Obtaining a grant of probate and registering a will of realty

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Classification of Assets

Assets can be classified as either immovables (real estate): land, freehold property, leases of over nine years; or movables (personal estate): cash in your bank accounts, shares (including shares in share transfer properties), units in unit trusts, jewellery etc. The classification is important because under Jersey law it is usual practice to have separate wills of immovables and movables. This differs from other jurisdictions, such as England and Wales, where all of an individual's assets are dealt with under one will.

One of the main reasons for having two separate wills is because under Jersey law the processes by which both types of assets will be released on the death of the owner is different. It is therefore only proper to refer to "obtaining a grant of probate" in respect of personal assets. In respect of immoveable assets, a will is "registered".

(1) Personal Estate

Obtaining a Grant of Probate or Letters of Administration

On the death of a Jersey domiciled individual, a grant of probate or letters of administration (applied for when a person dies intestate i.e. without leaving a will) will be required by the asset holder to release assets. It does not matter whether those assets are worth £500 or £5 million. Where a person dies leaving a will, the process is simpler. The executor must appear before the Probate Registrar to swear the oath of office of executor. Stamp duty is payable on the value of the deceased's assets. Stamp duty is currently payable in the following amounts where the net value of the Jersey estate:

- Does not exceed £10,000 - No fee
- Does not exceed £100,000 - £50 for each £10,000 or part thereof
- To exceed £100,000 but not to exceed £13,360,000 - £500 in respect of the first £100,000 plus £75 for each additional £10,000 or part thereof
- To exceed £13,360,000 - £100,000

A further £80 stamp is payable on all applications in respect of the Court Administration charge.

Once the executor has attended before the Registrar and sworn the oath, the grant of probate will be issued within approximately five to ten working days. Once the grant is obtained, the executor can then provide it to the asset holder/s who on receipt will act on the instructions of the executor.

If the deceased died without leaving a will then the process is more complicated. Firstly, it needs to be determined who is entitled to take out the letters of administration; that is, who is the deceased's "principal heir".

1. If the deceased dies leaving a spouse/ civil partner, then the spouse/civil partner is the principal heir;

2. If the person dies without leaving a spouse or civil partner but leaves children then the eldest son is the principal heir; or the eldest daughter (if no sons);

3. If the deceased dies without leaving a spouse/civil partner or children then their oldest male sibling is the principal heir.

It is the principal heir who takes on the role of administrator. Should that person not wish to act then they will have to renounce their entitlement and the next in line will be entitled to take out the grant. In these circumstances when attending on the Probate Registrar to swear the oath of office of administrator, the administrator will have to provide an affidavit (sworn by an independent individual) setting out the family circumstances of the deceased and showing who is entitled to take out the grant. Subject to the Probate Registrar being satisfied by that evidence, the grant will issue between five to seven working days after the appointment. Stamp duty will also be chargeable as set out above.

Appointing an Attorney

Not all executors or administrators wish to carry out the administration of an estate themselves, particularly if the estate is complicated. In such circumstances, the executor or administrator can grant a power of attorney to a law firm who will make the application to the Probate Registry on their behalf. The attorney will also carry out the administration of the estate on behalf of the executor or administrator.

Collas Crill has a registered executor company, Collas Crill Executors Limited, that regularly takes powers of attorney from executors and administrators.

(2) Real Estate

When registering a Will of Realty, Immoveable assets are dealt with very differently under Jersey law

When registering a Will of Realty, Immoveable assets are dealt with very differently under Jersey law. There is no executor of a will of immoveable estate and the property passes automatically by law on the death of the deceased to his or her heirs at law ("le mort saisit le vif"). An individual's heirs at law are as follows:

1. if the deceased dies leaving a spouse or civil partner and no children, then the spouse/civil partner is the heir at law;

2. If the deceased dies leaving a spouse or civil partner and children, then all are the heirs at law and take the property in equal shares as tenants in common;

3. If any children have predeceased the deceased leaving children, then their children will stand in the footsteps of the deceased parent;

4. If the deceased dies without leaving a spouse/civil partner or children then their sibling or siblings are their heirs at law.

Until a will of realty is registered, it is the heirs at law who own the property. That ownership changes on registration of the will to those persons named in the will. A will of immoveables is registered by way of a “demande” signed by a locally qualified lawyer and sent to the Registrar at the Public Registry who then registers the will in the Registry. It is the will that evidences title to the property or properties.

Stamp duty is payable on registration of a will of realty on the value of the property. The value of the property must be assessed by an estate agent. Stamp duty is charged as follows:

Where the net value of the immoveable property devised:

a. does not exceed £50,000: 0.5%;

b. £50,000 - £300,000: £250 in respect of the first £50,000 plus 1.5% on the balance;

c. £300,000 - £500,000: £4,000 in respect of the first £300,000 plus 2% on the balance;

d. £500,000 - £700,000: £8,000 in respect of the first £500,000 plus 2.5% on the balance;

d. £700,000 - £1,000,000: £13,000 in respect of the first £700,000 plus 3% on the balance;

e. £1,000,000 - £1,500,000: £22,000 in respect of the first £1,000,000 plus 4% on the balance;

g. £1,500,000 - £2,000,000: £42,500 in respect of the first £1,500,000 plus 5% on the balance;

h. £2,000,000 - £3,000,000: £67,000 in respect of the first £2,000,000 plus 6% on the balance; or

i. exceeds £3,000,000: £127,500 in respect of the first £3,000,000 plus 7% on the balance

A further £80 is payable on all applications in respect of the court administration charge. However, where the property is left by will to the heirs at law, then only the administration charge of £80 is payable and no valuation is required