

A guide to wills and estates

Following the death of a loved one there are many urgent decisions and arrangements that need to be made, most notably [registering the death](#) and [arranging the funeral](#). Following the funeral there is then the often upsetting task of dealing with their estate. A person's estate is their money, property and belongings when they died. This article provides an overview of the process, including the purpose of a will and the role of the executor or administrator in dealing with the estate.

The will

Before you can start dealing with someone's estate, you need to find out whether or not they left a valid will.

What is a will?

A will sets out what should happen to someone's estate after they die. If the person died leaving a valid will, their estate must be dealt with as set out in that document. A will has to be drawn up in line with strict rules and you may need to get legal advice to check whether the document you have is valid.



What if there is no will?

If you can't find a will, or can find only a copy then someone else, such as a solicitor, a bank, or the executor, may have it to keep it safe and you should talk to them about it. A will does not necessarily look like a legal document, so you should not destroy any written instructions left by the person who has died, because these may be their will.

If there is no will, or if the will that been left is not valid, the person is said to have died "intestate". As a result, the estate must be dealt with in line with the rules on intestacy, which set out who will inherit the estate and in what share.

Jointly-owned property

A person's estate may or may not include jointly owned property. This is because two or more people may own a home together as 'beneficial joint tenants' or 'tenants in common'.

Beneficial joint tenants own the property jointly, so when the first person dies the property automatically passes to the survivor under the right of survivorship and the house does not form part of the estate of the first to die.



Tenants in common each own a share in the land, and when one of them dies their share is included in their estate. It passes either according to their will or follows the intestacy rules if there is no will. The nature of the joint ownership should be settled when a property is acquired and recorded. If you are not sure how the home is owned, you should get legal advice.

Joint bank accounts

Money in joint bank accounts automatically passes to the other person. Other bank accounts are part of the estate.

The effect of marriage, divorce and civil partnerships on a will

If someone makes a will and then gets married or forms a civil partnership, their will ceases to be valid. However, if they make a will knowing that they were going to be married or form a civil partnership to a particular person and the will reflects this intention, the will remains valid.

If someone in a relationship with a person of the same sex made a will before 5 December 2005, and then later registered as a civil partnership in England or Wales, their will is still valid.

Generally if someone makes a will and then gets divorced or ends (dissolves) a civil partnership, any gift left to their former husband, wife or civil partner, and any appointment of their former husband, wife or civil partner as executor does not take effect unless the will says otherwise.

What happens if the person who died has no relatives?

If there is no will, and the person who died leaves no surviving husband, wife or civil partner or blood relatives, the estate will go to the Crown. For more information, you should contact the [Treasury Solicitors Department](#).

Dealing with the estate

Executors and administrators

If the person who died left a will, they will usually have asked an executor to administer their estate. An executor is the person named in a will who should take charge of doing everything the will asks.

If the person did not name an executor or did not leave a will, the court will appoint an administrator to deal with the estate. The administrator will usually be someone who is a beneficiary of the will, or who is entitled to inherit under the intestacy rules. Executors and administrators are also known as personal representatives.



Probate

If you are entitled to deal with someone's estate, you may have to apply for permission from the Probate Registry to manage and distribute it. This permission is called a "grant of representation" (or probate for short). You can [apply for a grant of representation yourself](#) or through a solicitor. There are 3 types of grant issued by the Probate Registry. The grant issued will depend on the circumstances of the case.

Type of grant	Given to
Grant of 'probate'	One or more of the executors named in the will
Grant of 'letters of administration (with will annexed)'	An administrator, who is appointed by a court when the executors named in the will are not available, not willing or not suitable to manage the estate, or if the will does not name executors
Grant of 'letters of administration'	Administrators when there is no valid will

You may be able to deal with someone's estate without having to apply for a grant of representation. You should contact the organisations holding the property, money and belongings of the person who died to find out if they need to see a grant before they release any assets to you.

