

# Legal Jargonbuster

An explanation in plain English of some of the common legal terms used in the context of Wills and Probate, and of some of the terms used to market legal services.

Wills, Probate and More



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## ADMINISTERING AN ESTATE

When a person dies, there will often be money, property and assets that belonged to that person which are held in his name. These are referred to as his “Estate”.

The deceased person may have had debts.

The term “administering an estate” refers to the task of collecting in the money, property and assets of the deceased person, paying his debts and funeral expenses, sorting out any outstanding tax affairs, and paying what remains to his heirs (by reference to his Will if he left a Will).

## ADMINISTRATOR

An Estate will usually be administered (see above) by a person called an Executor. An Executor is a person named in a Will who is given the task of administering the Estate of the person who made the Will.

If there is no Executor to administer the estate, the person who carries out the task is known as an “Administrator”.

This situation can arise if there is no Will, or if there is a Will but it fails for some reason to name an Executor who is able or willing to act. (See “Estate” and “Probate” below)

## ADVANCE DIRECTIVE

You can use an Advance Directive (also called an Advance Decision) to refuse some or all forms of medical treatment if you lose your mental capacity at a future date.

## BUSINESS PROPERTY RELIEF (often referred to as BPR)

This is a relief applied to Inheritance tax on certain business assets. The relief can apply at 100%, reducing the Inheritance Tax on the asset to nil, or at 50% reducing it to half the

	rate that would otherwise have been charged. See “Inheritance Tax”.
<b>BENEFICIARY</b>	A person named in a Will or Trust Deed who may or will receive a benefit of some kind from the Will or Trust Deed.
<b>BENEFICIARY</b> - <b>Residuary Beneficiary</b>	A Beneficiary entitled to some or all of the Residue of an Estate. (See “Residue”)
<b>CHATTELS</b> (often referred to as personal Chattels)	Chattels means movable personal possessions - any property other than Real Property. (See “Real Property” below)
<b>CHATTELS</b> - <b>as defined by s55(1)(x) of the Administration of Estates Act 1925</b>	The expression “chattels as defined by s55(1)(x) of the Administration of Estates Act 1925” means virtually any moveable object, provided that it was not used for business purposes.  Section 55(1)(x) states that “ ‘Personal Chattels’ means carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories(not used for business purposes),garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use, or ornament, musical and scientific instruments, and apparatus, wines, liquors and consumable stores, but do not include any chattels used...for business purposes nor money or securities for money.”
<b>CHATTELS REAL</b>	Chattels Real means leasehold interests in land
<b>ESTATE</b>	This refers to the money, property and assets belonging to a person, usually someone who has died.
<b>ESTATE</b> - <b>Estate Accounts</b>	Estate Accounts are accounts that are prepared when an Estate has been administered. Their purpose is to indicate to the Beneficiaries and Executors the size of the Estate at the date of death, the value of the money, property and assets realised by the Executors, how the money, property and assets have been used (e.g., to pay debts, Legacies etc) and the balance available as Residue.  Sometimes Interim Estate Accounts are prepared to provide information about the Estate during the course of the administration if the administration is taking a long time.

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<b>ESTATE</b> <b>Estate administration</b>	See “Administering an Estate” above
<b>ESTATE</b> - <b>Estate administration advice</b>	This is where you administer an estate and you receive advice from an expert with the legal aspects of the matter.
<b>ESTATE</b> - <b>Full estate administration</b>	This is where an expert administers an estate for you. It is the service that lawyers will usually provide for you.
<b>ESTATE</b> - <b>Complex Estate</b>	An estate involving complications such as a Will which is difficult to interpret, or the necessity to take Inheritance Tax into account.
<b>ESTATE</b> - <b>Insolvent Estate</b>	An Estate in which there are insufficient funds to pay all the liabilities
<b>ESTATE</b> - <b>Simple Estate</b>	An estate in which there are no difficult issues and which does not involve Inheritance Tax.
<b>EXECUTOR</b>	A person named in a Will to be given the responsibility of administering the Estate of the Testator.
<b>EXECUTRIX</b>	A female Executor.
<b>GRANT OF PROBATE</b>	A Grant of Probate is a document which you will need to access the money, property, bank accounts and other assets held in the name of a deceased person.  A Grant of Probate is issued by the Probate Registry when there is a Will. The Grant is taken as absolute proof that the persons who have proved the Will and are named in the Grant are entitled to administer the estate. (See “Probate” below)
<b>GRANT OF LETTERS OF ADMINISTRATION</b>	The document issued by the Probate Registry when there is no Will. This is taken as absolute proof that the persons who are named in the Grant are entitled to administer the estate. (See “Probate” below)
<b>INHERITANCE TAX</b> <b>(Often referred to as IHT)</b>	The name of this tax is in many ways self-explanatory. It is a tax on inheritance. It is charged when money, property or assets are transferred from one person to another person, or to a trust. The tax usually arises on death. However, the tax can be charged when a person transfers property during his lifetime to a trust.
<b>INTESTACY</b>	This is the situation that arises when a person has died without leaving a Will.
<b>INTESTACY</b> - <b>partial intestacy</b>	This is the situation that arises when a person leaves a Will which fails to dispose of all of

## **INTESTACY**

### **- Rules of Intestacy**

his Estate. The portion of the Estate which is not disposed of by the Will is disposed of by the rules of Intestacy.

