

probate



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Probate is a legal process that allows a person to deal with a deceased person's assets: property, money and all possessions owned by the deceased on the date of their death.

The authority to deal with a deceased person's assets is given in the form of a document known generally as a **grant of representation**.

Types of Grant

- 1 Grant of Probate:** The executor is the person named in the will who has the job of carrying out the terms of the will. If a person dies with a valid will and has appointed an executor, then that executor will get a grant of probate for the estate from the Probate Office. An executor must deal with the person's assets in the manner laid out in the will. The executor has the first right to 'prove' a will (establish that the will is valid so as it can be carried out). If an executor does not wish to 'prove' a will, he/she can renounce or reserve the right. Any one of two or more executors can apply for the grant of probate. They may apply jointly.
- 2 Grant of Letters of Administration:** This will be granted if a person dies *without* a valid will i.e., intestate. The assets are dealt with by a person known as an administrator. The people entitled to this grant to become an administrator are usually one or more of the nearest living relatives.

3 Grant of Letters of Administration with Will Annexed:

This document will be issued if a person dies with a valid will and a person *other* than the executor is applying for the grant. If the executor is unwilling or unable to act, or has died, or the will does not appoint an executor, then this grant will be given. The usual applicant is whoever is entitled to the residue (this refers to the remainder in a will after all other debts and gifts have been settled).

When is a Grant necessary?

- If a person dies leaving a property/land in his/her name (as the sole owner), then it is necessary to apply for probate so that the property/land can be sold or transferred into the name of another person.
- If a deceased person has left money in a bank or other financial institution, then a Grant of Representation may be required. The institution in question should be contacted by the executor or next of kin to establish what is needed.
- If a person dies leaving a house and/or land that he/she owned jointly with another, then that house and/or land may automatically pass to the surviving *joint tenant*. If that is the case, usually there is no need for a grant. However, in some joint ownerships property will not automatically pass to the other surviving owner.
- If a person dies leaving money in a joint name account, then a grant may be

necessary due to the fact that the money may not automatically pass to the surviving account holder – it depends on the type of account and on the reasons for which the joint account was opened.

- It may not be necessary to apply for a grant where a person has died leaving no assets.
- If someone living outside the Republic of Ireland dies leaving assets within the Republic then, depending on the value of those assets, an Irish grant may be required to deal with these assets, regardless of whether or not a grant has issued in a foreign country.
- If a person living in Ireland has assets abroad it may be necessary to get a separate grant for these foreign assets.

If there is real or leasehold property (houses, apartments, land etc.) in the deceased's name, then a **Deed of Assent** must be executed by the executor/administrator after the grant has been issued. This is a written document setting out the transfer of the real or leasehold property to the beneficiary. A solicitor may be needed for these purposes.

How to apply for Probate or Administration

There are two ways of proceeding with an application:

- 1 Employ a solicitor to undertake the process for you. The involvement of a solicitor may be necessary and advisable in certain cases.

- 2 Apply in person through the Personal Applicants Section of the Probate Office or one of the District Probate Registries. You can apply to the Dublin Probate Office for a grant where a person has died anywhere in Ireland, or abroad. To apply to one of the District Probate Registries the deceased person must have had a fixed place of abode within the jurisdiction (area of control) of that registry.

Personal Applications for Probate/Administration

This may be done by writing to the District Probate Registries. For the Probate Office in Dublin, an applicant must go in person (see address below).

The Probate Office has the discretion to refuse to allow a personal applicant to be accompanied by an advisor. It can also refuse to allow a personal applicant to continue with an application that had already been initiated by a solicitor.

The Probate Office will help an executor who has decided to act personally.

Note: It is most important to keep the original will safe in a secure place.

A personal applicant must take the following steps:

- a** Obtain an application form for personal applicants from the Probate Office/District Probate Registry.
- b** Complete this form by giving details of bank/post office/building society accounts, property, assets, stocks, shares and any debts of the deceased. At this stage you are giving general information obtained from any documents the deceased left as to their financial set up. Further details can be added later on as they come to light, or they might be pointed out at the interview stage below, and an applicant will be told how to set about obtaining further information.
- c** Return the completed form to the Probate Office. A personal applicant will then receive an acknowledgement and an appointment for a preliminary interview. More than one appointment may be required.
- d** Attend the interview in person and bring the following items: death certificate, will and any other papers requested by the Probate Office.
- e** Sign the documents then swear the Oath for Executor or Administrator.
- f** Bring the completed Revenue Affidavit to the Revenue Commissioner for clearance for Capital Acquisitions Tax purposes.
- g** Pay the court probate fee (which is determined by the value of the estate).
- h** If the deceased had any means-tested social welfare payments, then a copy of the

schedule of assets must go to the Department of Social and Family Affairs for confirmation that there is no claim against the estate – a personal representative may be liable for this otherwise.

