



BAILIWICK OF GUERNSEY PROBATE REGISTRY

Information on obtaining Probate in the Bailiwick of Guernsey

This information is produced by the Bailiwick of Guernsey Probate Registry to give general guidance only and should not be treated as a complete and authoritative statement of the law.

Please note that staff members are not permitted to give legal advice.

If you are in any doubt about your rights/obligations, or of the procedures to follow in relation to obtaining probate or administration of a deceased person's estate, you should seek legal advice.

Probate Introduction

1. What is Probate?

Probate is the legal process of (a) proving (or registering) the Will of Personal Estate of a person who has died (the deceased); and (b) authorising the person(s) (or company) named as Executor(s) in the Will to act as such and deal with the assets, possessions and liabilities (the Personal Estate) of the deceased.

2. What are Letters of Administration?

A Grant of Probate is obtained when the deceased has left a valid Will naming one or more Executors. If there is no (valid) Will, or if there is a valid Will but no Executor(s) are validly named in it, the Grant is of Letters of Administration and is made to one or more Administrators.

Grants of Probate and Grants of Letters of Administration are collectively called Grants of Representation.

Executors and Administrators are collectively called Legal Personal Representatives.

In the following answers for the sake of brevity, the expression Probate is used instead of Grants of Representation.

3. When is probate required?

In Guernsey it is not (and never has been) compulsory to take out a Grant of Representation. That would only be done if the asset-holder requested it in order to ensure that the assets were paid out to the lawfully-entitled person(s).

Each institution will have different internal policies as to when probate may be required. For example, a bank may be prepared to pay out the balance of a small account without probate but require probate to pay out a larger sum.

Probate is not required for real estate i.e. houses and land owned by the deceased except where the deceased was the owner of the shares in a Guernsey or Alderney limited company which itself owned real estate. Then the shares will count in the value of the personal estate and their underlying value must be determined by reference to the value at the death of the deceased of the relevant real estate. Leasehold interests in real estate count as personal estate for the purposes of Probate.

4. What does the Probate Registry do?

The Bailiwick of Guernsey Probate Registry (the "Registry") issues Probate when requested so as to enable asset-holders to transfer assets in the Bailiwick of Guernsey to Legal Personal Representatives. If the deceased died without leaving assets in our jurisdiction then Probate cannot be issued here.

Many of the grants of Probate issued are for deceased persons who lived outside the Bailiwick of Guernsey, with considerable numbers in South Africa and others around the world, including Middle Eastern countries, who have bank accounts or investments in Guernsey.

5. How does the Registry grant probate?

The Registry, like any other probate registry, requires the applicant to provide the original will or an affidavit, from a lawyer qualified in the relevant jurisdiction, setting out who are the heirs when there is no will, a death certificate, the value of the estate, proof of a Guernsey asset and that an asset-holder requires a Guernsey Grant of Probate in order to release assets and appropriate proof of identity and address. The Registry exercises Guernsey customary law which means it can adapt and evolve flexibly and with agility.

6. What does the Registry do with the money raised from fees charged for Probate?

After the payment of the Registry's overheads, surplus funds raised from the probate process are paid to the Social Investment Fund and is used for charitable good causes in the Bailiwick.

7. How much will be available for the Social Investment Fund?

This varies from year to year depending on the value of the estates processed.

8. What are the costs of obtaining Probate, and is it a form of inheritance tax?

The Registry charges fees in the form of a tariff linked to value of the personal estate, of £50 per £10,000 value of the personal estate plus some nominal additional amounts for additional documentation. There is an upper cap of fees of £250,000.

The fees charged are not a form of tax, but a fee for the service provided. The Tariff is attached at Appendix 1.

9. Who runs the Registry?

Responsibility for the Registry lies with the Ecclesiastical Court of the Bailiwick of Guernsey, which is overseen by the Dean of Guernsey (currently the Very Reverend Tim Barker).

The Registry operates the probate service pursuant to an agreement with the States of Guernsey.

The Registry sits each Friday morning; a Commissary of the Registry presides (or, when he is unavailable, one of the assistant commissaries). He is accompanied by the Registrar (currently Advocate Jason Green) or one of his deputies (Advocate Mike Riddiford, Joanne Seal and Karen Bougourd). They are responsible for all the legal matters relating to the probate procedure. Two staff support the registrars.

10. Can I apply for a grant?

If the deceased left a Will, the executor appointed by the deceased's Will may, if he is aged 18 or over, apply for probate of the Will. If the Will appoints more than one executor the Registry will normally make a grant to all of them (if of course they all apply), unless any of the executors appointed are unable to, or decide not to, take a grant. If the executor is under 18, and no other executor over 18 is able or willing to take a grant, a grant may be made to his parents or guardian until he is 18.

