

# Probate

A complete guide  
to UK probate



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# Introduction to Probate

When you are close to someone, whether by marriage, relation, friendship or business partnership, their death will always be a sad event. You may be expected to play a role in sorting out their affairs, either informally or formally.



This is a serious and important role: if you act in a formal capacity, you will help to ensure that the deceased person's wishes are carried out, that their assets are protected for their intended beneficiaries, that their liabilities are covered (but not increased) and that any potential conflicts are prevented or resolved.

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Some people regard an official role in Probate as too onerous. They fear that they will not sufficiently understand the issues at hand, or – worse still – could be held liable for any mistakes that occur. If there is a potential for disagreement over the terms of a Will, or the Probate process itself, they may be reluctant to insert themselves into the middle of a toxic situation.

Most often, people choose not to play an official role simply because the complexity of Probate is beyond their expertise. At least half of all families dealing with the death of a relation decide to employ a professional to administer Probate. A further 35 per cent adopt a hybrid process, through which they administer some aspects of Probate but hire a professional for others. Just 15 per cent of families go for a full 'do-it-yourself' Probate.

Whichever you and your family or associates choose, the legal administrative

position is the same: you will have to notify the same agencies, submit the same forms and pay the same taxes. It may take a while to understand all the jargon and requirements, but administering Probate yourself is likely to be cheaper than hiring a professional. Of course, the more complex the affairs of the deceased, or the larger their estate, the more reason to hire a professional.

Whichever route you choose, it is still important to have a clear understanding of the process of Probate, so that you are prepared to intervene if anything has been missed, or incorrectly addressed. Where there are multiple parties – creditors, beneficiaries, debtors who still owe the estate amounts of money, tenants, business partners or employees for example – it can be hugely helpful when a central figure, whether they are administering the Probate or not, understands all the issues at hand.

One initial issue to clear up: the meaning of Probate. Simply put, it means 'administering an estate'. It is known as 'Confirmation' in Scotland and, legally speaking, refers to a court order which must be obtained before assets holders such as banks can release funds belonging to the deceased person. The Grant of Representation is a legal document, issued by the Probate Registry, which confirms who is entitled to administer the estate. This Grant is commonly known as Probate.



The only exception to the rule of Probate is where the value of the estate is lower than £5,000 after funeral costs have been deducted. In this case, banks and building societies generally release money once they see a Registrar's death certificate, although they sometimes want to see a statutory declaration form, confirming that you're distributing the estate according to the wishes of a Will, or according to intestacy rules.

An initial, important decision that needs to be made, is: who will administer the estate of the deceased person? If someone has been named in the person's Will, they are officially known as the Executor. If not, they're known as the Administrator. In both cases, they are also known as a Personal Representative.

The Personal Representative has to decide which of the three options to choose: a do-it-yourself Probate, a mix of do-it-yourself and professional advice, or handing over Probate entirely to a professional. Reading this guide should help you to make this decision, as you work through the various stages.



A word of warning: Probate is seldom an easy and quick process.

On average, it takes between six and nine months to complete and around

80 working hours, dealing with multiple organisations, individuals and government departments. There are many factors that can delay

things, from asset and liability holders failing to respond to

requests for valuations, to issues with valuing joint assets

or selling properties or businesses, to challenges

over a Will.

Yet with patience and application, you can

resolve virtually all of these. Asset holders

cannot put off disbursing their funds forever.

Independent experts can value jointly-held

assets, and challenges to a Will can be

settled in court or through mediation.

This guide will take you through the

entire process of Probate, from the

initial notifications to doctors, government

agencies, beneficiaries, creditors, banks and building

societies, through to the specifics of property division

or sale, inheritance tax issues, advice for High Net Worth

individuals and families, conflicts of interest and the role of

bridging finance. Good luck!

# Initial advice following a death

If you have a central role in dealing with the affairs of someone who has died, here is a helpful list of steps you need to take.



First, ensure that a doctor is aware of the death and can provide a medical certificate giving the cause of death. This may be straightforward if the person was in hospital, but less so if they were at home or elsewhere. If a coroner is involved in ascertaining the cause of death, you may have to wait for a medical certificate until they have concluded their work.

The death has to be registered with the local Register of Births, Marriages and Deaths and (at least in England and Wales) this has to happen within five days of death, unless the coroner is involved. You will need to provide the medical certificate giving cause of death, signed by the doctor; the NHS medical card of the deceased; their full name, including maiden name and any former names or aliases; their address and occupation; the deceased's birth certificate, where possible, giving the date and place of birth; the name and date of birth of any spouse or civil partner of the deceased, along with their occupation.

Further down the line, you are likely to need certified copies of the death certificate, made by the Registrar of Deaths, to show to banks or other parties holding the assets of the deceased. So it's worth getting these copies during your initial visit, since it costs more and is more time consuming to get these later.

When you are at the Register Office, ask about the Tell Us Once service. See the next page for details.

Second, contact a funeral director to begin the funeral arrangements. This initial contact is a good opportunity to discuss the role of Personal Representative, since funeral directors are typically highly experienced and can lead you through the process and offer helpful advice.

Next, find the Will, if the deceased made one, and try to ensure that it is valid. If there is any chance that the deceased made a more recent Will, then that is likely to supersede any previous Will. In the Will, if someone has been named as the Executor, make contact with them. Otherwise find out who is the best person to administer the estate – possibly you.

Alongside the Will, you need to find all relevant documents relating to the financial and other affairs of the deceased. These documents may include share certificates, bank and building society statements, pay slips, utility bills, tax returns, insurance documents and other financial papers.

Since the spread of online services, an increasing amount of financial and other information is now stored online rather than on paper documents. So alongside collecting physical documents, your job is also to access the deceased's online accounts. This can be a complex business all by itself. Ideally, the deceased will have left clear instructions with a trusted friend, partner or relation, explaining how



to access these accounts, along with the relevant passwords. In practice, not everyone is so organised, and it may take some detective work before you can access the information you need.

Whether there are physical documents or online accounts, you will need to provide a certified Death Certificate to asset and liability holders. At this point, ask them to confirm the value of each asset and liability at the date of the person's death.

### How to use the Tell Us Once service

A registrar will explain the Tell Us Once service when you register the death. They will either complete the Tell Us Once service with you, or give you a unique reference number so you can use the service yourself online or by phone. You must use the service within 28 days of getting your unique reference number.

If you cannot register the death because an inquest is underway, you can still ask the registrar for a unique reference number. Then you'll need to get an interim death certificate from the coroner holding the inquest first.

