

Common Queries, Limited, Special & Foreign Grants

(Including Applications to
Probate Officer)

Common Queries

- ▶ Instituted and Substituted appointment of Executors not dealt with correctly in Oath
- ▶ Jurat on Oath not completed correctly
- ▶ Assets incorrect on Oath
- ▶ Details not corresponding on all documents
- ▶ Documents exhibited not being marked by the Applicant and Commissioner for Oaths
- ▶ Lodging Solicitor executing the Administration Bond rather than the Commissioner for Oaths before whom the Oath was sworn (Order 79 Rule 29)
- ▶ Statement of Current Market Value not being included with application for dates of death over 2 years old in Intestacy, Will Annexed and DBN cases
- ▶ Renunciation and Power of Attorney forms not setting out title as per the Oath
- ▶ Title not being set out correctly in Oath, particularly in Intestacy and Will Annexed cases
- ▶ Details of deceased and Applicant(s) not corresponding on all papers

Miscellaneous

- ▶ Affidavit of Attesting Witness required if the attestation clause is defective and/or if Will is on loose pages. (*The Affidavit of Attesting Witness must always confirm due execution and then in addition confirm the number of pages in the Will and the fact that they're on loose pages etc.*)

Example of a very simple Attestation Clause: “Signed by the testator in the presence of us and signed by us in the presence of the testator”

- ▶ Affidavit of Testamentary Capacity may be required in cases where dementia or alzheimers or cognitive impairment is listed as a cause of death on the death certificate and the Will (Codicil) was made within 5 years of the date of death.

Miscellaneous

- ▶ Exhibit sheets should not be used when exhibiting documents - the actual document itself should be marked by the Applicant and Commissioner.
- ▶ If there are bequests to Charities under the Will, a Charitable Bequest form must be completed (precedent form on Probate page on Courts Website) and included with the application.
- ▶ Engrossment of Will (Codicil) must be included with all Probate, Will Annexed and Will Annexed (DBN) applications - this is a **certified** photocopy of the will (codicil) and this is inserted in the original grant.
- ▶ In Intestacy and Will Annexed applications, if the date of death is over 2 years, a Statement of Current Market Value is required and this current market value must be reflected in the Oath/Bond form.
- ▶ Ad Litem applications do not require the Statement of Affairs to be completed on ROS.
- ▶ Non Assessed Applications

Powers of Probate Officer

- ▶ Prove & Condemn Wills
- ▶ Issue Grants of Representation
- ▶ Issue Citations & Subpoena
- ▶ Make Rulings pursuant to Order 79 SC Rules

Orders of the Probate Officer

- ▶ Natural Child
- ▶ Rival Applications
- ▶ Guardian
- ▶ Execution of Will
- ▶ Incorporation of Documents
- ▶ Grant to attorney in cases of physical disability
- ▶ Foreign Wills
- ▶ Admit will to proof in terms of translation

Rival Applications

- ▶ “Where there are conflicting claims for a grant among members of a class the grant shall be made to such of the claimants as the Probate Officer shall select having given not less than 21 days notice to the rival claimants, or on objection being made within the said period, to such person as the Court shall select.”

Guardian

Must make application in advance

- ▶ Must be made in all cases where Guardian/Potential Guardian is applying
- ▶ Petition setting out all relevant facts
- ▶ Consent from child over 12 years (Election not required if parent applying)

Persons of Unsound Mind

As of May 2023 and on foot of the Assisted Decision Making (Capacity) Act 2015, Order 79 Rule 27 of the Rules of the Superior Courts was amended which abolished the power of the Probate Officer to appoint a Committee for the purposes of extracting a grant in a deceased's estate.

Under the new rule, an application must now be made to the High Court for an Order pursuant to Section 27(4) of the Succession Act 1965.

Incorporation of Documents

Affidavit of Attesting Witness

- ▶ Was the document in actual existence at the time of execution of the will?
- ▶ Is it referred to in the Will as being in existence?
- ▶ Is it clearly identified?

Order 79 Rule 23

- ▶ “In the case of a person Who In the opinion of the Court or the Probate Officer, is suffering from a severe continuing physical disability, administration, or administration with will annexed, may be granted to his attorney, acting under a power of attorney.”

Foreign Domicile Applications

- ▶ Establish domicile of deceased at the date of death
- ▶ If domiciled abroad, these applications can only be made in the Principal Probate Office
- ▶ Did the deceased die Testate or Intestate?
- ▶ If Testate, is the Will in a foreign language?
- ▶ Does the Will bequeath assets in all jurisdictions?
- ▶ Is there a Will dealing specifically with the assets in this jurisdiction?
- ▶ Did the deceased own both immovable and moveable assets in Ireland?
- ▶ **Immovable assets** are governed by **Irish law**
- ▶ **Moveable assets** are governed by **law of domicile**
- ▶ Section 102 of the Succession Act 1965 – different ways in which the validity of a Will can be proved
- ▶ Affidavit of Law will be required in a lot of Intestacy cases

Foreign Domicile Applications

- ▶ Applications where the deceased, though domiciled outside the jurisdiction, makes a Will in this jurisdiction (usually bequeathing the assets in this jurisdiction only)
- ▶ An Affidavit of Attesting Witness from one of the two witnesses to the Will is required to confirm due execution and place of execution (must confirm it was executed in this jurisdiction) (Section 102 of Succession Act 1965)
- ▶ Must confirm there are no Wills made in any other jurisdiction
- ▶ If there are other Wills copies must be provided
- ▶ You may need to prove 2 or more Wills in the one application

Foreign Domicile Applications

Applications to the Probate Officer in foreign domicile applications

- ▶ Where a Will being proved is written in a foreign language a preliminary application under Order 79 Rule 5(10) has to be made to the Probate Officer
- ▶ Order 79 Rule 5(8)(b) application to limit the Grant to immovable property in this jurisdiction
- ▶ Order 79 Rule 5(8)(a)(i) application to limit the Grant to moveable property in this jurisdiction and give the Grant to the person **entrusted** with the administration of the estate of the deceased in the place where the deceased died domiciled
- ▶ Order 79 Rule 5(8)(a)(ii) application to limit the Grant to moveable property and give the Grant to the person **entitled** to administer the estate of the deceased in the place where the deceased died domiciled

Foreign Will

- ▶ **Sealed and Certified** copy of the **Will** from jurisdiction (Probate Court/Probate Office) where the grant has issued
- ▶ **Sealed and Certified** copy of **Grant** from jurisdiction (Probate Court/Probate Office) where will has been proved
- ▶ OR (if Will has not been proved) - Affidavit of Law

Admit Will to proof in terms of a translation

Must make the application in advance

- ▶ Grounding affidavit including relevant exhibits
- ▶ Affidavit of Law if necessary
- ▶ Affidavit of Translator
- ▶ Original Will
- ▶ If Will has been proved in foreign jurisdiction, then a Sealed and Certified copy of same must be obtained from the Probate Court where the foreign grant issued and also a Sealed and Certified copy of the grant (and translation of same if necessary)

Applications to Probate Court

- ▶ Section 27(4) applications
- ▶ Original Will lost
- ▶ Set aside a Caveat
- ▶ Testamentary Capacity
- ▶ *Ad Litem* Grant
- ▶ Rival Applications
- ▶ Where deceased may have to be presumed dead
- ▶ Simultaneous death