



# **Information on obtaining Probate in the Isle of Man**

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

**The information deals only with applications to the Isle of Man Courts. Please note that staff members are prohibited from giving legal advice or offering opinions.**

**If you are in any doubt about your rights, 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 and Administration of Estates

This information is provided to help you if you are dealing with the estate of a person who has died (the deceased). We recognise the difficulties that many people face when dealing with an estate after a death and we hope that the following information will make your task a little less difficult.

## Probate Introduction

### 1. What is the Probate Office?

The Probate Office forms part of the Civil Division of the High Court. It deals with 'non-contentious' probate business, that is where there is no dispute about the validity of a will or entitlement to take a grant.

### 2. What is a Grant of Representation?

When a person dies somebody has to deal with their estate (money, property and possessions left) by collecting in all the money, paying any debts and distributing what is left to those people entitled to it. Probate (from a Latin word, meaning 'proof') is the Court's authority, given to a person or persons to administer a deceased person's estate and the document issued by the Court is called a Grant of Representation. This document is usually required by the asset holders as proof to show the correct person or persons have the Court's authority to administer a deceased person's estate.

There are three main types of grant:-

- **Probate** – issued to the executor(s) named in the will
- **Letters of Administration with Will Annexed** – issued to someone other than an executor when the deceased left a will
- **Letters of Administration** – issued when the deceased did not leave a will (this is called "dying intestate")

The grant provides the names and addresses of the executors or administrators. Throughout this information the word "grant" will be used and this refers to all types of grant of representation.

### 3. Why is a grant of representation needed?

- To protect the interests of the estate and beneficiaries. Before releasing money or other assets owned by the deceased, those holding the assets (such as banks) need to know that they are dealing with someone who has the legal authority to deal with the deceased's affairs. The grant of representation provides that assurance.
- To confirm that the will made by the person who has died is valid (however, though very few cases arise, the validity of a will remains open to challenge after probate has been granted).

**Please note: the Court does not require or insist on probate being applied for.**

### 4. Is a grant needed in all cases?

No.

- It may not be necessary to obtain a grant where a home is held in joint names and is passing by survivorship to the other joint owner.

- Where a joint bank or building society account is held, production of a death certificate may be sufficient for the monies to be transferred to the joint holder.
- Certain institutions may release monies without a grant being produced if the amount held by the deceased was small. Apply to the institutions to see if they will release monies without a grant.

### **5. How is a grant of representation obtained?**

By applying to the Probate Office. Applications can be made personally, or through an advocate, and may be made by post.

**Please note: Staff of the Probate Office can offer procedural guidance on how to obtain a grant; they cannot provide legal advice.**

### **6. When can a grant be obtained? (How soon after the death of the deceased?)**

Unless the permission of the Civil Division of the High Court is obtained, no grant of probate or of administration with the will annexed shall issue within seven days of the death of the deceased. If the deceased person did not leave a will (i.e. died intestate), then except with the permission of the Civil Division of the High Court, no grant of administration shall issue within fourteen days of the death of the deceased.

### **7. 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 Court will normally make a grant to all of them (if of course they all apply), subject to a maximum of 4 persons, 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.

If the deceased did not leave a will then letters of administration will normally be granted to a person who is entitled to the estate, or a share of the estate, under the rules of law governing distribution on "intestacy". In this case, notice of the application must be given to everyone who is entitled to share in the estate and is resident in the Isle of Man. Further details about distribution on intestacy, and categories of persons entitled to receive notice, can be found under Part III of the Administration of Estates Act 1990 a copy of which can be obtained from the Tynwald Library (tel. +44 (0) 1624 685520).

You may in certain circumstances apply on behalf of someone else (see Section 8 below). If this is the case you will need to make it clear why you are making the application and you will need to provide documentary evidence, authorising you to act in the capacity as applicant, in support of your application.

### **8. Can somebody else make the application on my behalf?**

A person appointed as your lawful attorney may make the application on your behalf. The Power of Attorney authorising the person to act on your behalf will need to be submitted in support of the application.

