

Grant of Confirmation in Scotland (with no Will) – Lastingpost.com

Introduction

If a person dies without a valid Will, they are said to have died intestate. In this event, there are specific rules that decide who receives what.

What is a Grant of Confirmation?

After a person's death, all their assets, including their bank and building society accounts, are automatically frozen. This is the case whether or not they left a Will.

If the deceased died intestate, you as the Next of Kin, will need to apply to the sheriff Clerk's office to be appointed Executor. You should be aware that in Scotland, the Executors are known as Executor-datives (male) and Executrix-datives (female).

The Grant of Confirmation issued by the Court allows you as the appointed Executor to deal with all the property and other assets of the person who has died.

As part of the application, a valuation of the deceased's assets will need to be provided to the Court. Confirmation will not usually be granted until all or some of any Inheritance Tax that is due has been paid.

Is a Grant always Required?

The Next of Kin will not, however, need to apply for a Grant of Confirmation if everything the deceased owned was held in joint names with their spouse or civil partner or if their only assets were Bank or Building Society Accounts that contained less than £5,000. In this case, the deceased's estate can be distributed using the rules of Intestacy immediately.

Small Estates

In addition, Confirmation is only required for a 'Small Estate' if a Bank or Building Society requests it. A small estate is defined as an estate with a total (or gross) value of less than £30,000. This threshold is subject to change from time to time.

Valuation Process

The Next of Kin need to collect details of all the property and all the debts belonging to the deceased.

The property will include any house, car, furniture, savings, life insurance policies, personal possessions, jewellery and anything capable of being valued and of being transferred to one person to another.

The liabilities may include a mortgage, outstanding bills, etc and will also include the

funeral expenses.

For help in valuing the deceased's estate, please look at our PDF file. This file is located in the Valuation Process part of the "IF there is no Will" section of the Web-Site.

Unless the deceased's estate is a small estate (with a gross value of less than £30,000) or a Grant of Confirmation is not required, the Next of Kin should consider appointing a Solicitor for the application to the Court and for help administering the estate.

To find a Solicitor in your area of Scotland who specialises in Confirmation work, Please go to <http://www.lawscot.org.uk/find/>

Application to the Court

If you are applying to be appointed Executor, you must deliver to the Sheriff Clerk's Office the following documents.

1. Personal details of the deceased and their family.
2. Full details of the estate.
3. The Death Certificate.

The Sheriff Clerk will complete the requisite forms and if no further questions require answering, they will issue Confirmation in a few days.

In Scotland, the Court may request that the person applying to act as Executor provides a "Bond of Caution." This is a guarantee from either an insurance company or an individual that the Executor will carry out their duties in accordance with the legal obligations and also insures against any losses suffered in the handling of the estate.

How Long Does it Take?

As each person's circumstances are different, it is difficult to predict with any certainty how long it will take to firstly obtain the Grant of Confirmation and to then administer the estate.

The reason why the process is slow is that it is normally not possible to collect the assets (apart from joint accounts which automatically pass to the survivor) or indeed to pay the liabilities of the estate out of the assets until a Grant has been obtained. This is because all official bodies including Banks, Building Societies, Stockbrokers and Estate Agents will want to see sight of the Grant before proceeding with any sales or transfers to the Executors.

As a rough guide, it should take six to nine months for an estate that includes property.

Final Winding Up

Once all the assets have been collected and all the liabilities have been discharged, the net balance of the estate can be ascertained.

This balance can then be distributed to the beneficiaries in accordance with specific legal rules.

Specific legal Rules for Distribution

In the absence of a Will, the estate will be distributed according to the following rules:

1. Prior Rights

The surviving spouse or civil partner is entitled to the following:

(a) The house up to £300,000. If the house is worth more than this, they can choose to take money instead;

(b) Furniture and moveable household items in the house up to a value of £24,000. If these goods are valued at a higher amount then the spouse can choose specific items to this value; and

(c) A payment of £42,000 if there are children and £75,000 if there are not.

2. Legal Rights

After the Prior Rights have been dealt with, a surviving spouse and children have specific Legal Rights to the remaining personal estate (the 'moveable estate' and includes money, furniture and cars) after any debts have been paid.

If there are children, the spouse receives a third of the personal estate and the children get a third. If there are no children, the spouse gets half.

3. The balance

The balance of the state is distributed to surviving relatives of the deceased person in the following order:

- (i) Children (or their descendents if they have predeceased)
- (ii) Parents, brothers and sisters
- (iii) Nephews and nieces
- (iv) Spouse

If the deceased has no surviving spouse then the following order is used:

- (i) Children (or their descendents if they have predeceased)
- (ii) Parents, brothers and sisters
- (iii) Uncles and aunts, grandparents, great uncles and great aunts, and finally more remote relatives

(iv) The Crown (The state)

Further Information

For further information on Intestacy and obtaining a Grant of Confirmation, please go to www.scotland.gov.uk

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