

• PROBATE

"Probate" is a term commonly used as a generalisation for what ought more properly to be called a "Grant of Representation". Such a Grant authorises a person to administer and manage the personal estate of a person who has died.

WHAT FORM DOES A GRANT TAKE?

A Grant of Representation may take one of three forms:

- A a Grant of Probate**, whereby an Executor named in the Will is given authority to wind up a deceased person's personal estate;
- B a Grant of Letters of Administration with Will annexed**, where there is a Will but the named Executor has died or is unwilling to act, in which case a person entitled to the residue of the deceased's personal estate is entitled to apply for a Grant; or
- C a Grant of Letters of Administration, where there is no Will**, in which case certain relations of the deceased are entitled to apply for the Grant. The surviving spouse (if any) will be first entitled, followed by the deceased's adult children in order of seniority, followed by the deceased's adult grandchildren. Where a deceased's oldest child has died before him leaving an adult grandchild, then that grandchild will be entitled to a Grant before the most senior of the deceased's surviving children.

WHAT ASSETS DOES THE GRANT COVER?

The Grant only authorises the deceased's Executor or Administrator to deal with the deceased's personal estate. Guernsey real estate (i.e. land and buildings in Guernsey) does not require an Executor and a Will dealing with Guernsey real estate would never appoint one.

IS A GRANT ALWAYS NECESSARY?

No, and neither is it obligatory to obtain one. The sole purpose of obtaining a Grant is to

enable the release of the deceased's personal estate to the Executor or Administrator. If the asset holder is willing to release without a Grant, then there is no point in obtaining one. For instance, small balances at banks (usually £5,000 or less), will commonly be released without a Grant provided that the recipient of the money can identify himself and is prepared to give a letter of indemnity to the bank.

HOW IS A GRANT OBTAINED?

Application for a Grant is made to the Ecclesiastical Court, either directly by the named Executor or prospective Administrator or through his advocate. However, if there is no Will, then the prospective Administrator will need to supply his advocate or the Registrar of the Ecclesiastical Court with documentary proof that he is entitled to a Grant. The Ecclesiastical Court will also wish to know the value of the estate. It may be necessary to obtain independent advice to ascertain this, depending on the types of assets involved.

HOW MUCH DOES A GRANT COST?

The Ecclesiastical Court fees are approximately £35 per £10,000 of the gross value of the personal estate, with small additional charges for ancillary documents and for each page of any Will or Codicil. The percentage charge is lower for estates with a gross value of £80,000 or less.

If a professional adviser or bank is engaged to obtain the Grant, their fees are of course payable in addition and vary greatly depending on who is used. Careful enquiry is prudent.

WHAT ARE THE POWERS AND DUTIES OF AN EXECUTOR OR ADMINISTRATOR?

The Executor or Administrator takes an Oath before the Dean in the Ecclesiastical Court to administer the estate in accordance with the law and the terms of the Will and to render an account of his administration to the Court if called upon to do so.

The duties essentially involve the gathering of assets, the payment of debts (including taxes, such as unpaid income tax) and the distribution of the net estate. This can be very quick and easy in small estates, but in complex ones can take months and sometimes years. When a Grant of Probate or Letters of Administration have been issued, a notice may be published in La Gazette Officielle allowing a three month period for any creditor of the Estate to notify the Executors or Administrators of his claim. Many Executors or Administrators will decline to make any distribution of the net Estate until that period has lapsed.

It is always advisable for any Executor or Administrator to take advice from an advocate if they have not dealt with this sort of matter before.

NOTE

This leaflet is only a guide and introduction to the provisions of Guernsey Law; it is not exhaustive or definitive and specific advice on the matters to which it refers should always be obtained.

TO MAKE AN APPOINTMENT WITH AN ADVOCATE, PLEASE CALL 01481 723191.

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