

OBTAINING GRANT OF PROBATE



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Q: My late mother left me her house and I applied for and obtained Grant of Probate on my own, i.e. no solicitor involved. Now that I have obtained the Grant of Probate, can I carry out the transfer of the Property from my mother's name into my own name? Also, as I am married must it now be put into the joint names of my husband and I or can it be transferred into my sole name.

A: Firstly, well done in applying for the Grant of Probate yourself as this can be a complex and lengthy application. Anyone attempting to make a similar application themselves should give this task considerable consideration before doing so.

- The Law Society list a range of circumstances which may give rise to the need for legal advice when applying for a grant of probate, some of these are:
- Doubt about the meaning of the Will or its validity.
- Title matters i.e. ownership of property.
- From which account debts should be paid and whether there is sufficient cash to pay liabilities and legacies / Managing ongoing liabilities.
- Managing an insolvent estate
- If a beneficiary is under the age of 18 years or is suffering from a disability.
- If a farm or business is involved.
- The availability of various tax reliefs and steps to be taken after the death to make sure that all possible tax relief can be claimed.
- Whether any insurance policies/credit union accounts/post office accounts have been nominated as payable to a particular individual.
- If the deceased owned assets jointly with any other person.
- Claims/disputes by disappointed beneficiaries including the rights of children to make a claim.



- When a legacy is payable to a beneficiary who has predeceased the deceased.
- Legacies of items which were sold by the deceased before death.
- Trusts or implied trusts and the existence of a letter of wishes
- Partial intestacy (where there is a Will but it does not cover all the property of the deceased).
- Whether the deceased received payments under the Nursing Home Support Scheme.
- The position of a predeceased child
- Charitable bequests and dealing with the Commissioners for Charitable Donations and Bequests
- When there is a refund due to the Department of Social Welfare.

It is essential to identify from the outset any legal and tax issues to be dealt with; these are not always obvious and can result in a personal representative being held personally liable. Your solicitor will advise you on the steps to be taken and will be in a position to deal with any underlying complexities. He/she will attend to the considerable administrative detail involved, from assembling accurate date of death information, completing the Revenue and Probate Office forms required in the application for a grant of representation collecting the assets, organising where relevant the filing of tax returns and ultimately making arrangements for the distribution of the estate, and related accounting to the personal representatives and beneficiaries.

If you are happy that all administrative matters have been dealt with, you should now be able to prepare the land registry transfer documents. This will allow you to transfer the house into your sole name. The Land Registry shall require the original transfer document signed by you, the original grant of probate and fees in the sum of €130.00. There is no requirement to have the house transferred into the joint names of you and your husband. If you leave the house to your husband in your will, he will inherit it free of inheritance tax. However, if you die without a Will and leave children surviving, your husband shall only be entitled to a two third share of this house and your children shall inherit the remaining one third share. If you do not want this to happen, you should either make a will leaving the house to your husband or transfer the house into your joint names.



If you have any queries regarding this article please feel free to contact Jacquelyn Dunne Solicitor on (086) 1617418. Send your questions for next week's article to jacquelyn@dunnesolicitors.ie or by post to Dunne Solicitors, Ballyshonock, Kildorrery, Co. Cork

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Principal: Jacquelyn E. Dunne B.A.

Ballyshonock, Kildorrery, Co.Cork | Tel: 086 161 7418 | email: jacquelyn@dunnesolicitors.ie | www.dunnesolicitors.ie