What does the executor or administrator need to do?

Executors or administrators have certain duties and responsibilities when dealing with the person's estate. These include:

- finding out how much the estate is worth
- taking all reasonable steps to collect any money the person is owed
- paying any inheritance tax that might be due
- paying for the funeral
- paying any debts the person owed from the assets in their estate
- distributing the remainder of the estate to the beneficiaries



Gathering details of someone's assets and liabilities

You should look carefully through the person's personal papers to find details of all their assets and liabilities. Assets include bank accounts, building society accounts, insurance policies, share certificates, savings certificates and premium bonds. Liabilities include money owed for electricity, gas, water, phone bills and so on, and personal debt such as credit agreements and credit-card accounts.

You may be able to get back part of any money the person paid up front for items such as television licence, road tax, household insurance and council tax. You should also find out which credit organisations the person owed money to.

Paying any debts

The executor or administrator is responsible for paying the debts of the estate. You should pay any debts, including funeral expenses, out of the person's estate. If there is no money to pay for the funeral, read our article about [funeral payments from the social fund](#).

If you do not know some or all of the organisations the person owed money to you should advertise for any creditors to come forward and make a claim against the estate. This advert is called a "deceased estates notice" and you should publish it in "[The London Gazette](#)". If the estate contains land, you should also advertise in a newspaper in the area where the land is situated. The London Gazette is published each working day. You will have to pay for the advert out of the estate. There is a separate edition of the same newspaper for Scotland. Visit www.gazettes-online.co.uk for more information about how to publish in The London Gazette.



You need to give creditors two months to make a claim. If you do not advertise, you may have to pay any claims creditors make after the person's estate has been shared out. You should tell the creditors that you are the executor or administrator. This may also mean telling organisations such as water, gas, electricity and telephone suppliers, hire-purchase or rental companies.

One example of a claim that may come up is if Jobcentre Plus find they paid too much Income Support to someone who has died and ask for the overpayment back. If the person who died owes any National Insurance at the date of their death, this must also

be paid out of the estate. If this is not paid, it may affect the benefit the surviving husband, wife or civil partner gets.

You may have to sell some or all of the assets in the estate to pay off the debts of the person who died. However, do not rush into either selling assets or distributing the estate. Where appropriate, seek professional legal advice.

Claiming any benefit someone is owed

The executor or administrator can claim any state benefits someone is owed even after they have died. There may be money due if the person was getting or had recently claimed a benefit.

To claim any benefit owed you should show Jobcentre Plus form BD8 from the registrar (see our article on [forms and certificates received when registering a death](#)) and ask them for a form to apply for the benefit.



Sometimes, benefit can be paid without having to claim. Ask Jobcentre Plus for more information, as soon as you can, if:

- the person who died was waiting for the outcome of an appeal against a decision about their benefit, or
- you think they may have been eligible for a benefit but did not claim it. You may be able to act on their behalf and any benefit they owed may be payable to the estate.

Who can make a claim on an estate?

Whether or not you are related to the person who died, you can apply to the court for a share of their estate if they were supporting you financially in any way just before their death. This will apply to unmarried partners (or partners where there is no civil partnership) in a case where there is no will.

If you qualify, you must apply within 6 months of the date when the grant of representation was issued. The court may let you apply later in special circumstances. If you want to apply, you should get legal advice as soon as possible after the person dies. Do not leave it until after the 6 months.

Distributing someone's estate

Once all the assets have been gathered in and the taxes and debts have been paid then the executor or administrator must distribute what is left in the estate to the beneficiaries. If there is a will, you must follow the instructions set out in the will. If there is no will, you must distribute the estate in line with the laws of intestacy. Once this is done you should prepare the estate accounts, which must be approved and signed by you and the main beneficiaries.



For more information, visit the wills, probate and inheritance section of the gov.uk website - <https://www.gov.uk/wills-probate-inheritance>