

## Wills & Probate - The legal procedure

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The manner in which we deal with the deceased's property and finance (generally known as their 'Estate') depends upon whether or not there was a Will made out by the deceased. More and more people nowadays realise that the best way for their wishes to be put into effect are for them to make a Will during their lifetime.

If the deceased left a Will, an application will be made by those named as Executor for a Grant of Probate. This involves an application to the Probate Registry supported by a sworn statement known as an Oath. A fee is also paid to the Registry. Once the Probate has been obtained it is then possible to collect in and administer the Estate.

Because there is a Will, the Estate is distributed to the persons mentioned in the Will. The Executors or the Lawyer acting on their behalf will pay off any debts and expenses such as outstanding bills and funeral expenses. If there is any liability for Inheritance Tax this too will be paid out to the Inland Revenue before the balance of the Estate is paid out. This balance is known as the Residuary Estate and those to whom it is paid are known as Beneficiaries. A charge for the legal work is made which depends upon the time spent and the value of the Estate.

If there was no Will then the deceased is said to have died Intestate. The Estate belonging to the deceased still needs to be collected in and distributed, and so regrettably the bills have to be paid! The main difference here is that we do not know where the deceased wanted their money and property to go, so complex rules have been drawn up over the years to decide where the Estate should go.

Inevitably, this may be unsatisfactory as there is very little discretion to change those rules. For example you may know that Uncle George always said he wanted his fob watch to go to the next door neighbour for the kindness they had shown him - however under the rules of intestacy, the neighbour is not entitled to anything.

In our 21st Century world, relationships have changed. Although marriage is the norm, often couples co-habit and those relationships may be longstanding and may have produced children. However, the surviving partner of such a relationship wouldn't normally be entitled to anything from the Estate (though the children would). Likewise same sex partnerships afford no legal rights for the surviving partner who can be left without money and home.

The procedure for collecting in the Estate is pretty similar to Probate but involves a Grant of Letters of Administration to be taken out.

A further disadvantage is that under the Rules, even a wife or husband surviving their partner does not necessarily mean that they automatically obtain the full amount of the Estate. Inevitably, property values, insurances, pensions and savings can add up to a substantial sum. It is not unknown for a surviving spouse, because the value of the former matrimonial home is quite high, to not gain the house outright but to have a shared interest in it with their children. As well as creating complicated trusts it can cause difficulties within the relationships of those left behind. The cost to the Estate can be large.

This additional cost and heartache could all have been avoided by leaving a Will! At quite a modest cost and a surprisingly short time all these problems can be avoided. Your Estate will pass to those that you want it to.