

Obtaining a Grant of Probate without a signed Will

04 March 2025  Daniel Edwards

It is not entirely uncommon for somebody to fail to leave an easy to find, original and validly executed Will after their death.

Often though they will have left behind clues or snippets that suggest they had, in fact, created a valid Will; they might have given somebody a copy of the Will – to tell them what was in it perhaps – or told that person they had been to see a solicitor to make a Will, for example.

In order to obtain a grant of probate however, it will normally be necessary to have the original signed Will, and not just a copy of it. If you are unable to locate the original but have a copy, it is still possible to get a grant of probate, but there are various practical challenges that arise.

How do I find a Will?

There is no obligation in the UK for a Will to be stored or registered in a specific manner. That can make finding a Will difficult on occasion and there is no sure-fire way of finding out if somebody has a Will.

There is a [National Will Register](#) but because it is not compulsory, most Wills are not noted on the register.

Another common search method is to make enquiries of Local firms of solicitors, or even other professional firms you know the deceased had dealings with (such as an accountant perhaps). These firms may not be able to release a copy of the Will to you, they should at least be able to tell you if they do hold the original, or a copy, as the case may be.

Sometimes people will give a copy of their signed Will to the person named as an executor, or even a member of their family, or a close friend/ neighbour. Making enquiries of potential candidates in this field will also often be a prudent step.

What if I can't find the original?

There is a presumption that if there is a suggestion the deceased had created a Will, but the original signed copy cannot be located after a death, that is because it has been revoked by the Testator by their destroying it.

However, that presumption can be rebutted. If you only have copy of the signed Will, or even an unsigned draft, it might still be possible to obtain a Grant of Probate in the right circumstances.

The procedure in such circumstances is contained in Rule 54 of the Non-Contentious Probate Rules, which makes provision for an Order being made by a district judge or registrar (of the probate registry).

There are no hard and fast rules as to when such an order will (and will not) be made. Each case will be fact specific. The burden of proof will be on the person making the application to show that, on balance of probabilities, it is more likely than not that the Will in question complied with the various formalities concerning the signing and witnessing of Wills, and that the presumption of revocation by destruction should be rebutted.

If you find yourself in this situation, taking urgent and specialist legal advice will likely prove to be a prudent move. The recent case of [Packer v Packer](#) gives a warning as to what can happen when things go wrong.

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