto/> )

In most cases no inheritance tax is payable.

In cases where inheritance tax is payable a grant cannot be issued until tax has been paid.

If the deceased's estate is very close to or exceeds the limit at which tax becomes payable the account of the estate will be sent to the capital taxes office after your interview.

After the Capital Taxes Office has returned the account to the probate registry they will notify you in writing of the amount payable.

Arrangements for payment will be explained to you at your interview.

The issue of the grant does not imply that the Inland Revenue agrees all values submitted and correspondence may take place when the account is returned to the capital taxes office.

Please note that tax becomes due 6 months after the end of the month in which the deceased died

Interest is charged on unpaid tax from and including the due date whatever the reason for late payment.

If you have any queries about tax and interest, before you apply for a grant, you should contact:  
The Capital Taxes Office, Minford House, Rockley Road, London. W14 ODF Tel. 0171 6034622 Ext. 204

## **What happens after the interview?**

After your interview the grant will be prepared by the probate registry and sent to you by post.

The interviewing officer should be able to give you an estimate of how long it will be before the grant is issued. When you receive the grant you should show it to any person or organization holding the deceased's money or property that has asked to see it. The money and property will then be released to you.

Copies of the grant may be obtained from probate registry and are only valid if they bear the impressed seal of Court.

## **What are the responsibilities of the probate registries?**

We are responsible for making sure that an applicant is entitled to be given a grant, and that any will produced appears to be properly made.

If there is any doubt as to whether the will left by the deceased is valid, or where it appears a will had been altered or amended we may wish to interview one of the witnesses.

**Please note that the responsibility of the probate registry ends when the grant is issued.**