

Applying for probate or letters of administration

This guide is intended to assist you in applying for a grant of probate or letters of administration when a relative dies.

You may be asked to provide one of these documents by a hospital trust or GP when using the complaints process to investigate the care provided to your loved prior to their death. You will need to apply for a grant of probate or letters of administration if you want to request copies of a deceased person's medical records under the Access to Health Records Act 1990 (AHRA). See our guide Access to Medical Records at www.avma.org.uk/help-advice/guides/#medical-records.

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patient safety and justice

AvMA is the charity for patient safety and justice. We provide specialist advice and support to people when things go wrong in healthcare and campaign to improve patient safety and justice.

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Grant of probate and letters of administration – what's the difference?

Applying for the legal right to deal with a deceased's property, money and possessions (their 'estate') is called 'applying for probate'.

If the person left a will (dying 'testate'), you will be granted probate.

If the person did not leave a will when they died (dying 'intestate'), you will be granted letters of administration.

Who can apply for probate?

If there is a will and you are named in it or a codicil (an update to the pre-existing will) as an *executor*, you will be entitled to apply for probate.

If there is more than one executor, you must all agree who makes the application for probate. Up to 4 executors can be named on the application. If only one executor is named on the application and there are others, they will need to prove that they tried to contact all executors named in the will before they applied.

If an executor has died or no longer has mental capacity, a replacement should apply for probate instead. It may be that the deceased has named a replacement executor in their will, if not the High Court has a discretionary power to appoint a substitute executor. You should seek legal assistance if you need to pursue this course.

Who can apply for Letters of Administration?

If the deceased did not leave a will, an *administrator* will deal with the estate. You can apply to become the administrator of the deceased's estate if you are the deceased's closest living relative. The order of 'closeness' is as follows:

- husband, wife or civil partner (including if you were separated);
- children (including legally adopted children but not step-children)
- grandchildren
- great-grandchildren
- parents
- brothers and sisters
- half-brothers and half-sisters
- grandparents
- aunts or uncles
- half-aunts and half-uncles

Before you apply

The executor or administrator can apply for probate or appoint a solicitor to do so on their behalf.

Before you apply, you should estimate and report the value of the deceased's estate to HMRC [you can do this online]. Depending on the value of the estate, you may have to pay Inheritance Tax.

If there is tax to pay, you normally have to pay at least some of it before you are granted probate. You cannot apply for probate until you have a notice from HMRC saying you have either paid inheritance tax or have no tax to pay.

Make sure you have the original will if you are the executor (remember, there will not be a will if you are an administrator). If the will has been changed or damaged, you must include a letter explaining any changes.

You should also have the original death certificate, or an interim death certificate from the coroner if an inquest is underway.

What does it cost?

There is no application fee if the estate is valued at under £5,000.

The application fee for probate is £300 if the value of the estate is £5,000 or over.

These fees do change from time to time so please check the government website: www.gov.uk/applying-for-probate/apply-for-probate

How do I apply?

You can apply for probate online:

www.apply-for-probate.service.gov.uk/death-certificate

You can also apply by post. The form you need to fill in depends on whether the deceased left a will or not. You can obtain these forms online here:

www.gov.uk/applying-for-probate/apply-for-probate

What happens next?

You will usually be granted probate or the letters of administration within 4 weeks of applying but this could take considerably longer.

You should seek specialist advice before making any financial plans or putting a property on the market until you have received the grant or letters.

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patient safety and justice

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- To expand the range of communities we serve and so enabling more people experiencing avoidable harm to access services from us that meet their needs
- To empower more people to secure the outcomes they need following an incident of medical harm, whilst providing caring and compassionate support
- To eliminate compounded harm following avoidable medical harm
- To have the necessary diversity of sustainable resources and capacities to deliver

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