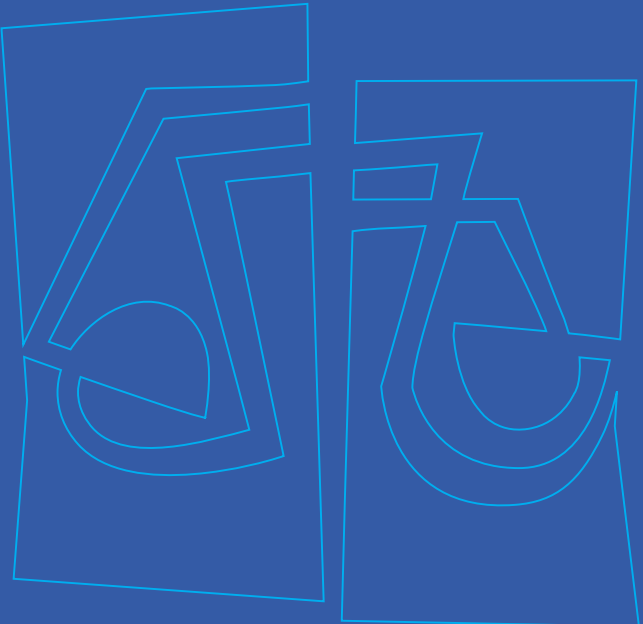


July 2014



probate



You can read more about this area in FLAC's Wills and Intestacy leaflet.

What is Probate?

Probate is a legal process that allows the authorised or named person to deal with a deceased person's assets (also known as his or her 'estate'), which means the property, money and all possessions owned by him or her at the time of death. Usually a person will write down what he or she wants to happen to his or her assets in a document called a will. Probate usually involves first establishing that the will is valid (called 'proving' the will) and then carrying out what it requests.

Who carries out probate?

The authority to deal with a person's assets is given in the form of a document known generally as a grant of representation, issued by the Probate Office. The type of grant depends on whether the deceased person left a will or died without a will (intestate).

If the person leaves a will, he or she will usually name a person or preferably two persons as executors to be responsible for carrying out its terms. In some cases, the deceased person may not have named an executor or may not have left a will, and so the type of grant varies depending on the situation.

What are the types of Grant?

1. Grant of Probate: If a person dies with a valid will and has appointed executors, then the executors will get a grant of probate for the dead person's estate from the Probate Office. They must handle the person's assets as specified in the will. The executors have the first right to 'prove' a will, that is, establish that the will is valid so that it can be carried out. Any one of two or more executors can apply for the grant of probate, or they may apply jointly.

Although he or she has the first right to prove the will, if an executor does not wish to do so, he/she can renounce or reserve the right.

2. Grant of Letters of Administration: This will be granted if a person dies without a valid will, also known as intestate. The assets are dealt with by a person known as an administrator, rather than an executor. The people entitled to become an administrator are usually one or more of the nearest living relatives.

3. Grant of Letters of Administration with Will Annexed: This 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, which is whatever remains in a person's estate after all other debts and gifts have been settled.

When is a Grant necessary?

- If a person dies leaving behind a property or land in his or her name (as the sole owner), then it is necessary to apply for a grant of representation so that the property/land can be sold or transferred into the name of another person.
- If a person dies leaving a house and/or land owned jointly with another person, then it depends on the type of joint holding as to whether that house and/or land automatically passes to the surviving person. If it is a joint tenancy, the surviving party will automatically inherit on the death of the other party and no grant of probate or administration is required to transfer the property. If it is a tenancy in common, the surviving partner does not have any automatic right to a share and the deceased person can bequeath his or her share to any beneficiary/beneficiaries in the will.

- 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 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. This is a legally complex area involving such issues as the terms of the bank contract, what you and your joint holder intended in setting up the account and how much you each contributed to the account. It is especially contentious where the joint account holder is not your spouse or child. It is therefore very important that you leave specific written instructions in your will and to the other joint account holder as to who will inherit your share of a joint account, taking into account the issues mentioned above.
- It may not be necessary to apply for a grant where a person has died leaving no assets. Also, if a person dies leaving a relatively small amount of money in an account, for example less than €5,000, the bank may not require a Grant of Representation to release the funds. You will need to check with the bank in any case.

