

Inheritance Tax and the probate process

Probate is the system you go through if you're handling the estate of someone who's died. It gives you the legal right to distribute the estate according to the deceased's wishes. Inheritance Tax forms are part of the process even if the estate doesn't owe Inheritance Tax.

Understanding probate terminology

If the deceased left a will, it usually names one or more 'executors', who apply for the grant of probate (also called a 'grant of representation').

If the deceased died without leaving a will, a blood relative can apply for a 'grant of letters of administration', depending on a strict next-of-kin order of priority defined in the 'rules of intestacy'. This makes them the 'administrator'.

If the named executor does not want to act, someone else named in the will can apply to be the administrator (again, depending on a strict order of priority).

The catch-all term for an executor or administrator is 'personal representative'.

The probate process - at a glance

Here is an overview of the steps to take in England and Wales, with more detail in the sections below. Again, the process differs in Scotland and Northern Ireland - please follow the links above for more information.

1. Value the estate and speak to the deceased's banks and other financial organisations to establish whether you need probate (or confirmation)
2. If you do need probate, complete the relevant probate application and Inheritance Tax forms - these differ depending on whether or not the estate owes Inheritance Tax
3. Send the forms to the relevant government bodies (in England and Wales, that's the Controlling Probate Registry and HM Revenue & Customs (HMRC))
4. Pay whatever Inheritance Tax is due
5. Attend an interview at the Probate Registry and swear an oath
6. Wait for the grant of probate (or confirmation) to arrive in the post - banks and other organisations will ask to see this before they allow access to the deceased's assets
7. Pay any debts owed by the estate and then distribute the estate

Step 1 - Value the estate to see if you need probate

When you might not need probate

Probate may not be needed if the estate:

- is a low-value estate - generally worth less than £5,000 (though this figure can vary) - and doesn't include land, property or shares
- passes to the surviving spouse/civil partner because it was held in joint names

When you as the executor or personal representative contact the deceased's bank or other financial institutions, they will either release the funds or tell you to get a grant of probate (or confirmation) first. Some banks and financial institutions may insist on a grant before giving you access to even a small amount of money.

When probate is usually needed

You will almost certainly need probate if the estate includes:

- assets generally worth more than £5,000 in total (though again this figure varies)
- land or property in the name of the deceased, or held as 'tenants in common' with someone else
- stocks or shares
- some insurance policies

Step 2 - Apply for probate

If you're going through the probate process, you'll have to fill in an Inheritance Tax form in addition to the PA1 Probate Application form, even if the estate doesn't owe Inheritance Tax. The estate will only owe Inheritance Tax if it's over the threshold (£325,000 in 2009-10).

The Inheritance Tax forms you need depend on where the deceased lived - England, Wales, Scotland, Northern Ireland, or abroad - the size of the estate and whether it is an 'excepted estate' (ie you don't need to fill in a full Inheritance Tax account - form IHT400).

Usually, if an estate has no Inheritance Tax to pay, it will be an excepted estate. However, this is not always the case. Some estates that don't owe Inheritance Tax still have to return a full Inheritance Tax account.

If you're not sure whether the deceased's estate is an excepted estate, you'll need to start by filling in a Return of Estate Information form to find out (form IHT205 in England and Wales). Depending on your answers to certain questions, the form will make clear when you should stop filling out that form and switch to form IHT400 (a full Inheritance Tax account) instead.

Step 3 - Send the forms to the relevant government bodies

If you have filled in form IHT205, send that and form PA1 Probate Application to your nearest Controlling Probate Registry along with the original will, the death certificate, and the probate fee. If you have filled in form IHT400, follow the instructions on page 55 of the IHT400 guidance notes.

Step 4 - Pay any Inheritance Tax due

If the estate owes Inheritance Tax, you won't get the grant of probate (or confirmation) unless you pay some or all of the Inheritance Tax first. The 'due date' is six months after the date of death.

Steps 5 to 7 - What happens next?

More help?

Probate and Inheritance Tax Helpline

- **Contact point**

Probate and Inheritance Tax Helpline

- **Phone number**

0845 302 0900

- **Website (opens new window)**

<http://www.hmrc.gov.uk/cto/iht.htm>

Once you've paid any Inheritance Tax and sent off the forms to the Controlling Probate Registry, the process takes about six weeks if there are no problems. There are three stages:

- examination of forms and documents - Probate Registry staff check the forms and documents and prepare the probate papers
- probate interview - all the executors who have applied attend an interview to review the forms and swear an oath, either at the Controlling Probate Registry or interview venue
- probate is granted - the grant of probate is sent to you by post from a district Probate Registry

After you get the grant of probate (or confirmation) and have paid any Inheritance Tax due, you can collect in the money from the estate, pay any debts owed by the estate and then distribute the estate according to the will or the rules of intestacy.