

APPLICATION FOR GRANT OF PROBATE AND ADMINISTRATION

1. The following documents must be filed when applying for probate:
 - a. Original will and codicil where applicable.
 - b. Certified Copy of Original Death Certificate. If unavailable, file Affidavit in Proof of Death.
 - c. Oath of Executor - should account for non-applying executors by reserving power, showing renunciation or death of co-executor.
2. Additional Documents that may be required:
 - a. Affidavit of Due Execution – required where will:
 - i. does not contain an attestation clause,
 - ii. contains no marksman clause but testator made a mark.
 - iii. was executed twice
 - iv. contains unattested alterations or obliterations
 - v. contains any inconsistency/irregularity regarding the testator's or witnesses' signatures.
3. The following should also be noted:
 - a. Only an executor can apply for probate – Agent acting under Power of Attorney from executor must apply for L/A with Will Annexed.
 - b. If no executor is named in the will, application must be made for L/A with Will Annexed.
 - c. A primary executor and a substitute executor cannot generally obtain probate jointly. Only co-executors can apply for probate.
 - d. Marking clause must be endorsed on the actual will (top, bottom, margins or back of the last page)

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- e. Same JP/Notary Public and the same date are to be used in the jurat of the documents as well as the related marking clause.
- f. Grants from non-commonwealth countries e.g. USA cannot be resealed - treated as regular probate application. File certified copy of grant & will endorsed with seal of foreign court.

APPLICATION FOR GRANT OF LETTERS OF ADMINISTRATION

1. The following documents must be filed when applying for Grant of Letters of Administration (L/A):

- a. Certified Copy of Original Death Certificate
- b. Oath of Administrator - state applicant's capacity/relationship e.g. spouse or child and account for other beneficiaries (Consent, Deed Renunciation or Notice and proof of service)
- c. If applicant is applying as personal representative of a beneficiary, grant issued in the beneficiary's estate must be filed.

Beneficiaries who are alive are ranked higher than the personal representative of a deceased spouse who survived the deceased but died without obtaining L/A.

- d. Notice – should be sent to beneficiaries who are equally entitled. Issue of a child who predeceased the deceased is entitled equally with the child of the deceased.
- e. Consent or Deed of Renunciation – must be filed from beneficiaries who rank higher in the order of priority.
- f. Deceased beneficiaries – where a beneficiary survives the deceased but later dies, notice should be sent to their personal representative or beneficiaries.

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- g. Administrator-General's Certificate.
 - h. Tear sheets.
2. Additional Documents that may be required:
- a. Affidavit of Delay
 - b. Affidavit of Alias
3. The following should also be noted:
- a. Applicant must fall within the Order of Priority listed in the CPR.
NB: stepchildren, grandchildren (acting in their own right), care givers, cousins, nieces and nephews (acting in their own right) or persons raised by the deceased cannot obtain L/A.
 - b. Common Law spouses – applicant should obtain court order declaring spouseship prior to filing application for L/A.

APPLICATION FOR GRANT OF L/A WITH WILL ANNEXED

1. Application arises where deceased died testate but a person other than an executor seeks to prove the will (usually a beneficiary). Typically arises where:
- a. No executor appointed in the will
 - b. Executor appointed in the Will has died in the lifetime of the testator, or after his death, without proving the Will.
 - c. The executor has renounced probate
 - d. Executor has been cited to accept or refuse probate and has not entered an appearance
 - e. Executor gives Power of Attorney to agent to make the application on his/her behalf.

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NB: entitlement to obtain this grant is not based on applicant's relationship to the deceased but is based on applicant's benefits under will.

2. The following documents must be filed when applying for L/A with Will Annexed:

- a. Certified Copy of Original Death Certificate
- b. Oath of Administrator with Will Annexed – state capacity in which applicant is seeking grant (devisee or legatee) and account for other beneficiaries named in the will.
- c. Notice – should be sent to other beneficiaries under the will who are equally entitled. The Personal Representative or beneficiary of a deceased beneficiary should also be notified.
- d. Consent– must be obtained from beneficiaries who rank higher in the order of priority.
- e. Administrator-General's Certificate
- f. Tear sheets

3. Additional Documents that may be required

- a. Affidavit of Delay
- b. Affidavit of Due Execution
- c. Affidavit of Handwriting
- d. Affidavit of Search
- e. Affidavit of Alias
- f. Affidavit of Knowledge and Acceptance
- g. An Affidavit of Plight and Condition

4. Application for L/A with will annexed cannot be obtained where:

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- a. Will invalid – intestacy arises. Apply for L/A.
 - b. Original will lost or destroyed - Apply for Probate of copy/reconstructed will.
 - c. Issues concerning due execution of will– Apply for Probate and address issues in Affidavit of Due Execution.
5. The following should also be noted:
- a. Residuary beneficiary is ranked in priority to all other beneficiaries.
 - b. Where executors cannot be located – Citation to accept or refuse probate should be issued. If no appearance entered, file application for L/A with will annexed; otherwise a court order must be obtained.
 - c. Personal Representative of a deceased beneficiary who is applying for this grant must file grant issued in the beneficiary's estate.

HGH

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