To get a Tell Us Once reference number from the Registrar of Births, Marriages and Deaths, you'll need the following details of the person who died:

- name, date of birth and address of the deceased and the date they died
  - name, address and contact details of the Personal Representative or company dealing with the estate
  - if there's a surviving spouse or civil partner, their name, address, telephone number and their National Insurance number or date of birth
  - if there's no surviving spouse or civil partner or they're unable to deal with the affairs of the deceased, the name and address of their next of kin
  - if the deceased died in a hospital, nursing home, care home or hospice, the name and address of that institution – and whether the stay was for 28 days or more
- You may also need, if they exist, details of:
- their passport number and town of birth
  - their driving licence number and vehicle registration number(s)
  - any council services they received, such as Housing Benefit payments or Council Tax reductions, along with the name of their local council
  - any benefits, tax credits or State Pension
  - any money they received from an Armed Forces Pension or Compensation Scheme
  - any money they receive or paid into public sector pension schemes or Local Government Pension Schemes, for which you will need their National Insurance number

# What to do when Applying for a grant

The first step in applying for a Grant is to apply to the Probate Office, submitting a legal document including an Oath sworn by the Personal Representative. You will have to pay a fee of £273\* for a personal application and £1.50\* per copy of the Grant, if you buy both at the same time.

\*Prices correct at 26.01.22 for current fees please see <https://www.gov.uk/applying-for-probate/fees>

The first step in applying for a Grant is to apply to the Probate Office, submitting a legal document including an Oath sworn by the Personal Representative. You will have to pay a fee of £105 for a personal application and £1 per copy of the Grant, if you buy both at the same time.

At this point, you need to work out whether the estate will be subject to Inheritance Tax. At the moment, the inheritance tax threshold is £325,000. If the estate is worth any amount below this, then ask for form IHT205. If it will be worth more than £325,000, then complete form IHT400. You may have to arrange a loan to cover inheritance tax [see Chapter 10].

Ask the Probate Registry for an application form by contacting [www.justice.gov.uk/courts/probate/applications](http://www.justice.gov.uk/courts/probate/applications). Then fill in the forms that they send you and return them to the Probate Registry along with the original Will, the death certificate of the deceased and the relevant Inheritance Tax form.

As the Personal Representative, the Probate Registry will invite you for an interview, so that you can swear the papers.

There are three different types of Grant:

- a) Grant of Probate is where the deceased left a Will and also named one or more Personal Representatives – known as an ‘Executor’ or as ‘Executrix’ where there’s more than one – and at least one of these Representatives is happy to take on the role.
- b) If the deceased left a Will, but did not appoint a Personal Representative (or those named are unwilling or unable to take on the role), then the Grant is called Letters of Administration with Will Annexed.
- c) If the deceased died intestate – meaning that they did not leave a Will, or the Will is invalid – then the Grant is called Letters of Administration.

Where the deceased did not appoint a Personal Representative, there is a legally-binding order for who can apply to fulfil the role, starting with a residual beneficiary, followed by a Personal Representative of a residual beneficiary who died after the deceased, then the beneficiary of a special gift, then their Personal Representative, then ‘any creditor’.

It’s important to follow these rules so that the Probate Registry accept your application to become a Personal Representative. You should discuss with other members of the deceased’s family or other beneficiaries, to ensure that everyone is happy with the decision.

To prepare for your role as Personal Representative, be sure to familiarise yourself with the duties that you’ll be expected to perform. These include identifying and collecting assets and settling debts; identifying all beneficiaries; preparing the estate accounts to present once the administration process has



concluded. You may have to present accounts to the Probate Registry when applying for the Grant.

Before applying to the Probate Registry, it's a good idea to open a bank account on behalf of the estate of the deceased. This is sometimes known as an Executor's Account. You'll be able to use this account to pay expenses relating to the Probate, such as the cost of the probate application form and ongoing fees. As soon as the Grant has been issued, money can be transferred from the bank account of the deceased into this new account.

### Keeping accounts

As a Personal Representative, you are not permitted to charge the estate for the time you spend on this work, but you can claim expenses such as travel, telephone, stationery and postage costs. So it's important to keep any receipts and to make a note of all the preparatory work you do. You can claim for the cost of probate fees, death certificates and bank charges, so keep copies of all outgoing payments and receipts for any money that you pay out.

Go through the paperwork of the deceased and list all bank and building society accounts, then write to all of them and explain your role, enclosing a copy of the death certificate. Ask them to cancel all standing orders and direct debits, then to send you a 'letter of final account', with details of any income tax certificate that may have been issues for the accounts. They may also have deeds and income tax certificates associated with the accounts.

If the deceased wrote cheques before they died, which had not yet been presented to a bank at the time of death, then they will be returned to the payee with a note saying 'drawer deceased'. These payments now become part of the deceased's debts and need to be included in the probate forms. Money that is owed to the deceased should be paid into the estate account that the Personal Representative opened.