These are the rules that set out who will inherit the Estate of someone who has died without leaving a valid Will (i.e., has died “Intestate”)

## **INTESTATE**

A person who has died without leaving a Will. (Such a person is often referred to as “the Intestate”)

## **JOINT TENANTS**

Joint ownership of an item of property by two or more people in which they are legally treated as if they did not have separate shares in the property.

Therefore if one joint tenant dies, the surviving joint tenant or tenants automatically inherit the share of the property of the deceased joint tenant.

This is known as “Rights of Survivorship”.

Rights of Survivorship apply even if the deceased joint tenant makes a Will purporting to give away his share of the joint property.

The provision in the Will giving away his share will fail to take effect because the Rights of Survivorship will operate to give his share to the surviving joint tenant or tenants.

Houses are commonly held by married couples and civil partners as joint tenants.

(See “Tenants in Common” and “Severance of Tenancy”)

## **LASTING POWER OF ATTORNEY**

This is a document to give one or more people the legal authority to run the financial affairs of another person; or to take decisions about the health and welfare etc of that other person.

A Lasting Power of Attorney would typically be signed by someone as a precaution against the future loss of mental capacity.

There are two types of Lasting Power of Attorney: a Property and Affairs LPA, and a

	Personal Welfare LPA.
<b>LEGACY</b>	A Legacy is gift of personal property made by a Will.
<b>LEGACY</b> - Pecuniary Legacy	A Pecuniary Legacy is a gift of money made by a Will E.g., “I give Jason Sykes the sum of £300”
<b>LEGACY</b> - Specific Legacy	A Specific Legacy is a gift of a specific item of property made by a Will E.g., “I give Jason Sykes my grand piano”
<b>LEGATEE</b>	A Legatee is a person who is due to receive a legacy (see “Legacy”, “Pecuniary Legacy” and “Specific Legacy” above)
<b>PERSONAL CHATTELS</b>	See “Chattels” above
<b>PERSONAL PROPERTY</b>	Moveable property (e.g., furniture) as opposed to immovable or real property which refers to land. (See “Real Property” below)
<b>PERSONAL REPRESENTATIVE</b>	A Personal Representative is a person who administers an Estate. The expression “Personal Representative” can mean either an Executor or an Administrator.
<b>PROBATE</b>	A Grant of Probate is a document which you will need to access the money, property, bank accounts and other assets held in the name of a deceased person.

When a person is named as executor in a Will, his authority in relation to the Estate stems from the Will. He has wide powers as an executor given by statute (and possibly extended by the Will) to collect the money, property and assets of the deceased. However, in practice he will find that he is unable to collect many assets of the estate – possibly all of them – without a document known as a **Grant of Probate**.

In particular, he will not be able to sell or transfer the house of the deceased or shares held by the deceased.

The Grant of Probate is a document which is obtained from the probate registry by submitting an application in the correct form.

When there is a death and the deceased did not leave a Will, the person who is entitled to deal with his Estate is known not as an executor, but as an Administrator. An

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Administrator cannot have authority conferred on him by a Will, because there is no Will. An Administrator, in common with an Executor, can apply to the Probate Registry for a Grant. The Grant issued to an administrator is known as a **Grant of Letters of Administration**.

The Administrator does not have any formal legal authority to act in the administration of an Estate until he has obtained a Grant of Letters of Administration.

There are many other forms of Grant that can be issued by the Probate Registry depending on the circumstances.

Note that the word “Probate” is often used rather loosely to denote the process of administering an estate (see “Estate Administration” above).

#### **PROBATE**

##### **- Application for Probate**

An application for Probate is an application to obtain a Grant of Probate (this expression is often used to refer to an application for a Grant of Letters of Administration). See above: Probate.

#### **PROBATE**

##### **- Contentious Probate**

Contentious Probate refers to the situation where an Estate has to be administered but there is a serious disagreement or dispute of some kind to resolve.

#### **PUBLIC GUARDIANSHIP OFFICE**

The Public Guardianship Office is an institution which protects people who have lost their mental capacity. It has a number of powers and duties, one of which is to maintain a register of Lasting Powers of Attorney.

#### **REAL PROPERTY**

Real Property means Land, things attached to the land (e.g., houses) and rights over land other than leasehold interests are all examples of Real Property.

#### **RESIDUE**

The Residue is the portion of an Estate left over after the payment of debts, funeral expenses and Testamentary expenses, legal fees and legacies.