- i** Once the Registrar of the Probate Office is satisfied that the will is valid and that there are no caveats (objections) entered, then probate will be granted. Where there is no will, a Grant of Administration will issue.
- j** If problems arise, for example, if the original will is missing or the signatures are questionable, then the Registrar may ask for sworn statements from witnesses.
- k** Where a dispute arises about the will or about probate (between two beneficiaries, for example, or between the executor and another person) this matter must be dealt with by the High Court judge in charge of probate matters and the High Court can direct that the matter be dealt with by the Circuit Court in certain circumstances.
- l** It is wise to get certified copies of the Grant of Representation from the Probate Office, as certain institutions such as banks, the Post Office or the Prize Bond Office may require them to release funds.
- m** Remember to do a deed of assent for any land or house in the estate. You may need a solicitor as this deed will transfer ownership.

Capital Acquisitions Tax

The person who gets a benefit on the death of another person may have to pay Capital Acquisitions Tax (CAT) if the amount of the benefit combined with any other previously taken benefit is over a certain threshold.

Inheritances from parent to child and usually from child to parent have a higher threshold than those between other relatives.

Inheritances from distant relatives or non-relatives have a lower threshold. An executor or administrator must ensure that anyone liable for inheritance tax pays what is due promptly, as the executor may be personally liable if it is not paid.

The tax exemption of Dwelling-House Relief means that a person who receives a gift or inheritance of a dwelling house will not have to pay CAT on this provided that:

- They have lived in that house for three years prior to the date of the gift/inheritance.
- At the date of the gift/inheritance they are not beneficially entitled, in whole or in part, to any other dwelling house.
- At the date of the gift/inheritance of that house the person continues to live there for a period of 6 years, unless they are 55 years or over.

Questions about inheritance tax and probate may be made by emailing captax@revenue.ie or by phoning the Revenue's taxpayer information unit on lo-call 1890 201104.

You may also find out about thresholds for CAT which is levied on gifts and inheritances on the Revenue Office's website: www.revenue.ie and looking under leaflets and guides, capital acquisition tax, gift tax or inheritance tax.

Probate Office

First Floor
15-24 Phoenix Street North
Smithfield
Dublin 7
Tel: 01-888 6174/888 6728

District Probate Registries

There are 14 of these registries and they are located in local Circuit Court offices. If the deceased lived in Dublin, Meath, Kildare or Wicklow, the application must be made to the Probate Office in Dublin. Outside these areas applications can be made to either the Probate Office in Dublin or the local Probate Registry.

A list of locations and contact details for Probate Registries can be found online by going to www.courts.ie and looking under 'Offices and Maps' for 'Probate Office Business'.

Legal Aid

You may be eligible for legal aid if you are a person of moderate means. To qualify for legal aid in civil cases your disposable income and assets must be below a certain limit, there must be merit to the case and there must be no more satisfactory way of resolving the problem. After approval, the Legal Aid Board provides you with the services of a solicitor and, where necessary, a barrister. You can apply for legal aid for more than one matter at a time. The Board's offices are called Law Centres and are located around the country. For the location of your nearest Law Centre, call 1890 615 200.

As of 1 September 2006 the new **disposable income** limit of a person applying for legal aid has been increased from €13,000 up to €18,000 per year.

The **maximum allowance** (this is an expense which the rules allow you to deduct when calculating your disposable income) on childcare facilities if you are working is €6,000 per child per year. The maximum allowance on accommodation costs (e.g. rent) is now €8,000 per year.

The value of an applicant's home and its normal contents are excluded when assessing the value of his/her capital resources (property), as are the value of the tools of an applicant's trade.

For details of other allowances, contact the Legal Aid Board or your local Law Centre.

notes

FLAC Mission Statement:

FLAC is an independent human rights organisation dedicated to the realisation of equal access to justice for all. It campaigns through advocacy, strategic litigation and authoritative analysis for the eradication of social and economic exclusion.

While every effort has been made to ensure the accuracy of this leaflet, it is provided for general legal information only and is not intended as a substitute for legal advice. FLAC does not accept any legal liability for the contents of this leaflet. Persons with specific legal problems should consult a solicitor.

Free Legal Advice Centres

13 Lower Dorset Street

Dublin 1

Tel: 01 874 5690

Email: info@flac.ie

Website: www.flac.ie