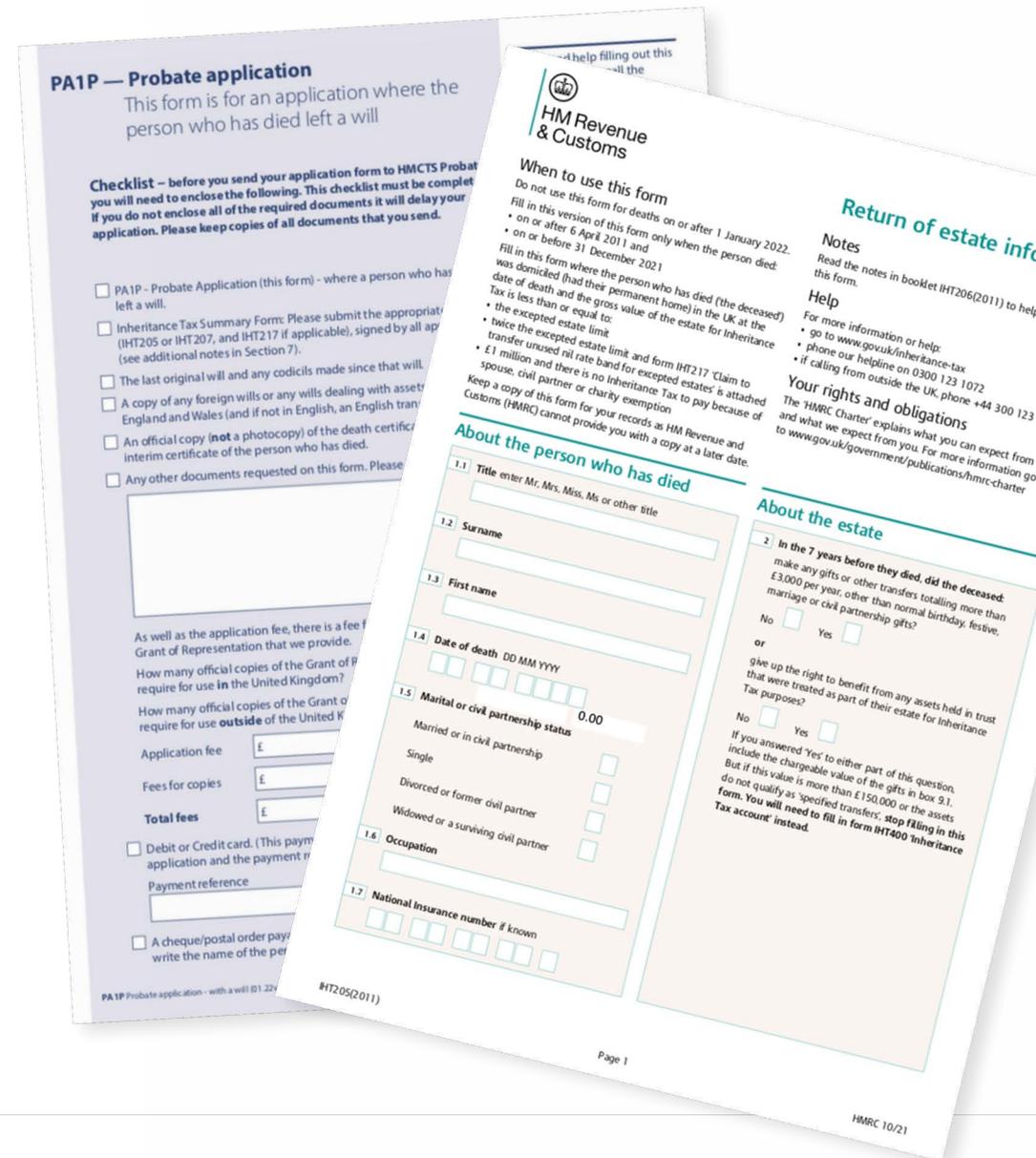
# Applying for Probate – the Forms



The two main forms that you will probably have to complete to apply for Probate are **PA1** and **IHT205**.

The first form PA1 will ask you for the following information:

- The deceased’s date of birth and death, full name, address and occupation
- The Will and whether Personal Representatives were appointed
- Details of the deceased’s relatives – children, siblings, parents, uncles and aunts
- Details of the deceased’s surviving spouse or civil partner
- Details of assets held in another name
- The deceased’s adoption status if relevant
- Whether the deceased was illegitimate or had any illegitimate children
- The Controlling Probate Registry, or one of its interview venues, where you would prefer to be interviewed



Form IHT205 is for estates with a gross value below the inheritance tax threshold, or with a total value below £1,000,000, with no inheritance tax to pay due to spouse, civil partner or charity exemption.

You will have to complete the following information:

- Whether the deceased made gifts totalling more than £3000 per year in the seven years prior to the date of their death
- Whether the deceased gave up the right to benefit from assets held in trust within seven years of the date of death
- Whether the deceased made a gift within seven years of death, but continued to benefit from all or part of the gift – for example, if they gave their home to their children but continued to live in it
- Whether the deceased had benefited from assets held in trust, owned or benefited from assets held overseas, held any life assurance or pension policies
- The gross value of the deceased's assets including cash, along with money held in bank accounts and savings accounts
- Details of personal goods, stocks and shares, insurance policies, money owed to the deceased, business interests, ownership of land and property, gifts and lifetime transfers, and assets held in trust for the deceased

Once you have completed both of these forms, make copies of them and send them, along with the original Will and the death certificate, to the Probate Registry.

Some time after sending in these forms – typically within a few weeks – you will be contacted with a date and time for an interview at the Probate Registry, to swear an Oath. You should take all the paperwork you've collected up to this point, since you may be asked to provide evidence for the information you provided on the forms.

At this point, you will be asked to sign the accounts and swear the executor's or administrator's oath, where you promise that all the information you have submitted is accurate and truthful, and that you will carry out your duty to distribute the estate in accordance with the Will or intestacy rules, within a reasonable timeframe. You will also be asked to sign the Will and, if applicable, to submit the estate accounts once the administration of the estate is complete.

Once you have signed them, the Will and the Grant become public documents and can be viewed by members of the public, on payment of a small fee.

It's a good idea to get copies of the Grant, so you can provide them for each asset holder, when you collect assets for the estate.



# Dealing with assets and liabilities

As a Personal Representative, you need to collect information about everything relating to the financial affairs of the deceased, before you apply for the Grant.



Typically, this information breaks down into the following areas:

- Personal goods, including vehicles, bicycles, jewellery, chattels and furniture
- Stocks, shares and bank accounts including cryptocurrency holdings
- Insurance policies
- Money owed to the deceased
- Business interests, such as shares in a jointly-held company
- Land and property
- Gifts and lifetime transfers
- Assets held in trust for the deceased

### Dealing with State Pensions, Benefits and Tax Credits

The Department of Work and Pensions (DWP) needs to know about the death of any UK citizen. This can either happen through the Tell Us Once service, or by contacting the DWP Bereavement Service. This office may ask for a completed BD8 form (notification of death).

You should claim any pension or state benefits that had not been paid to the deceased up until their death. These amounts should also be entered into the probate forms, counting as money owed to the estate.

Equally, if any money has been paid into the deceased's bank account relating to a period following their death, this counts as a liability which must be repaid. To minimise the risk of this, call the relevant agencies and ask them to stop any future payments in advance of receiving the notification of death form.

If the deceased had a private or company pension, life insurance policy or death in service benefit, write to each provider with a copy of the death certificate and ask them to calculate the final statement. A policy may have been written in trust for someone else (such as a surviving spouse), in which case it can generally be paid to that person immediately, without any need for probate. Otherwise, any payment like this will become part of the deceased's estate and must be declared on the probate form.

### Share Certificates

Each listed company has a Share Registrar, so if the deceased held shares, write to this person with details of the deceased, how many shares they held along with the share certificate number if you have it, and a copy of the death certificate. Ask them to confirm that the deceased did indeed have this holding.



If you're unable to locate share certificates, but believe that the deceased held shares, contact their stockbroker, bank or accountant with a copy of the death certificate and ask if they have the certificates. Failing this, ask the Share Registrar to look on electronic settlement systems such as CREST, which should carry a record of the deceased's holding.

To value shares, you can ask a stockbroker to do this, or you can simply check the Stock Exchange Daily Official List, or the Financial Times website ([www.ft.com](http://www.ft.com)) where you need to look for the value of the shares on the day of death, or the Friday before, if the death happened on a weekend. Enter this price on the probate forms.