If the deceased left a Will but did not appoint an executor, or the executor cannot or will not act, then the person entitled to the residue of the estate, or any other beneficiary as the case may be, under the Will may apply for letters of administration. A creditor of the estate (or a person who would be entitled to the estate if there was no Will) may also be entitled to apply.

You may in certain circumstances apply on behalf of someone else (see Section 11 below).

11. Can somebody else make the application on my behalf?

A person appointed as your lawful attorney may make the application on your behalf. The Registry staff will draft the necessary Power of Attorney authorising the person to act on your behalf. It will need to be signed before a solicitor, advocate or notary public.

12. What does 'Renounce Probate' mean?

People often find, particularly after the death of a friend or relative, that they have been appointed an executor of their Will. They may have been unaware of the appointment and may not wish to take on the responsibility. However, even if they were asked in advance whether they were prepared to act as an executor and agreed to do so, they still have an opportunity to change their minds. A renunciation will, in appropriate circumstances, enable the responsibility of executorship to be renounced, i.e. refused. The renunciation must be signed by the

person renouncing probate and it must be witnessed by and signed by an advocate or solicitor or notary public. The Registry staff will draft the necessary renunciation unless one has been executed elsewhere in the world and is suitable for the Registry's purposes.

13. What does 'Power Reserved' mean?

'Power reserved' is where a named executor in a Will declines to act as such, but reserves the right to apply for probate at a later date. If an executor has had 'power reserved' the fact is indicated on the Grant of Probate. The Registry will draft the necessary power for signing in front of an independent witness.

14. Do I have to use the services of an advocate to make the application?

There is no requirement for an advocate to make the application, however if you are in any doubt about the need to make an application or how to make the application you should seek guidance from the Probate Registry who may advise you to take legal advice. Details of all Guernsey Law Firms can be found on the Guernsey Bar website (<https://www.guernseybar.com>).

Before making an application for Probate or Administration

1. Establish if the deceased left a Will

When a person dies it is important to establish if they left a Will. Once established, this will determine who is entitled to make the application for Probate. If the deceased did not leave a valid Will they will have died “intestate”.

2. What is a Will?

A Will states what a person wants to happen to their money, property and possessions after their death. The Will may appoint one or more persons as executors to be responsible for paying debts and dealing with money, property and possessions. A Will may have one or more codicils added to it. A Will (and any codicils – see below) needs to comply with certain formal requirements. If you are in doubt about whether a document is a ‘Will’ you may need to take legal advice.

3. What is a codicil?

A codicil is a supplement, amendment or addition to a Will explaining, modifying or revoking a previous will provision or adding an additional provision. There may be several codicils to one Will.

4. Finding the Will

It is important to find the Will as soon as possible. Look amongst personal papers held by the deceased at their home, in the bank, with their lawyer (who may have drawn the Will up) or with relatives. If you know that the deceased made a Will but it cannot be found, you may need to take legal advice.

5. What if there is no Will?

If no Will can be found, the Registry will ask you to approach an advocate to carry out a Will search amongst all advocates in Guernsey.

6. Once found, what if I believe the Will is wrong?

A Will can be challenged on a number of grounds – for example if the person was incapable, by reason of mental disorder, when it was made or if the person had been improperly influenced by another person when making the Will. If you wish to challenge the Will, you should seek legal advice immediately.

7. Can a person prevent probate from being granted?

Any person who wishes to show cause against the issue of a grant of representation may, through a Guernsey advocate, prevent probate/administration being granted in an estate by filing a caveat. The procedure prevents a grant being issued without giving the Caveator (the person who enters the caveat) the opportunity to liaise with the person applying for the grant, or to make representations to the Registry about the matter. The person wishing to enter a caveat will need to instruct a Guernsey advocate to lodge the caveat and to set out why they wish to enter the caveat.

Making an application

1. How do I apply for a grant when the deceased was a Bailiwick of Guernsey resident?

The basic stages for applying for a grant are set out below:

1. Obtain the application form.
2. Complete the application form.
3. Obtain the required supporting documentation, as indicated on the application form.

2. What about if the deceased died outside the Bailiwick of Guernsey?

The procedure for applying is similar in most respects as if the deceased had been a Bailiwick of Guernsey resident, however there are some additional documents required to support the application.

In the event that the original Will, providing it covers the deceased's estate in the Bailiwick of Guernsey, has already been submitted to the Court having jurisdiction at the place where the deceased died domiciled, the application must be supported by a Court sealed/stamped or a Court certified copy of both the Will and the Grant from the issuing Court or Registry. Please note it is not sufficient to submit plain copies or solicitor certified copies of the documents.

In every case where documents are in a foreign language they must be accompanied by an official government or Court approved certified translation into English.

If the deceased left more than one Will, and one of the Wills covered the estate in the Bailiwick of Guernsey, the original Will covering the estate in the Bailiwick of Guernsey must be submitted with the application together with copies of any other Wills the deceased left.