- 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.

What if I don't approve of something in the probate process?

You are free to lodge an objection called a 'caveat' with the District Probate Registry or the probate Office if you have an interest in the estate in question, you are unhappy with probate process or have another concern to do with the grant of probate/administration.

What is the Deed of Assent?

If there is real or leasehold property (houses, apartments, land etc.) in the deceased's name, then a Deed of Assent must be executed (or carried out) 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. You will need to get help from a solicitor to do this.

How can I apply for Probate or Administration?

There are two ways of proceeding with an application:

1. Employ a solicitor to undertake the process for you - this may even be necessary and advisable in certain cases. You can enquire in advance as to how much the probate process may cost, but note that where there are legally complex matters involved, the solicitor may not be able to make an exact estimate.
2. Apply in person yourself, 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 responsibility) 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 will assist you to execute the will in person.

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.

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

A personal applicant seeking to execute a will must take the following steps:

- a) Obtain an application form for personal applicants from the Probate Office or District Probate Registry.
- b) Fill out 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 about his or her financial situation. Further details can be added later on as they come to light, or might be pointed out at the interview stage below, and you 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, bringing along the death certificate, the will and any other papers requested by the Probate Office.
- e) Sign the documents and swear the Oath for Executor or Administrator.
- f) Bring a completed Inland Revenue Affidavit to the Revenue Commissioner for clearance for Capital Acquisitions Tax purposes. You can download this form (CA24) from the Revenue website (www.revenue.ie). Note that the CA24 is an extremely long and complex form - about 20 pages - and two copies must be filled out. It requires details of the solicitor acting for you or your details if you are applying in person, as well as a schedule of assets, which sets out all assets and debts, joint tenancies and so on involved in the estate.
- 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 you must send a copy of the schedule of assets to the Department of Social and Family Affairs to confirm 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 against it, then probate will be granted. Where there is no will, a Grant of Administration will be issued.
- 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. The High Court can direct that the matter be dealt with by the Circuit Court in certain circumstances.
- l) It is advisable 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 that a deed of assent is needed to transfer any land or house in the estate. You will need a solicitor as this deed will transfer ownership.

What happens if the executor fails to act?

An executor is generally obliged to distribute the assets of the deceased person as soon as reasonably possible after death. A beneficiary may take action against an executor who fails to distribute the assets within one year of the death. An executor is not obliged to show the will to the beneficiaries. However the will becomes a public document after the grant of probate.

Is there any tax liability on a dead person's estate?

Beneficiaries may have to pay Capital Acquisitions Tax (CAT) if the amount of the benefit – combined with any other benefit previously taken – is over a certain threshold. The thresholds vary depending on what the family relationship is with the dead person. Inheritances from parent to child and usually from child to parent have a higher threshold than those between other relatives. Spouses and civil partners are exempt from inheritance tax. Inheritances from distant relatives or non-relatives have a lower threshold.

Deadlines: Under the Finance Act 2010, any person who inherits on the death of another person is responsible for paying his/her Capital Acquisitions Tax before the relevant deadline. (However, if the person who gets a benefit is living outside the state, then the

executor/administrator or his/her solicitor must act as agent in dealing with the tax liability.) The relevant payment date is either 31 October of the same year where the inheritance is received between 1 January and 31 August, or 31 October of the following year where it is received between 1 September and 31 December.

If you miss the deadline for paying your tax, you will have to pay interest on the amount owed starting from the valuation date. Note that any payments you then make will first go towards paying off the interest, before the tax you actually owe.