In cases where the estate's value takes it above the Inheritance Tax threshold, you will need to make a formal valuation of any shareholdings. Otherwise, an estimate based on public records is sufficient.

### Rent, Cars and Valuables

The same principles apply to property rental: if the deceased was paying rent, any over-payment for a period following their death should be reclaimed and is an asset of the estate. Any rent owing is a liability. Make a copy

of the rent book and write to the landlord asking for a final statement.

If you need to value a vehicle, be sure to ask for the value that applied on the day of death. Then record this value as an asset to the estate. Any outstanding debts against a vehicle, such as a hire purchase agreement, count as debts against the estate.

If you are an Executor rather than an Administrator, you are able to sell a vehicle ahead of applying for probate.

Valuables such as jewellery, paintings, furniture and collectibles can be regarded as one joint sum, provided that none of the individual items is worth more than £500. Although the deceased may have had their goods valued for the purpose of insurance, this figure is a replacement value and therefore probably higher than the figure you need to record in probate, which is the value you would expect if the goods were sold on the open market on the day of death. Any fees you have to pay for professional valuations can be recouped later, so keep receipts.



# What to do when you have the grant sets

Once you have the Grant of Probate, you're able to collect the assets of the estate. It also gives you the authority to sell the estate's assets to pay any debts and to distribute the remainder of the estate according to the wishes of the Will, or the rules of intestacy.

Presuming that you have already obtained valuations for all the items that need to be sold, and all the asset holders are ready to disburse funds once they get a copy of the probate, the next stage should be fairly simple.

It is good practice to place an advertisement in the London Gazette, in case you believe that there may be creditors of the estate whose details you don't have, or that there may be unknown beneficiaries. By law, creditors and beneficiaries have two months from the date of this advertisement to make a claim against the estate. If this two month period passes without them contacting the Personal Representative, then the distribution of the estate can go ahead without the Personal Representative being concerned that they will be held responsible for funds due to these creditors or beneficiaries, even if they come forward later.

When you are paying off the estate's debts, be sure to ask for a 'full and final receipt of settlement' from payees such as credit card companies or utility companies. You will need to include these receipts in the final accounts.

By the same token, when you make a payment to a beneficiary, whether it is a legacy or a gift, be sure to ask them to sign a receipt. If they're under the age of 18, a parent or guardian should sign it on their behalf.

### Preparing the Estate Accounts

All the financial information that you have collected since the date of the person's death now has to be laid out in a formal report, then approved by the Personal Representatives. These accounts must include:

- Assets at the time of death
- Liabilities at the time of death
- Income received by the estate during the period of administration
- Changes in asset value, such as an increase in the value of a property
- Administrative expenses occurred during administration
- Details of legacies and the residue of the account to beneficiaries



# How to deal with **property**

Property issues commonly form a crucial part of Probate, since real estate is likely to have the largest financial value in the estate and is most likely to be complicated by joint ownership, shared residency or outstanding liabilities.

Here is a run-down of the principles by which property is treated under Probate:

### Sole ownership

If the deceased owned a property solely in their own name, this is known as sole ownership. The property will pass to whoever is named in the Will, or else is entitled to the property under the rules of intestacy.

### Joint ownership

Where two or more people own a property together, they either own it as 'joint tenants' or 'tenants in common'. In the case of joint tenants, the surviving owner automatically gains the share previously held by the deceased, whatever the Will says, or whatever the rules of intestacy.

For tenants in common, the deceased's share does not automatically pass to the other partner, but remains in the deceased's estate and is distributed according to the terms of the Will, or the rules of intestacy.

In this second case, it is always necessary for the property to be handled under the terms of a

Grant, with a Personal Representative. 'Tenants in common' is an arrangement typically used in second marriages or civil partnerships.

### Mortgages

Whenever there is a mortgage on a property, with a Life Assurance, Endowment or Mortgage Protection policy in place to cover the remaining mortgage on the owner's death, then you should write to the relevant provider and ask for a final statement.

If the property is going to be passed to a beneficiary, with a mortgage still in place, then the mortgage provider will either require the mortgage to be settled immediately, or will ask the beneficiary to assume the deceased's mortgage.

However, if the property is going to be sold, then the mortgage will be paid out of the proceeds.

### Overseas property

If the deceased had property overseas, it's best to take professional advice from an expert in that country, since the laws regarding ownership, valuation and title deeds can vary widely from country to country.



### Land registry

Presuming there is no outstanding mortgage on the property and it will be transferred to a beneficiary, contact the Land Registry and ask for a form to complete, or download it from [www.landreg.gov.uk](http://www.landreg.gov.uk). This form has to be witnessed and signed by the Personal Representative and the beneficiary, then returned to the Land Registry with a fee and a copy of the Grant.

### Valuation

In every case, the property has to be valued on the open market, even if the full value of the estate will come out beneath the tax threshold. Although the valuation does not have to be carried out by a professional, wherever a property is sold or transferred from the estate, or where there is a transfer of tenancy agreements and taxes, such as inheritance, capital gains or income tax, you may benefit from professional advice.

In some cases a professional valuation is helpful: for example, if there is any debate between beneficiaries about the value, or if the property's value is close to the inheritance tax threshold. HM Revenue and Customs sometimes takes an interest in estates which are valued just below this threshold, so a professional valuation can provide useful support in the case of a tax enquiry.



# How to deal with tax

Among the first responsibilities of a Personal Representative is to notify HMRC of the date of the deceased's death, quote their tax reference and National Insurance number and establish whether the estate needs to pay any tax, or is owed any outstanding payments. Find out whether you need to complete an R27 form, which sets out the tax position of the deceased and helps HMRC decide whether anything is owed.

As a Personal Representative, you should claim the personal tax allowance for the tax year up to the date of death, whereas any income that comes into the estate following death will be taxed separately, falling under 'income received during administration'. This period – from the date of death until the end of administration – is classed as a specific tax category and you may have to fill in a tax return, so that HMRC can assess income tax over this period. The deceased's personal tax allowance won't apply to this calculation. Instead, savings are taxed at the starting rate and other income, such as rents from property, are taxed at the basic rate.

For beneficiaries, they may have to pay tax on assets received from the estate, through their tax return, but won't have to pay inheritance tax so long as this tax has been paid by the estate. Give each beneficiary an R185 certificate, to show the gross and net income of the estate and the tax that has already been deducted, so they can include it on their own tax return. Higher rate tax payers may have an additional liability, while nontaxpayers may be able to reclaim tax.

### Capital Gains Tax (CGT)

If the deceased sold or gave away any assets in the tax year of their death, with a subsequent financial gain, then this gain has to be included in the income tax return up to the date of death. If there is a tax liability, it has to be calculated and paid out from the estate.