## **9. What is a Power of Attorney?**

A Power of Attorney is a written instrument (document) that authorises a person to act on another person's behalf to the extent indicated in the instrument. If a person is thinking about making a power of attorney in someone else's favour, it is advisable to seek legal advice about the form and effect before doing so.

## **10. What if there is more than one executor?**

Even if there is more than one executor, it may still be possible for just one of the executors to apply for probate and sort out the deceased's estate. However, a maximum of only four executors can apply jointly and sort everything out together.

## **11. What if one or more of the executors does not wish to apply?**

It is not necessary for all the executors to make the application but it must be stated on the application form why the other executor or executors have not been included in the application, for example they may have renounced their right to probate, wish to have power reserved to them (see Section 14 for meaning) or they may have died.

Supporting evidence of why an executor is not included in the application must also be submitted as part of the application, for example renunciation or a death certificate.

## **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 his or her 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 another person.

It should be clearly stated on the probate application form why the person is not party to the application and the renunciation will need to be submitted in support of the application. This proves to the Probate Office why the person who has renounced probate is not a party to the application.

If a person wishes to renounce Probate, or find out more about the legal implications of doing so, they should seek legal advice before agreeing to anything.

## **13. What if one of the Executors dies before the deceased person or before Probate is applied for?**

The person or persons making the application must state clearly on the application form whether the executor died before the deceased or if the executor survived the deceased but died before Probate could be applied for. A Registry issued death certificate (please note it is not sufficient to submit a plain copy) confirming the statement must be submitted as part of the application.

## **14. 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.

Where an application is made with the request that power is to be reserved to an executor or executors, notice of the application must be given to the executor or executors to whom power is to be reserved and the oath shall state that such notice has been given. The request for power to be reserved must be clearly stated on the application form.

### **15. What is meant by a 'minority interest'?**

A minority interest arises when any person under the age of 18 years has an interest in the estate of the deceased.

Generally where an application is made for Letters of Administration (which includes administration with the will annexed), and a minority interest exists, at least two persons or a trust corporation will be required to make the application.

### **16. 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 legal advice.** Access to details of all firms, advocates and members of the Isle of Man Law Society can be found on the Isle of Man Law Society website ([www.iomlawsociety.co.im](http://www.iomlawsociety.co.im)) or by contacting the Isle of Man Law Society on +44 (0) 1624 662910.

## **Before making an application for Probate or Administration**

### **17. 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".

### **18. 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.

### **19. What is a codicil?**

A codicil is a supplement 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.

### **20. 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 or with relatives. If you know that the deceased made a will but it cannot be found, you may need to take legal advice.

### **21. 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.

## Making an application

### 22. How do I apply for a grant when the deceased was an Isle of Man resident?

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

1. obtain the application form (which should accompany these guidance notes)
2. complete the application form
3. obtain the required supporting documentation, in particular an original or Registry issued death certificate and the original will (if applicable)
4. the application needs to be sworn or affirmed before a Commissioner for Oaths. This can be done by any person empowered to administer oaths (for example, an advocate or Justice of the Peace) or by staff at the public counter in the Isle of Man Courts of Justice Building. Please note that if the application is supported by a will, the will also needs to be freshly marked (signed with full signatures) on the front page by both the applicant or applicants and by the Commissioner for Oaths before whom the application is sworn or affirmed. Likewise, any codicils also need to be marked in the same manner.
5. calculate the appropriate application fee, depending on the value of the estate and the number of additional requirements (for example, the number of certified copies required), in accordance with the fees prescribed by the High Court Fees Order currently in force (details of the probate fees that are applicable should accompany these notes).
6. lodge the application form and the appropriate fee, together with any supporting documentation, at the public counter in the Isle of Man Courts of Justice Building. Alternatively, you may post your completed application to:-

**The Probate Office  
Isle of Man Courts of Justice  
Deemsters Walk, Bucks Road  
Douglas, Isle of Man  
IM1 3AR**

Please do not send cash through the post; cheques should be made payable to "Isle of Man Government" or, alternatively, you may ring the Payments line on +44 (0) 1624 686423 and pay by either a credit or debit card.

