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ADVOCATES

Probate



Probate

'Probate' is a general term used for what is, in effect, a grant of representation. This grant authorises a person to administer and manage the personal estate of a person who has died.

Grant of Representation ('a Grant')

A Grant of Representation may take one of three forms:

1. A Grant of Probate where an executor named in the will is given authority to wind-up the deceased's personal estate.
2. A Grant of Letters of Administration with will annexed, where there is a will, but the executor named in the will has either died or is unwilling to act, in which case a person entitled to the residue of the deceased's personal estate is able to apply for a Grant.
3. A Grant of Letters of Administration where there is no will. In this instance certain relatives of the deceased are entitled to apply for the Grant. The surviving spouse (if any) is first entitled, followed by the deceased's adult children in order of seniority, followed by the deceased's adult grandchildren, again in order of seniority, and so on. Where a deceased's oldest child has died before him leaving an adult grandchild, that grandchild will be entitled to a Grant before the most senior of the deceased's surviving children.

What assets does the Grant cover?

In principle, 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 houses in Guernsey) does not require an executor.

Is a Grant always necessary?

No, and it is not obligatory to obtain one. The sole purpose of obtaining a Grant is to enable the release of the deceased's personalty 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 example, small balances of £5,000 or less will usually be released without a Grant provided that the recipient of the money provides an acceptable form of indemnity to the bank or other institution. With the introduction of more stringent anti-money laundering requirements, increasingly it is more cost effective to obtain a Grant.

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. Generally a Grant can be issued within a few working days. However, where there is no will, a prospective administrator is required to produce to his advocate or to the Registrar of the Ecclesiastical Court, documentary proof that he is entitled to a Grant.

What is the cost of a Grant?

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

Should a professional person or a bank be engaged to obtain a Grant, their fees are payable in addition and can vary greatly depending on who is used. It is always prudent to make careful enquiry beforehand.

What are the powers and duties of an Executor or Administrator?

The executor or administrator takes an oath before the Ecclesiastical Court to administer the estate in accordance with the law and the terms of the will, and to render an account for his administration to the Ecclesiastical Court if called upon to do so.

The duties include gathering in the assets, payment of debts (including taxes e.g. unpaid income tax), and the distribution of the net estate. In small estates this is relatively quick and simple. However, in more complex estates it can take months, and sometimes years.

Executors and administrators often apply to the Royal Court to limit prescription. This includes publishing a notice in La Gazette Officielle. This has the effect of reducing the period during which the Executors may distribute the Estate, without incurring liability, to three months.

If executors or administrators have not dealt with this sort of matter before, it is always wise to take advice from an advocate.

NOTE - This leaflet is only a guide to the provisions of Guernsey law. Specific advice on the matters to which it refers should always be obtained.