On the other hand, if the deceased made financial losses on allowable assets, that were above the chargeable gains for that year, these losses can be offset

against any gains made by the deceased in the previous three tax years, starting with the most recent year. These losses can't be offset against any gains that accrue during the period of administration.

As of December 2021, the Capital Gains Tax limit is £12,300 per year and the rate of tax varies depending on whether you are a higher rate tax payer, a nontaxpayer or a charity. For higher rate tax payers, the rate is 28 per cent for gains from residential properties and 20 per cent for gains from other chargeable assets.

Any gains made by the estate during the period of administration, from the date of death to the end of the distribution of the estate, will be liable for tax. So, for example, if an asset is sold by the estate for a higher value than it had at the time of death, the resulting gain could be liable for capital gains tax if it is more than £12,300.

As a Personal Representative, if you expect CGT to apply, it's worth consulting with beneficiaries to see whether they are nontaxpayers or charities. If so, they may be able to save or reclaim the tax further down the line. Consider seeking professional advice in this case.



Inheritance tax is due if the value of the estate is above a certain threshold, known as the 'nil rate band'. As of December 2021 this band sits at £325,000, so anything valued below this level is liable for zero inheritance tax. The taxable band applies to anything above £325,000, for which you may need to fill in an IHT400 form and send it to the HMRC Inheritance Tax office.

In some cases, the IHT400 form doesn't apply: for example if the estate will pass to a surviving spouse, civil partner or charity. If it does apply, send it to HMRC with any schedules, including for IHT421 and then wait for the revenue to return a stamped IHT421, which you must send to the Registry of deaths, together with any Will and death certificates.

### Couples' Allowances

If the deceased was married or in a civil partnership at the time of their death, anything that is passed to the surviving partner is not subject to inheritance tax. This partner can also carry forward any unused tax allowance from their deceased partner, so that this can be used when they die (their executors may need to provide proof of this, so it's worth having professional advice in this case).

There are various exemptions to inheritance tax which it's worth bearing in mind:

- If your estate passes to your husband, wife or civil partner, and you're both living in the UK, there is no inheritance tax to pay, whether or not its value is above the inheritance tax threshold.
- Gifts between husbands and wives are free of inheritance tax.
- Donations to charities and political parties are also free of inheritance tax.
- The majority of gifts made more than seven years before someone's death are exempt.
- Gifts for weddings or civil partnerships up to £5000 are exempt from inheritance tax, as are gifts of up to £2500 from grandparents to grandchildren. The first £3000 that anyone gives away each year is exempt, and if you don't use this allowance in one year, you can carry it over to the next.

There are a series of calculations that need to be made, in the case of someone dying before the seven years have elapsed since making a gift, known as 'taper relief'. Consult a lawyer or accountant to make sure that you have the most up to date advice.

There are also specific rules relating to whether a spouse or partner was domiciled in the UK at the time of their partner's death, along with other thresholds for the total value of the estate and whether it includes overseas assets.



### Paying Inheritance Tax

As a Personal Representative, it is your personal responsibility to pay Inheritance Tax. You have six months from the end of the month of the date of death to pay this tax. After that, interest will be charged on any tax left unpaid. This generally means that inheritance tax has to be paid before the Grant of Probate has been received, and therefore before the assets of the estate have become available to the Personal Representative.

This leaves a gap in funding, which can be handled in one of several different ways:

You can ask the beneficiaries if they will lend you the money, ideally at a lower rate of interest (or no interest at all) than a commercial lender.

The bank or building society used by the deceased may offer to lend the money to the Personal Representative, if they are convinced that it will be repaid.

You should structure this payment as a loan rather than as overdraft, so that any interest paid can be subject to Income Tax relief.

You can arrange a direct transfer from National Savings to HMRC, if the deceased had sufficient savings certificates or premium bonds. This can help to cover any outstanding Inheritance Tax liability.

In some cases, it may be possible to spread inheritance tax payments over a number of years, especially if there are assets such as homes, businesses, farmland or woodland in the estate.

Some pension funds, friendly societies and life assurance companies are prepared to release funds ahead of the receipt of the Grant.

If you are an Executor (i.e. you were named by the deceased in their Will), rather than an Administrator, you are able to sell various assets ahead of receiving Probate, including cars, jewellery, personal items and quoted investments. Funds raised through these sales may be used to pay Inheritance Tax.

In the absence of these means of raising funds to pay inheritance tax, you may consider taking out bridging finance. This can prove to be an affordable,



an

convenient means of bridging the gap between Inheritance Tax liability falling due and the completion of the administration period.

### HMRC reviews

Even after the Grant has been given and inheritance tax paid, HMRC can decide to review the Inheritance Tax liability. It may return to the Personal Representative and ask for more money, if it decides that the estimate on the estate's value was too low.

After the Grant of Probate has been received, the Personal Representative has to take care to match their valuation of the estate's assets with the previously declared value. If they discover additional assets, or come to the view that the earlier valuation was inaccurate, they must inform HMRC straight away. Failure to do this can result in the Personal Representative incurring financial penalties.

### Claiming relief on IHT

If a property is sold at a loss within four years of death, or if shares are sold at a loss within one year of death, then inheritance tax relief can be claimed.

Finally, once HMRC are satisfied that all Inheritance Tax has been paid, or that no tax is due, they will write a signed and stamped letter to the Personal Representative to confirm that their enquiries are complete.



# Advice for high net worth individuals and families



The first and most important piece of advice, if you are a High Net Worth Individual or are part of a family in this situation is **MAKE A WILL!**

The pain and distress that can be caused by wealthy individuals dying intestate is an unfortunate phenomenon. Court cases can run for years, if large assets are at stake. Only the lawyers truly benefit. For everyone else's sake, write a Will so that there is a clear idea of what you want to happen to your estate.

Consider employing Lasting Powers of Attorney. This enables you to appoint a trusted person to take decisions on your behalf later in life, so that your financial affairs are well-managed if you are unable to do this yourself. You can draw up detailed instructions for how they will manage your estate, both before your death and afterwards, as part of a comprehensive estate planning strategy.

Inheritance Tax planning is crucial. There are a host of exemptions and reliefs that can transform the high net worth estate's value to beneficiaries. Without such planning, anything left by the estate above £325,000 per person – or £650,000 for a married couple – is likely to be taxed at 40 per cent. Consider making lifetime gifts and potentially exempt transfers, or transfer tax-free allowances.

For example, ask for advice about reversionary lease schemes, co-ownership, or 'full consideration' arrangements, which may result in property passing on to beneficiaries in a more tax-efficient way.