You should keep a copy of the completed application form, and any other documents that you submit, when you lodge your application.

### 23. What about when the deceased died domiciled outside the Isle of Man?

The word domicile, generally speaking, means the place where the deceased had his permanent home. The procedure for applying is similar in most respects as if the deceased had been an Isle of Man 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 Isle of Man, 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 or a court certified copy of both the will and the grant from the issuing registry, along with a death certificate. A court sealed copy will bear the raised or coloured seal of the issuing Registry or Court; a court certified copy will be marked with the signature of the issuing officer certifying that the document is a true copy of the original document. Please note it is not sufficient to submit plain copies of the documents.

If the deceased left more than one will, and one of the wills covered the estate in the Isle of Man, the **original** will covering the estate in the Isle of Man must be submitted with the application **together** with copies of any other wills the deceased left.

In all instances the will, whether it be an original, a court sealed copy or a court certified copy that is submitted with the application, must be freshly marked (signed with full signatures) on the front page by both the applicant(s) and the Commissioner for Oaths before whom the application is sworn, irrespective of the fact that if it is a court sealed or a court certified copy it will already have been marked when Probate was applied for where the deceased died domiciled.

In the event that the deceased died intestate (had no will), the application must be supported by a court sealed 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.

**Failure to provide either court sealed or court certified copies, or failure to have the document freshly marked (signed) by both the applicant(s) and the Commissioner for Oaths, will result in delays in processing the application as the documents will have to be returned to the address for service for the necessary requirements to be complied with.**

The address for service must be an address in the Isle of Man. For further information in relation to the address for service, please see section 27 headed 'Address for Service'.

#### **24. The application form**

There is only one application form to complete, however depending on the circumstances you may need to supply additional documentation in support of your application. The probate application form asks for details of the deceased and the applicant or applicants.

#### **25. How do I determine the value of the estate?**

The form asks you to indicate the gross value of the estate of the deceased in the Isle of Man at the date of death. The probate fee for lodging the application is based on the gross value of the estate, however please note that if the gross value of the estate is not indicated on the application form the maximum probate fee will be charged.

You should try to obtain the full value of everything in the Isle of Man owned by the deceased or due to him from any source at the date of his death (whether or not it has already been received) including any interest or bonus which will be paid, except property nominated in favour of any person and joint property if the deceased's share passed by survivorship. An example of property nominated in favour of a person may be a pension scheme which provides for certain benefits due on death to be paid to a nominee without requiring a grant to be produced, however determining whether or not the value of certain property should be included can be very complex and therefore you should seek legal advice if you are in any doubt.

"Gross value" means the estimated price an item would fetch if sold at the date of the deceased's death. Stocks and shares should be valued at the price at which they were quoted on the Stock Exchange on the day of death.

#### **26. Will I have to attend the Probate Office in person?**

All applications can be dealt with via the postal system, however the Probate Office may in certain circumstances ask an applicant (or applicants) to attend in person in order to clarify certain points or gain further information.

However, if you wish to hand-deliver your application to the public counter, the staff will assist by checking that all the application form has been completed, although please note the staff will not be able to comment or advise on the actual answers you provide in response to the questions on the application form.

You may also attend the public counter to swear or affirm the application before a Commissioner for Oaths, if you have not already done so elsewhere. This service will be carried out by the staff at the public counter on payment of the prescribed fee.

## **27. Address for service**

Every application is required to state an address for service in the Isle of Man, irrespective of where the applicant or applicants live. Once an application has been made, the Probate Office will send all further correspondence or documents to the nominated address for service.

If there is no personal representative of the deceased in the Isle of Man you may wish to seek the permission of the organisation in the Isle of Man, with which the assets of the deceased are deposited, to use their address. Organisations will normally grant permission for this, however the onus is on the applicant to check with the organisation first.

If permission has been gained from an organisation on the Isle of Man to use their address as the address for service for the application, it would assist if the applicant could establish the person's name in the organisation to whom the grant should be sent. This should be indicated on the application form and will help to ensure the grant is sent directly to the correct person and therefore prevent any delays in the organisation releasing whatever assets of the deceased they hold.