Valuation date: The valuation date is the date on which the market value of the asset being inherited is calculated. This may be the date of death, the date of grant of probate or the date of transfer to the beneficiary, depending on the circumstances. See more at <http://www.revenue.ie/en/tax/cat/guide/valuation-date.html>

Tax rates: The standard rate of tax is 33% in respect of gifts and inheritances taken on or after 6 December 2012.

YEAR	Group A	Group B	Group C
	(Son/Daughter)* (after indexation)	(Parent**/Brother/Sister/Niece/ Nephew/Grandchild) (after indexation)	(Relationship other than at A/B) (after indexation)
On or after 06/12/2012	€225,000	€30,150	€15,075

*Includes children of civil partners

**In certain circumstances a parent taking an inheritance from a child can qualify for Group A threshold.

These thresholds change regularly and you can find up-to-date figures online at http://bit.ly/cat_thresholds.

Are there any exemptions to CAT?

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 Capital Acquisitions Tax on it, provided that:

- He/she has lived in that house for three years prior to the date of the gift / inheritance.
- After the date of the gift/inheritance, he/she is not beneficially entitled, in whole or in part, to any other dwelling house, does not own or co-own another 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.

Where can I get further information about CAT?

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

What happens if the deceased person has left debts behind?

Where a person dies leaving debt behind, his or her relatives are not responsible for meeting the debts (unless they have stood as guarantor for these debts). However, the administrator/executor is responsible for discharging funeral expenses, debts and liabilities from the deceased person's estate.

What if the deceased was in receipt of social welfare payments?

If the deceased person was receiving a means-tested social welfare assistance payment such as a non-contributory state pension or Disability Allowance, then before distributing the estate, the executor is legally obliged to inform the Minister for Social Protection of the death.

Social
Welfare
(Consolidation)
Act

At least three months in advance of distributing the estate, the executor, as personal representative of the deceased person, must provide the Minister with the following documents:

- written notice of his/her intention to distribute the assets of the estate; and
- a schedule of the assets of the estate.

Failure to comply may mean prosecution and the executor maybe personally liable for any repayment due.

The funeral and legal expenses for which the estate is liable are first deducted from the overall estate value and then recovery of the overpayment will be sought. The Overpayments Officer will decide whether to recover it as a lump sum or in instalments.

Useful addresses:

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 other satisfactory way of resolving the problem. After approval, the Legal Aid Board provides you with the services of a solicitor and, if 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.

All those who are granted legal advice and/or legal aid must pay a fee called a contribution to the Board. The minimum contribution is €30 for legal advice and €130 for legal aid. Law centre staff will advise what a person's actual contribution will be as each person is assessed on an individual basis

Before you qualify for legal aid, you must first satisfy a means test. Your disposable income must be less than €18,000 and your disposable capital cannot be more than €100,000.

If you are in receipt of allowances, they will be taken into account and they are deductible when calculating disposable income. The maximum allowance on childcare facilities if you are working is €6,000 per child per year

and the maximum allowance on accommodation costs (e.g. rent) is €8,000 per year. The Public Service Pension Related Levy and the Universal Social Charge are now also considered and are deductible for the purposes of assessment.

The value of an applicant's home and its normal contents are excluded when assessing the value of his/her capital resources (property). If your capital resources exceed €4,000, you must complete a Statement of Capital.

For further details on financial eligibility requirements or for details of other allowances, contact your local Law Centre. A full list is available at www.legalaidboard.ie. FLAC has prepared a guide to the state legal aid system which you can download at bit.ly/CLAflacsheet.

Need more information?

Legal information leaflets are also available from FLAC on a variety of other areas of law. They are free to download as PDFs from the FLAC website or in print from your local FLAC centre or Citizens Information Centre.

Notes

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FLAC Mission Statement

FLAC (Free Legal Advice Centres) is a human rights organisation which exists to promote equal access to justice for all.

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FLAC is grateful to John Costello, solicitor, for his help in updating and revising this leaflet.

FLAC offers free, confidential basic legal information via its lo-call telephone information line at 1890 350 250 and one-to-one legal advice through its network of voluntary advice centres countrywide – www.flac.ie/help



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