In the event that the deceased died intestate (had no Will), the application must be supported by a Court sealed/stamped copy or a Court certified copy of the grant of administration from the issuing registry where the deceased died domiciled. Again, please note it is not sufficient to simply submit a plain copy or solicitor certified copy.

Failure to provide either Court sealed/stamped or Court certified copies will result in delays in processing the application as the documents will have to be returned.

3. What happens to the original documents I submit in support of my application?

Supporting documentation including original Wills/Codicils and Court sealed or certified copy Wills/Grants, Powers of Attorney, Renunciation forms and other documents WILL BE RETAINED PERMANENTLY by the Probate Office and cannot be returned. However, original Death Certificates will be copied and returned to you.

Once the Grant has been issued any person may obtain Court sealed and certified copies of the Grant and supporting documents from the Probate Registry (+44 (0)1481 721732 or email info@guernseyprobate.gg).

Once a grant has been issued

1. How do I administer the estate?

If you are the executor or administrator appointed by the Registry, it means that you must pay the debts and distribute the estate of the deceased in accordance with the Will or the intestacy rules. Each institution will want to see the original (or a certified copy) Probate document issued by the Registry. The staff of the Probate Registry cannot assist or advise you in any way with the administration of the estate. If you are in any doubt about your responsibilities you should seek legal advice.

2. What if a more recent Will of the deceased is found?

You must notify the Probate Registry, at the earliest possible opportunity, if a more recent Will of the deceased is found after Probate has been issued or if a Will is found after administration has been granted on the basis of intestacy. The staff of the Probate Registry will inform you of what further action will need to be taken as a result of the more recent Will being discovered.

3. What if the value of the estate is more than originally thought?

It is incumbent upon the applicant(s) to advise the Probate Registry immediately if the estate of the deceased person is valued higher than originally thought, either during the application process or following the issue of the grant. The balance of any outstanding fee due, if there is one, must be duly paid.

4. Contact details for the Probate Office?

The Probate Registry can be contacted by various means, details as follows:

By writing The Bailiwick of Guernsey Probate Registry
or in person to: Bureau des Connétables
Lefebvre Street
St Peter Port
Guernsey
GY1 2JS

By telephone: +44 (0)1481 721732

By email: info@guernseyprobate.gg

Office opening hours:

Monday to Thursday 09:00 to 13:00; Friday 09:00 to 13:00 – telephone calls only

APPENDIX 1

Bailiwick of Guernsey Probate Registry

TARIFF established on 1st January 1987 (and effective 1st January 2024)
(other than in respect of charges for ancillary documents)

<u>GROSS VALUE of relevant Estate</u> <u>as at date of death</u> <i>(which must be evidenced in sterling and if necessary converted using the exchange rate applicable on the date of death)</i>	<u>Fee</u>
£	£
Assets valued up to £50,000.00	150.00
£50,001.00 - £60,000.00	175.00
£60,001.00 - £70,000.00	200.00
£70,001.00 - £80,000.00	225.00

For amounts over £80,000.00, add for each additional £10,000.00 or part thereof: £50.00.

For Estates over £50,030,000.00, the fee is capped at £250,000.00.

For small Estates with significant documentation we reserve the right to charge a discretionary administration fee.

Please do not send any fees with your application as the exact fee will be confirmed to you in due course.

REGISTRATION CHARGE: at the rate of £1.00 per page including the Act and any Will and Codicils
CERTIFIED COPIES: £25.00 for the Act and £1.00 for each page of the Will and any Codicils
PHOTOCOPIES: £10.00 for the first ten pages (minimum £10.00) and thereafter £1.00 per page
CAVEATS: £60.00

- (a) Power of Attorney)
- (b) Oaths (Executor or Administrator))
- (c) Deed of Renunciation) £25.00 each
- (d) Power Reserved Statement)
- (e) Other documents as necessary)

N.B. EXTRACT of a SINGLE PAGE – minimum charge: £10.00 plus correspondence charge, if any.

Notes

- All amounts in this tariff are in pounds sterling. Payment of Registry fees (other than in cash) must be by cheque or banker’s draft drawn on a bank in the Channel Islands, the Isle of Man or the United Kingdom, or by sterling electronic transfer (details below)
- If you wish to make a sterling telegraphic transfer, the bank details of the Guernsey Probate Registry are as follows:-
- Bank: LLOYDS BANK
- Account No: 00790800
- Account Name: Guernsey Probate Registry
- Sort Code: 30-93-73
- IBAN: GB90 LOYD 3093 7300 7908 00
- BIC: LOYDGG51001
- When making a payment please ensure that any bank charges are deducted from your end and NOT from the Registry fee payable. Please also ensure the deceased’s surname is quoted.
- No Grant of Representation can be issued by this Registry unless the deceased held assets at the date of death in his or her sole name which are within the jurisdiction of the Registry.
- An additional minimum charge of £10 will be added to all invoices where inward postage is insufficient or omitted.