#### **SEVERANCE OF TENANCY**

This is the process by which Joint Tenants can become Tenants in Common (see “Joint Tenants”)

#### **STATUTORY LEGACY**

When a person who is married or in a Civil Partnership dies intestate (i.e., dies without

leaving a Will), and that person (known as “the Intestate”) has children or siblings, his or her spouse or Civil Partner is entitled to a fixed sum of money known as the “Statutory Legacy”.

If the Intestate leaves a spouse or civil partner and children, the Statutory Legacy is currently £250,000.

If the Intestate leaves a spouse or civil partner and siblings (but no children), the Statutory Legacy is currently £400,000. Note that the surviving spouse or civil partner has other entitlements in addition to the statutory legacy.

## TENANTS IN COMMON

This means Joint ownership of an item of property (usually a house) by two or more people in which each has a distinct share in the property which may be left by a Will to persons other than the surviving owner or owners.

This contrasts with Joint Tenants who cannot dispose of their shares in jointly owned property by their Wills.

Tenants in Common are said to have “undivided shares” in the property they own as each is entitled to occupy the whole property in common with the other owners.

(See “Joint Tenants” and “Severance of Tenancy”)

## TESTATOR

A Testator is a person who has made arrangements to give away his property on death by signing a Will.

## TESTATRIX

A female Testator (see “Testator” above)

## TRUST

It is notoriously difficult to define what a trust is.

This is an example of a trust to explain the concept:

A person could write a document known as a “Trust Deed” stating that he wanted a sum of money (known as a “Trust Fund”) to be used for the benefit of certain relatives of his.

The document could name two people to look after the Trust Fund. The people looking after the Trust Fund would be known as “Trustees”.

The relatives who would benefit from the Trust Fund would be known as “Beneficiaries”.

This would create a Trust. (Subject to certain legal formalities being complied with).

You will note that a Trust has three ingredients: (1) Trustees, (2) a Trust Fund, and (3) Beneficiaries.

It also (usually) has a document which sets out how it is to be run.

A Trust can be set up by a person during his lifetime as in the example, in which case it is known as a Lifetime Trust or Settlement, and the document creating it is known as a Trust Deed or Declaration of Trust.

A Trust can also be created in a Will in which case it is known as a Will Trust. There is usually no separate Trust or Settlement Deed with a Will Trust as the Will itself sets out the terms of the Trust. However, sometimes a person creates a Lifetime Trust then directs in his Will that on his death money should be paid into the Trust from his Estate.

**TRUST FUND**

Money, Property or Assets that are held in a Trust. (see “Trust” above)

**TRUSTEES**

The individuals responsible for running a Trust, whether the Trust is created by a Will or by a Trust Deed. (see “Trust” above)

**WILL**

A Will is a statement, usually in writing, by the person making it which sets out how he would like his money, property and assets (his Estate) to be given away on his death.

**WILL**

- **Basic Will**

A basic Will is a Will that is not complicated. Typically it would be a Will where you are leaving everything you own to one or two people, or to your children.

**WILL**

- **Basic Will for two people**

This is where two people (usually married or civil partners) make basic Wills on similar

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terms. Typically they would leave everything they own to each other on the first death, and on the second death they would leave everything to their children or to one or two other people. If they had children under the age of 18, they would usually appoint guardians to look after their children in their Wills.

**WILL**

- **Complex Will**

This is a Will which is more complicated than the above typical examples of “Basic Wills”.

If you discuss your needs with us over the telephone, we will let you know whether your needs are basic or not and give you a quote.

**WILL**

- **Mirror Wills**

This is where two people (usually married or civil partners) make Wills on similar terms. Typically they would leave everything they own to each other on the first death, and on the second death they would leave everything to their children or to one or two other people. Such Wills are called “Mirror Wills” because the provisions of the Wills mirror each other.

**WILL**

- **Will while you wait**

This is just what it says on the can.

It is literally a case of a Will while you wait.

Our Will service makes use of modern technology and enables us to prepare a Will and give you face to face advice all in the course of a single meeting with you.

The meeting can be in your own home, our office, or any other reasonable location of your choice.

The process means that you can have a Will drawn up in your own home that is ready to sign very quickly – sometimes within an hour. We aim to produce all our Wills as Instant Wills.

Traditional methods of making a Will require two or more meetings and a delay of days or weeks before you are able to sign your Will.

With a Will while you wait, it might take as little as one hour for you to have a Will

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produced and ready for to sign.

Remember, Wills, Probate and More can create a will while you wait for you in your own home, your office, or almost any other place that you choose.

## **WILL**

### **- Second marriage Will**

This is where you are on your second marriage and you and your spouse want to make arrangements using trusts to ensure , as far as possible, that children from your first marriages to inherit something from you.

## **WILL TRUST**

A Trust established by a Will

(See “Trust” above)

## **WINDING UP AN ESTATE**

When a person is winding up an Estate he is finishing the Administration of the Estate.

An Estate is wound up when all liabilities have been paid and the Residue has been paid to the Residuary Beneficiaries.

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