

# PENGILLYS

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A guide to  
protecting your family

## Probate and Administration

Probate Application

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## Your guide to Probate and Administration

When someone dies, there are many things that will need to be done from arranging the funeral to distributing their 'Estate', their property, money and possessions. If the person made a Will, they would have appointed **Executors** who are then responsible for dealing with the Estate and, if necessary, obtaining the 'Grant of Probate'.

If however, the person died without having made a Will, there are a special set of rules governing the order of priority as to who may apply to be appointed as **Administrator** to administer the Estate. This is known as 'Intestacy'. The rules of intestacy enables the law to decide the order of succession of the Estate and how it is divided and distributed. This also applies if there is a Will but it does not cover the whole Estate, this is known as 'Partial Intestacy'.

### In the first instance

We check if there is a valid Will and if necessary, prove that the Will is the last Will of the deceased, and states who has been appointed to sort out their Estate - their Executors.

If there is no Will, the next of kin can apply for the right to deal with their Estate. In this instance the Estate will be administered by Administrators rather than Executors.

### The next step

We will ask you to provide us with details of the assets and debts or liabilities of the person who has died. You will need to complete an Estate Questionnaire which will set out the information we require clearly for you to state:

#### Assets

May include: house, car, furniture, savings, life insurance policies, shares, personal possessions, jewellery, or anything else having a value. Plus, the appropriate share of anything in joint names.

#### Liabilities

May include: a mortgage, outstanding bills, credit cards, loans etc.  
This may also include the funeral account.

From the details you provide, we can ascertain the size and value of the Estate, in order to advise you and also to establish whether any inheritance tax is payable.

### Apply for Grant of Probate (if there is a Will)

If there is a Will - An oath (sworn document), is then made by the Executors named in the Will, saying what the value of the Estate is and undertaking to administer it according to law.

### Apply for a Grant of Representation (if there is no Will)

If there is no Will - Apply for a Grant of Representation to be an Administrator, which gives the legal right to access the assets of the deceased.

| A 'Grant of Probate' or 'Grant of Representation' is required in order to collect the assets in the Estate before any assets or property, if any, can be sold.

### HMRC - Outstanding Tax

It is also necessary to complete the relevant HM Revenue and Customs tax form and any tax that may be payable can be assessed and paid. Even when no tax is to be paid, a form still needs to be submitted to HM Revenue and Customs as it is the Executors personal liability and responsibility to declare all assets correctly. If the Probate Registry accepts that the papers are in order they will issue the 'Grant of Probate' or 'Grant of Representation' for the Estate.

### Executor and Administrator Responsibilities

As a named Executor or an Administrator, there are responsibilities involved in dealing with the Estate of the person who has died.

#### Debt

An Executor or Administrator is personally liable to pay any debt of the deceased out of the Estate, even though he or she may be unaware of the debt, and may distribute the Estate without knowing

of it. An Executor can protect him or herself from such liability by advertising for claims to be made within a stated time and it is important that you seek our advice on this matter in order that you can safely distribute the Estate.

#### Inheritance Tax

An Executor is also liable for Inheritance Tax which may be due in respect of any gifts made by the deceased within seven years of death. There are a number of exemptions and reliefs to reduce Inheritance Tax liability, which we can advise you on.

#### Distribution of the Estate

Distribution of any property or money to the beneficiaries who are entitled to it.

### How long will Probate or Administration take?

People's circumstances vary from one to another, so it is extremely difficult to advise how long it may take. We will keep in touch with you throughout the process in order to advise the position we have reached and how matters are progressing. It also depends on whether a third party is likely to apply to the Court to challenge the Will and it would be extremely unwise for the Estate to be distributed before ten months have passed from the date of the 'Grant of Probate' or 'Grant of Representation'.

### Final winding up

We will prepare an account to the Executors, setting out the assets and liabilities of the Estate, our fees and the amount available for distribution. Once approved we will then distribute the Estate.

### How much will it cost?

Our charges are calculated based on the time spent by the Solicitor assisting you with this and will include: meetings, research and drafting, plus the number of letters, emails and telephone calls required.

Our charges will also contain an element based on the Estate. This is because the value is a reflection of the importance of the matter and, consequently, the responsibility of this firm. Therefore, we will also charge between 1 and 1½ percent of the gross value of the Estate (excluding any residence in which the deceased resided where the rate will be up to half of 1 percent.)

There will also be certain additional expenses (known as disbursements) such as court fees and charges for official copies of the grant documents, which we shall incur on your behalf, and which will be added to our account.

If the administration of the Estate is likely to take some time to complete we may deliver bills at intervals for the work carried out during the conduct of the matter. These bills would be payable out of the assets of the Estate. This assists our cashflow and enables you to keep track of costs.

We hope that this short guide has helped you in understanding more about Probate and Administration. We would be pleased to meet with you to discuss any Estate matters that you may have.

#### Please call:

Christopher Berry **Principal** over 30 years' experience  
Katherine Ashley **Principal** over 15 years' experience  
Sherry Foot **Associate Solicitor** over 7 years' experience  
Stephen Peck **Solicitor** over 18 years' experience  
Liam Connolly **Trainee Legal Executive** over 5 years' experience

on **01305 768888**

Full details regarding the experience and qualifications of the above, can be found by visiting our website - [www.pengillys.co.uk](http://www.pengillys.co.uk) - About - Our People.

Further details about Pengillys and how we work, our Terms of Business and Privacy Policy are also available on our website or on request as printed documents.



# PENGILLYS

SOLICITORS ● MEDIATORS

Looking after you and your family



Call us for professional help and advice on

**01305 768888**

or email

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## Our Offices

### Weymouth

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