Be aware of the list of exemptions. These include passing assets on to your spouse, on trading businesses, on agricultural property and farmland or on charitable gifts. Indeed, if you leave at least 20 per cent of your estate to charity, the remainder will attract IHT at 36 per cent rather than 40 per cent.

Consider forming a Trust. A Trust is a reliable way to pass on significant assets to the next generation, safely and securely. After your death, the Trust will be managed by the trustees you have appointed, to carry out your wishes. For example, you may want to leave funds in trust for your children or grandchildren's education, or to make personal gifts. A Family Protection Trust is one option: with your assets 'in trust', your children will be able to borrow their inheritance from the trust in return for a value IOU, allowing them to gain the full benefit of the inheritance without incurring any IHT liability.

Integrate business succession planning. If you have a commercial business, you may want to preserve the personal and family wealth that is tied up in it. A combination of a Will and a Trust can help to achieve this, through estate planning. You may for example want to identify future leaders, and ensure that the business continues to thrive.



Appoint capable administrators. In the case of a large estate, where there are Trusts involved, or where there are complexities such as overseas property to consider, handling Probate can be a lengthy and highly involved process. This makes it especially important to appoint capable and experienced administrators who can achieve rapid progress and results, allowing assets to pass on to beneficiaries in good time, rather than getting tied up in unnecessary bureaucracy. The key role is the Executor, named in the Will as the Personal Representative who will take responsibility for handling Probate.

Philanthropy and giving. This can play a key role in the legacy that a high net worth individual leaves behind. When properly established, as a charity or foundation for example, it can also yield significant tax benefits to the estate. Be sure to appoint professional advisers to integrate philanthropic giving with the terms of Probate, to maximise tax efficiency and benefiting your chosen causes and individuals.

Heritage relief. If you own an especially notable home or building of historical or architectural importance, you could discuss with HMRC whether they will accept this as a gift to the nation in lieu of tax. Also, a number of buildings, land and works of art are exempt from both Inheritance Tax and Capital Gains Tax, when they pass to a new owner as a result of death, or as a gift. In addition to buildings of outstanding historical or architectural interest, heritage relief can apply to land of outstanding natural beauty and spectacular views, land of outstanding scientific interest, such as conservation areas, and objects with national scientific, historical or artistic interest.

In exchange for relief from IHT, the new owners must promise to look after the assets, make them available for the public to view and keep them in the UK. If they breach these conditions, or sell the assets, IHT becomes payable.



# Resolving Probate conflicts

The number of high-profile Probate disputes in the UK almost doubled between 2016, when 227 cases reached the High Court, and 2020, when there were 446 such cases. Expert lawyers believe that many thousands of similar cases are resolved before reaching court.



The main reasons for conflicts are:

- Someone challenges a Will on the grounds of the mental capacity of the testator, that there has been undue influence placed on the testator, or that there has been fraud.
- The role of Executors is challenged by someone who alleges that they are not acting in the best interests of the beneficiaries.
- Claims for 'reasonable financial provision' from an estate under the Inheritance (Provision for Family and Dependants) Act 1975.
- Claims known as Proprietary and Promissory Estoppel, where a Will fails to take into account a promise that the testator gave during their lifetime.
- Issues relating to overseas assets.

In this area of Probate, hearing about real live cases is perhaps the most instructive (and entertaining!) way to learn.

### Case one: The Angry Mother

A woman's mother disapproved so violently of her choice of boyfriend that it led to a 26-year estrangement – for the rest of the mother's life. The mother died in 2004 leaving £500,000 in a Will to a number of animal charities. She attached a letter to the Will stating that she did not wish her daughter to inherit anything from her estate.

The daughter, who was living in rented accommodation and surviving on state benefits, made a claim under the Inheritance (Provision for Family and Dependants) Act 1975, arguing that the Will did not provide her with reasonable provision, and that her mother had no known links with these animal charities. The court awarded her £50,000, far below the £213,000 that she asked for. This case upheld the principle that people can leave their estate to whomever they wish, without having to cater to family members.



### Case two: The Squabbling Children

A mother died leaving £4.3 million in her estate, naming one of her four children as the sole beneficiary in her Will. The three other children challenged the Will, saying that their mother had lacked testamentary capacity at the time she wrote this Will, and that a previous Will, naming all four children as equal beneficiaries, should be reinstated.

During the course of the dispute, it emerged that all four children had 'borrowed' money from their mother, some without repaying it, along with numerous items of furniture and jewellery, since their mother was living in a nursing home. Legal fees mounted up, which, together with Inheritance Tax and repayment of the borrowings, meant that the estate was much reduced from its original size. The prospect of a lengthy court case would further eat away at the estate.

Instead, the children agreed to mediation, which resolved the situation by returning to the earlier Will and dividing the estate equally between them, minus their borrowings. This saved them heavy costs had the matter gone to a full trial.

### Case three: The Crooked Attorney

A lawyer was appointed Executor for a high value Swiss estate. Some months later, the estate's beneficiaries discovered that millions of pounds and several valuable works of art had vanished from the estate. A firm of solicitors traced these assets to the UK, where the lawyer had moved, and carried out investigations into the misappropriations, requesting disclosure from both Swiss

and UK banks, auction houses and other third parties. The solicitors then issued proceedings against the Executor in both Switzerland and the UK.

As a result of these proceedings, the administration of the estate was removed from the Executor and, through mediation, the beneficiaries were able to recoup the estate assets.

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With the high incidence of second (or third) marriages, involving step-children, step-parents and half-siblings, families are increasingly diverse and therefore potentially liable to dispute a Will. Longer life expectancy also complicates the situation for some: a new Will, written at an older age, may prompt concern over the testator's mental capacity.

Other causes of dispute include beneficiaries who disagree with one another over the terms of a Will; people who are financially dependent on the deceased, but are unnamed in the Will; and disagreements over the value of assets – often the value of a property.

Employing an independent law firm to act as a mediator can be a good way to resolve such conflicts. Yet the best way to avoid them in the first place is to write a clear and valid Will, make sure that it is properly signed and witnessed, that it names an Executor, and that this person knows where it is and what to do with it.



# The role of bridging finance

There are many circumstances in the course of the Probate process where payments have to be made - or there is pressure for them to be made - before sufficient funds are available from the estate.



### Scenario 1

Inheritance Tax is due on an estate prior to the receipt of the Grant of Probate by the Personal Representative (the Executor or Administrator). If they have the funds, they can make this payment safe in the knowledge that the estate will reimburse them at a later stage. But what if they don't have the funds?

In some cases, UK Probate processes become 'locked': the Personal Representative can't pay the Inheritance Tax, which means that the Grant of Probate cannot be made.