## **28. Probate Fees**

A simplified reference guide to the probate fees applicable should accompany these notes. Please remember when calculating the fee payable to include the cost of any additional requirements you may have (for example, 5 additional copies of the grant in addition to the application fee).

## **29. What happens to the original documents I submit in support of my application?**

All documents supplied in support of the application (for example the original will, death certificate, etc.) will be permanently retained by the Court. Once the grant has been issued, all the information provided as part of the application will be available for public inspection in the Deeds and Probate Registry (tel: +44 (0) 1624 685250).

Once the grant has been issued any person may obtain copies of any document submitted, from the Deeds and Probate Registry, on payment of the prescribed fee.

## **Once an application has been made**

### **30. What happens next?**

The application will be considered and, providing all is in order, the grant will be prepared and sent to the address for service stated on the application form. The address for service must be an address in the Isle of Man.

If the application is deficient in any way, or if the Court is required to make further enquiries before the application can be progressed, we will write to the address for service stated on the application form. Any documents that need amending will also be returned with the covering letter to the address for service.

### **31. How long will it take?**

Providing the application is in order, and no further information is required or enquiries needed, we aim to process all probate applications, and issue the grant to the address for service stated on the application form, within 10 working days of receipt of the application.

However, it should be noted that unless the permission of the Civil Division of the High Court is obtained, no grant of probate or of administration with the will annexed shall issue within seven days of the death of the deceased, and no grant of administration shall issue within fourteen days thereof.

If further enquiries need to be made as a result of the application being incorrect, or deficient in some way, we aim to write to the address for service within 10 working days of receipt of the application.

### **32. Can a person prevent probate from being granted?**

Any person who wishes to show cause against the issue of a grant of representation may 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 Court about the matter.

## **Caveats**

### **33. In what sort of circumstances are caveats used?**

Due to the numerous circumstances it is not possible to give a comprehensive list; a caveat is often used to allow "breathing space" to enable the caveator to make enquiries to determine whether there are grounds to oppose an application for probate, or to bring matters in relation to the estate before the court. A few typical examples are:-

- there is some allegation concerning a will, for example it is not the last will or the deceased was not of sound mind when it was made
- there is a dispute between two or more people equally entitled to apply for probate
- there is dispute about whether a will exists

### **34. How will I know if I should file a caveat?**

The staff of the Probate Office are not able to advise you whether you should file a caveat, or what subsequent steps should be taken. The staff can tell you what procedures are available to you but they cannot advise on the appropriateness of any of these. If you are in any doubt, you should seek legal advice.

### **35. How do I enter a caveat?**

In order to enter a caveat you must complete **Form 2** (set out in the Schedule to the Probate Rules 1988, subsequently amended by the Probate (Amendment) Rules 2009 - copies of which can be obtained from the Tynwald Library – tel. +44 (0) 1624 685520) and lodge it at the public counter along with the appropriate fee. You may do this yourself or through an advocate.

Whilst the caveat remains in force, the information is used to prevent probate/administration being granted in the estate without you being informed.

### **36. Can I enter a caveat by phone or by sending a letter to the Probate Office?**

No. A telephone call or letter is not recognised as a means of preventing a grant from being made.

### **37. When should the caveat be entered?**

Once you decide that you want to enter a caveat, you should do so immediately. However, if you are in any doubt you should seek legal advice as there is a possibility you may become liable to pay costs at a later date.

### **38. How long does a caveat last?**

Six months from the date it is entered. In the month before it is due to expire, you or your advocate may apply to extend it for a further period of six months. The application for an extension must be in writing (there is no prescribed form to complete) to the Probate Office and should quote the caveat number for which you are seeking the extension. There is no further fee payable when requesting an extension.

### **39. Is there a reminder issued towards the end of the six months?**

No. If a caveat is not extended it simply expires, but if you wish you may enter another, providing of course that probate/administration has not been granted in the intervening period. The appropriate fee will have to be paid on application to enter a new caveat.

