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WHEN IS PROBATE REQUIRED IN 2021 - INFORMATION FOR CLIENTS Walsh West Private Client Legal 2021

When is probate needed? Do I need probate?

What does probate mean?

Probate refers to the process of administering a deceased person's estate.

There are two stages to this. First, you have to apply for a grant of probate or letters of administration, which means that you can legally administer the estate.

Then, you are able to sort out their debts and distribute the property among people named in the will.

What is a probate grant?

This is a legal certificate you need to get by law to provide to the bank in order to deal with the person's bank account. If you require a grant of probate, you must complete an application with the local probate registry.

What is probate used for?

Probate is a legal document you need to get before you can deal with the estate of someone who has died.

This includes accessing their personal bank account, clearing their debts like a mortgage, and making sure that people named in the will are paid in full.

Who should apply for probate?

Generally, the person who applies for probate is the executor of the estate.

However, if there is not someone named in the final will, a family member may apply for letters of administration to get the right to deal with probate. If you do not want to apply for probate yourself, many legal services will have a specialised team that can make an application for you.



This is especially useful in cases where the law is complex, for example, if the estate is worth a lot or the person has many debts, like a mortgage. It is worth contacting a few legal services to see if you should apply for a grant of probate yourself.

Do you always need probate?

No. If the financial value of the estate is low, or the property and assets were jointly owned, you may not need probate.

However, if there is a contentious probate, then you may find that you need to go through a process.

When is probate required?

Probate is necessary for most aspects of estate administration. Probate will normally be required in the following circumstances:

- For distributing the property and assets among beneficiaries where it was owned solely by the person who died.
- Where any part of estate administration is disputed, and there are legal proceedings.
- Where the person owned stocks or shares in their sole name.
- Where the amount of money in financial services is over the probate threshold, which could be anywhere between £5000 and £50,000.

If you find that it is required then there are a number of probate specialists and solicitors that can help you.

When is probate not necessary?

There are some situations where you will not need probate. These include:

1. When the person owns their property and assets joint with another person, probate will not be needed. This is because the assets will be passed directly onto the other person who owns the property. This is most common where a husband and wife, or partner, are the joint owner of the family home. When one owner dies, you should provide the death certificate to HM Land Registry so the legal rights to the home can reflect this change. It is important to note that a joint tenancy and tenancy in common are different.
2. For a small estate, many banks will not require a grant of probate to access the money. This is generally if the person had less than £5000 in their personal accounts. This is only really the case where the person had no land, property, or shares.



3. If the person was insolvent. Therefore they had more debt, tax, and other expenses to pay than they actually had.
4. Where there is an insurance policy in the form of a trust. In this case, the trustees must produce a copy of the policy and the death certificate. Then, the insurance services will pay the trustees of the estate, who hold the money for the beneficiaries.

What counts as a small estate?

There is not a clear-cut definition of a small estate. Whether the bank or financial services will release the deceased person's funds varies between the bank. This threshold can be anything between £5000 and £50,000. You can often search this online, or contact the bank.

If you are not certain how much is in the person's bank account, you will need to contact the bank in order to find out.

"The easiest way to find out if probate is necessary is to seek legal advice. However, as a rule, if the estate is worth less than £5,000 or the inheritance is left directly to a spouse or civil partner, you will not need probate."

How do you know if probate is necessary?

The easiest way to find out if probate is necessary is to seek legal advice. However, as a rule, if the estate is worth less than £5,000 or the inheritance is left directly to a spouse or civil partner, you will not need probate.

What is the threshold for probate in the UK?

There is no set threshold in England and Wales, and therefore the threshold can vary between different banks and building societies.

Often the threshold will be lower where there is no will. Therefore you should contact the financial service who hold the account.

How much money can you have in the bank before probate?

The probate threshold will depend on the bank or financial service. Generally, probate will be needed if the size of the estate is more than £5000. However, if you need help you should get advice from your bank.

If you need support you may need to meet some costs of probate. You will find that there are both fixed and variable costs involved.



The probate thresholds for each financial institution, bank and building society is different.

Do I need to apply for probate if there is a will?

Even in cases with wills, most of the time you will still need to apply for probate if there is a will.

The only difference is that you will be applying for a grant of probate, rather than letters of administration. There are some legal restrictions on who can apply for letters of administration, but otherwise, the process is mostly the same.

Do I need probate for pension funds?

You should contact your pension provider so they can stop sending the deceased money. Once you have given the provider the will and death certificate, they can give you more information on what will happen to the pension funds. This varies depending on the provider, but in general, there are three options:

1. The pension payments just stop so no probate is needed
2. The pension can transfer to the person's spouse or civil partner. This is often at a widow's rate. This should not require probate.
3. There could be a final lump pension payment. Depending on the value of this payment, you may need a grant of probate to access the funds.

Do I need probate for life insurance payments?

This depends on the policy. If the life insurance policy was set up so that it would go to a named beneficiary, by law they will not need probate.

However, if a beneficiary is not named, the money will just go into the deceased's estate, if the policy value is over the threshold, probate may be required.

Do I need probate where the deceased had foreign assets?

The legal probate process is much more complex in cases where the person held assets outside England and Wales.

Different jurisdictions have different rules on inheritance. You should, therefore, seek help and advice from legal services with a team with an address in the country where the assets are held.

These services can help you navigate the law of the other jurisdiction.



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Do I need probate to access funds held by a business?

If the person who died was the legal owner, partner, or director of a business, this can complicate the process, especially where the accounts are in the business name.

Therefore, you should seek help and advice from legal services.

Do I need probate where the deceased was the beneficiary of a trust?

There are different trust rules, and not all beneficiaries have the same rights to the trust funds. Whether or not you need probate depends on how the rights are set up under the trust. It is likely you will need help and advice from a legal or financial service.

Do I need probate where a trust is established under the terms of the will?

There are many reasons why people set up a trust in their wills for after they have died. For example, they may want to ensure that family members receive the property without the assets being assessed for care fees. You may not need probate in certain cases. However you should still seek legal help and advice as trusts can be complex, for example in some circumstances the trust will not be valid and need to be paid back into the administrator's account in full.

Care needs to be taken to release assets in a trust, as there can be legal and tax consequences.

What happens when probate is not needed?

If the bank does not require you to have a grant of probate to access the assets, they will generally still want to see a copy of the death certificate and proof of identity before you can access the accounts and release the funds.

If probate is needed it can take somewhere between 6 and 12 months.

Do I need to pay inheritance tax when probate is not required?

You often still need to pay inheritance tax to HMRC on estates, even if you do not require a grant of probate. However, cases where probate is not needed often overlap with cases where inheritance tax is not needed, like when the estate and assets pass directly to a spouse, or the value of the estate is low.



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For initial advice about Estate Planning including Lasting Powers of Attorney, Wills, Trusts and Probate; call our team on 0203 488 7503, 01992 236 110 or contact us by email at welcome@walshwestcca.com or via our website www.walshwestcca.com and we will help you.