A **bridging loan** can unlock this situation, allowing the Inheritance Tax to be paid, the Grant to be made and the estate disbursed to beneficiaries.

### Scenario 2

Two siblings are named in a Will as beneficiaries from an estate where the principle asset is a property valued at £1.2 million on the open market. One sibling is keen to realise a sale quickly, because they want to complete a property purchase of their own. They receive an offer of £1 million for the property from a developer and this sibling wants to go ahead.

The other sibling is prepared to wait for a better offer, rather than forfeit £200,000 through a quick sale. They agree to take out bridging finance so that one sibling can receive their share of the home up front, while the other waits for the property to achieve a good valuation and sale.

### Scenario 3

In a large estate worth several million pounds, there is a collection of valuable assets including property, shares, investment policies, jewellery and other items. There are also several debts to be paid: property rental fees, car finance, an outstanding mortgage, Income Tax and Inheritance tax. What's more, there are several beneficiaries who have yet to agree on what each may inherit.

It will take several months, possibly running into a second year, to disentangle all these credits and liabilities. Yet a number of the debts must be paid at once, or the estate risks financial penalties or even legal action.

Once again, bridging finance can play an extremely helpful role: the Personal Representative can get a good idea of the eventual value of the estate, once all debts have been settled. It is far better to pay all debts in good time, realise assets without acute time pressures (thereby maximising returns to the estate) and ensuring that the beneficiaries are satisfied with the outcome.

A bridging loan enables the Personal Representative to restructure the estate's finances, thereby streamlining the Probate process. In a case such as this, a bridging loan can be extended against the collateral of shares, investment policies etc, rather than simply against a property.



### The case for bridging finance

The speed at which bridging finance can be extended, its flexibility and versatility, makes it ideal for Probate situations where there are competing pressures: some beneficiaries wanting to realise their share of an estate, versus Personal Representatives and other beneficiaries aiming to maximise its value; immediate payments such as Inheritance Tax versus the need to spend time administering a complex estate.

“We have found that customers are extremely grateful when they realise how useful bridging finance can be in a Probate situation,” said Stephen Clark at **Finbri**. “It is a great relief to them that, at a time when they are understandably distressed by someone close to them dying, they are not forced into making difficult choices at short notice. Bridging finance removes a lot of the stress from their lives and allows them to realise the full value of their assets.”

Bridging finance loans are typically extended for amounts between £50,000 and £10 million, at 70 per cent of the value of an asset such as a property, for a term of between one month and three years. Interest payments range from 0.40 per cent to 1.5 per cent per month.

With the high incidence of second (or third) marriages, involving step-children, step-parents and half-siblings, families are increasingly diverse and therefore potentially liable to dispute a Will. Longer life expectancy also complicates the situation for some: a new Will, written at an older age, may prompt concern over the testator’s mental capacity.

Other causes of dispute include beneficiaries who disagree with one another over the terms of a Will; people who are financially dependent on the deceased, but are unnamed in the Will; and disagreements over the value of assets – often the value of a property.

Employing an independent law firm to act as a mediator can be a good way to resolve such conflicts. Yet the best way to avoid them in the first place is to write a clear and valid Will, make sure that it is properly signed and witnessed, that it names an Executor, and that this person knows where it is and what to do with it.



# Glossary of Probate terms

A glossary of the need to know terms when trying to understand Probate.

### Abatement

If there aren't enough funds to settle all the funeral expenses, testamentary and administration debts and legacies in full, the legacies will have to be reduced, or 'abated', by the necessary amount.

### Absolute interest

This is an interest that a beneficiary is entitled to without question, straight away.

### Accumulation

This refers to retaining and reinvesting income, such as from property rental, or bank interest.

### Acquisition (Probate value)

This is the value at which the Personal Representative or a beneficiary acquires the assets of the estate.

### Adeem/ademption

This is either the complete or partial extinction of a specific bequest as a result of the deceased having gifted, sold or otherwise disposed of it during their lifetime, other than by revocation.

### Administration period

The period between the date of death and the end of the administration.

### Administrator

The legal representatives of a deceased person who has died without a Will. They are usually the closest relatives of the deceased.

### Advancement, power of The

This is a power given to pay capital monies held in trust to or for the benefit of a beneficiary of the trust.

### Affidavit

Written statement by a person called 'the Deponent', who signs it and swears or affirms to the truth of its contents.

### Agreed value

The probate value as formally agreed by HMRC Inheritance Tax where inheritance tax is payable. HMRC may seek verification of the values from the District Valuer.

### Appointment, power of

A power given by Will or deed to appoint a person or class of persons to inherit an interest.

### Apportionment

The division of income in proportionate shares between certain beneficiaries, calculated on a daily basis.

### Appropriation

The transfer of an asset to a beneficiary, instead of its sale proceeds, on account of a legacy or share of residue.

### Attorney

A person appointed by another to act in his place.

### Beneficiary

A person entitled to receive funds or property under a Will or intestacy.



### Bequest

A gift of personal property, e.g. a ring.

### Call

Demand upon the holder of partially paid shares to pay the balance.

### CGT

Capital gains tax.

### Chose in action

The right to bring a legal action to recover chattels, money or debt.

### Chain of representation

The process where an Executor of a sole or last surviving Executor who has died without completing the administration of an estate, becomes the Executor of both estates.

### Clearance certificate/certificate of discharge

A certificate issued by HMRC Inheritance Tax releasing a person liable to inheritance tax from paying further inheritance tax.

### Clearance Letter

Letter sent by HMRC to the person who has signed the IHT400 confirming that all Inheritance Tax has been paid.

### Codicil

A written amendment to a Will.

### Devise

A gift of real property, e.g. a house.

### Disbursement

A payment made to a third party by a professional, e.g. Funeral Director or solicitor.

### Estate

All the assets and liabilities of a deceased person – such as property, shares, cash, savings and investments as well as outstanding debts.

### Estate accounts

Accounts recording the financial transactions during the administration period.

### Estate in fee simple

An absolute freehold interest.

### Excepted estate

An estate where no inheritance tax is due if certain criteria are fulfilled.

### Executor

A person appointed by a Will or codicil to administer the estate.

### Gift

A gratuitous transfer of money or assets.

### Grant of Representation

This is obtained from the Probate Registry (Sheriff Court in Scotland) following a death. The Grant will be made to the Personal Representatives where there is a Will and to the closest relatives where there is no Will. This document is called a Grant of Probate ('confirmation' in Scotland) where there is a Will and a Grant of Letters of Administration where there is no Will. A deceased person's estate can be dealt with once the Grant of Representation has been obtained.

### HMRC Inheritance Tax

The division of HMRC which deals with all aspects of inheritance tax, capital transfer tax and estate duty. Formerly known as the Capital Taxes office.