### **40. Can a caveat be withdrawn?**

A caveat can be withdrawn but the procedure to follow in order to do this will vary depending on what stage the caveat has reached. If you are unsure about the correct procedure to follow you are strongly recommended to seek legal advice.

### **41. What happens when a caveat stops an application for probate?**

The person applying for probate is informed of your caveat and given your details.

### **42. What happens next?**

It is up to yourself and the person applying for probate to make contact with each other, hopefully to resolve any differences, and agree a way forward.

### **43. What if there is no agreement?**

This is where matters become complicated and, if you have not already done so, you are strongly recommended to seek legal advice.

## **Once a grant has been issued**

### **44. How do I administer the Estate?**

If you are the executor or administrator appointed by the Court, it means that you must pay the debts and distribute the estate of the deceased in accordance with the will or the intestacy rules. The staff of the Probate Office 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.

### **45. What if a more recent will of the deceased is found?**

You must notify the Probate Office, 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 Office will inform you of what further action will need to be taken as a result of the more recent will being discovered.

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

By writing to:- **The Probate Office**  
**Isle of Man Courts of Justice**  
**Deemsters Walk, Bucks Road**  
**Douglas, Isle of Man**  
**IM1 3AR**

By telephone:- +44 (0) 1624 **685243**

By email: [probate@courts.im](mailto:probate@courts.im)

## Legislation

Copies of relevant legislation can be obtained, on payment of a fee, from the Tynwald Library – tel. +44 (0) 1624 685520. Alternatively, some of the legislation that is applicable may be viewed free of charge on the Isle of Man Courts of Justice website at the following address:

<http://www.courts.im/courtprocedures/willsandprobate/legislation.xml>

## Glossary of Terms

In order to try and assist you understand some of the terminology you will encounter when dealing with probate, we have produced the following glossary of terms.

In providing explanations for each of the more commonly used terms, please note that we have tried to give a simple explanation in plain English. If you are in any doubt about the meaning of any of the terms set out below, or the legal consequences of undertaking any procedure referred to, you should seek your own legal advice.

<b>Term</b>	<b>Explanation</b>
Address for service	An address in the Isle of Man which, after receiving the application, the Probate Office will send all further correspondence or documents to. Every application is required to state an address for service in the Isle of Man, irrespective of where the applicant or applicants live.
Administrator	A person appointed to deal with a deceased person's estate
Beneficiary	A person who is left a legacy by, or benefits from, another person's will
Caveat	Any person who wishes to show cause against the issue of a grant of representation may prevent probate/administration being granted in an estate by filing a caveat. This gives 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 Court about the matter
Codicil	A codicil is a supplement or addition to a will explaining, modifying or revoking a previous will provision or adding an additional provision. There can be several codicils to a will
Creditor	A person who is owed money
Deceased	Dead. In relation to probate, the term 'deceased' is normally added after a person's name to indicate that the person has passed away.

Domicile	A person's place of residence
Executor	A person appointed by a testator to carry out the terms of his or her will
Grant	A Court Order authorising a person, or persons, to administer a deceased person's estate
Grant of representation	This is a general term which includes grants of probate and letters of administration
Intestate	The term used when a person dies without leaving a will
Lawful Attorney	The person(s) appointed to act on behalf of another
Letters of Administration	A Court Order issued when the deceased did not leave a will
Letters of Administration with Will Annexed	A Court Order issued to someone other than an executor when the deceased left a will
Minority interest	When any person under the age of 18 years has an interest in the estate of the deceased
Notice	Notify
Power of Attorney	A Power of Attorney is a written instrument (document) that authorises a person to act on another person's behalf to the extent indicated in the instrument
Power Reserved	'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
Pre-deceased the deceased	Died before the deceased
Prescribed Form	A form set out in law
Probate	'Probate' is a term commonly used when talking about applying for the right to deal with a deceased person's affairs. This is also sometimes referred to as 'administering the estate'
Probate Grant	A Court Order issued to the executor(s) named in the will
Renounce	Refuse
Testator	A person who has made a will
Will	A will is a written document containing a person's instructions and wishes as to how their property and assets are to be distributed after his or her death

Issued by the Probate Office,  
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