

Getting Probate or Letters of Administration of an Estate

PROBATE AND ADMINISTRATION No.570 OF 1992
IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
LETTERS OF ADMINISTRATION

In the estate of Sandra Singh, deceased. Sworn at \$100,000.00

BE IT KNOWN that Sandra Singh late of Lot 10 Hope Road, Newtown died on the 1st day of May 1991 at Lot 10 Hope Road, Newtown intestate.

AND BE IT FURTHER KNOWN that on the 6th day of June, 1992 Letters of Administration of all the estate which by law devolves to and vest in the personal representative of the said deceased were granted by the High Court of the Supreme Court aforesaid to David Andrew of 64 Smith St. Newtown he having been first sworn well and faithfully to administer the same.

Dated this 12th day of June 1992
Sworn Clerk for Register

Personal Representatives

When a person dies, her/his property or **ESTATE** as it is called, is dealt with by one or more personal representatives as directed by the **WILL** left by the deceased or the **INTESTACY RULES**.

A will is a document in which the person making it, called the **TESTATOR**, states what she/he wants to happen to her/his estate after she/he dies. For information about making a will see Section Number 1.

If a person dies without leaving a will, that is she/he dies **INTESTATE**, the law contained in the Intestacy Rules governs what must be done with the estate. For more information on intestacy see Section Number 2.

Personal representatives are called **EXECUTORS** if appointed by will and **ADMINISTRATORS** if there is no will. Administrators are appointed by the High Court.

Grants of Representation

Before personal representatives can deal with an estate they must obtain a grant of representation from the High Court authorising them to act.

The grant issued to executors is called a Grant of **PROBATE** while administrators are granted **LETTERS OF ADMINISTRATION**. If an Executor or intended Administrator is unable to apply she/he can appoint someone by Power of Attorney.

How to Obtain Probate or Letters of Administration

Before a grant of representation can be issued the following things must be done:

1. An **OATH AND STATEMENT OF ASSETS AND LIABILITIES** must be delivered to the Commissioner of Internal Revenue. The statement is a list of the assets and liabilities of the estate (i.e. property owned by and debts owed by the deceased when she/he died). The oath is a sworn statement confirming that the contents of the inventory are correct.

Other documents must be delivered including:

- (a) a copy of the death certificate;
- (b) the will, if any; and
- (c) a copy of the transport/title to immovable property
- (d) certificates of valuation of the assets.
- (e) a letter from a bank or share registry giving the value of the bank account or share at the date of death
- (f) a Power of Attorney, if applicable

Estate duty was abolished in 1991 but if the gross value of the estate (i.e. the total value of the assets) is more than \$100,000.00 a **PROCESS FEE** of ½ per cent of the gross value is payable. For example, if the gross estate is worth \$200,000.00 the process fee will be \$1,000.00.

When the process fee, if any, has been paid a certificate will be issued by the Proper officer appointed by the Commissioner of the

Internal Revenue Department.

2. Once the Commissioner of Internal Revenue's certificate has been obtained the application for Probate or Letters of Administration can be made to the High Court.
The following documents must be filed with the application:
 - (a) the Commissioner of Internal Revenue's certificate;
 - (b) the death certificate;
 - (c) the will, if any;
 - (d) a list of the assets and liabilities as accepted by the Commissioner of Inland Revenue; and
 - (e) the executor's or intended administrator's oath. This is an affidavit (a sworn statement in writing) by the executor or intended administrator containing information about the deceased and an undertaking to administer the estate properly.
 - (g) A Power of Attorney, if applicable.

Duties of Executors and Administrators

Once a grant of Probate or Letters of Administration has been issued the personal representatives must:

- (1) Collect in all the assets of the estate including money owed to the deceased.
- (2) Put at least 2 weekly notices in the Official Gazette and a newspaper calling on people owed money by the deceased to send in their claims within 3 months of the first notice.
- (3) At the end of the 3-month period pay off all debts, including the funeral expenses.
- (4) Distribute (i.e. share out among the beneficiaries in accordance with the will or the Intestacy Rules) what is left of the estate after all debts have been paid. This should if possible be done within a year after the grant of representation.
- (5) Give an account of their handling of the estate to the beneficiaries and the High Court.

Personal representatives must not make a profit out of their dealings with the estate. They can however take expenses and are entitled to any gift left to them in the will.

If personal representatives fail to carry out their duties properly they will be personally liable to the beneficiaries.

If a personal representative is unable or unwilling to carry out her/his duties, she/he can renounce the grant. A new person will have to be appointed to carry out those duties.