### Inheritance tax (IHT)

The tax paid by the estate of the deceased when that person dies.

### Insolvent

An estate is insolvent if the assets are insufficient to pay all funeral, testamentary and administration expenses and debts.

### Instrument of variation

(also called a Deed of Variation) Enables beneficiaries of a deceased's estate to alter the distribution of the estate to reflect family circumstances and possibly save future inheritance tax.

### Intestacy

The situation where a person dies without making a Will fully disposing of all their assets. The administration of an 'intestate' estate is governed by the Administration of Estates Act 1925.

### Issue

Children, grandchildren or remoter lineal descendants.

### Legacy

A gift in a Will; this could be money, chattels or property.

### Legacy/bequest/devise

The estate capable of being transferred or conveyed at common law.

### Letters of administration

If the deceased died 'intestate' i.e. leaving no Will, or if the Will is invalid for any reason, the Grant is called a 'Letters of Administration' and is sometimes referred to as 'simple administration'.

### Letters of Administration with Will Annexed

If the deceased left a Will, but did not appoint any Executors or all of the Executors are unable or unwilling to act or the Will does not dispose of all of the deceased's assets, then the Grant is called 'Letters of Administration with Will Annexed'.

### Nil rate band

This is the value of an estate that is not subject to Inheritance Tax. Any value above this amount is subject to Inheritance Tax.

### Oath

Written statement by a person called 'the Deponent', who signs it and swears or affirms to the truth of its contents.

### Personal chattels

These are Personal Possessions. Does not include any chattels used at death for business purposes and any money or securities for money.

### Personal Representative

An executor or administrator.

### Power of attorney

Formal deed by which one person appoints another to act on his behalf or represent him.

### Power reserved

If an Executor does not wish to take the Grant now they can reserve power to take the Grant at a later date.



### Renouncing probate

If a Personal Representative does not wish to act and has not intermeddled in the estate he can reject his appointment by renouncing. This must be in writing.

### Residuary beneficiary

The person entitled to the whole or part of the deceased's estate after the payment of all debts, funeral and testamentary expenses and legacies.

### Residuary estate/residue

The remainder of the estate after payment of all funeral expenses, any Inheritance Tax, liabilities, administration expenses and legacies.

### Solvent

An estate is solvent where the assets are sufficient to pay funeral, testamentary and administration expenses and debts.

### Specific legacy

This is a gift of a particular item of the deceased's estate (e.g. a grandfather clock or a house).

### Spouse

Husband or wife at the date of death.

### Spouse, civil partner or charitable exemption

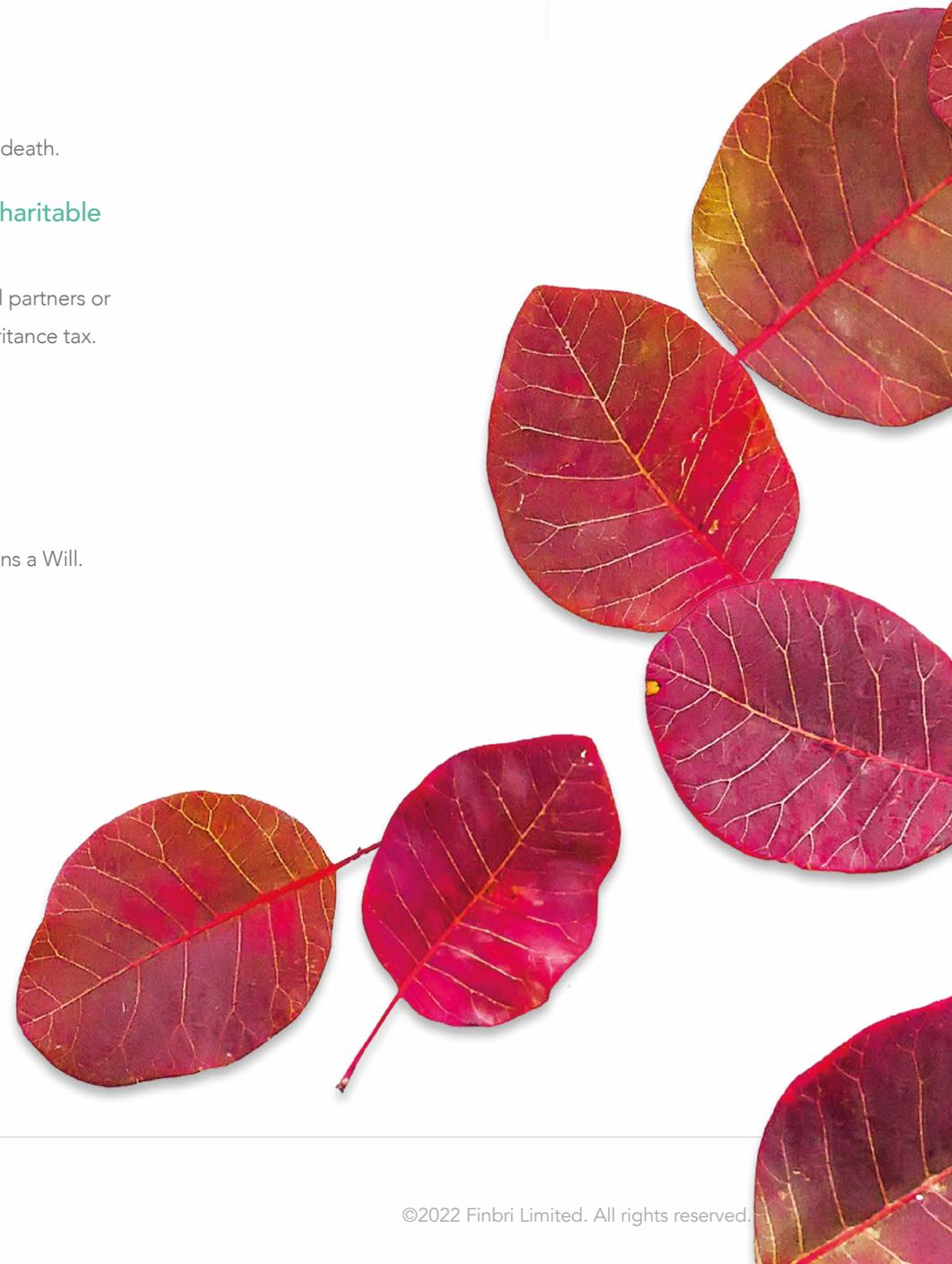
Any gifts made to spouses, civil partners or charities are exempt from inheritance tax.

### Testate

Dying, leaving a Will.

### Testator

The person who makes and signs a Will.





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