

# Guernsey: Probate

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## What are probate and letters of administration?

The term probate generally refers to a grant of representation, which is the official validation and approval of the person entrusted to deal with a deceased's person's personal estate by the Bailiwick of Guernsey Probate Registry (the **Registry**). For brevity, this guide shall use the term probate to refer to any type of grant of representation.

Probate enables a personal representative of the deceased to administer the deceased's personal estate. There is no legal requirement to obtain probate in Guernsey – whether it is required is a question for the asset holder (ie the bank or fund-manager) – but normally, where the funds involved exceed £10,000, the asset-holder will require a grant before releasing the assets to the personal representative.

There are occasions when it is not necessary or not possible to obtain probate. If the deceased was not domiciled in Guernsey and did not leave any assets situated there, probate cannot be obtained in Guernsey. If Guernsey assets are held jointly (as is often the case for spouses) then Guernsey probate is not required on the death of the first joint owner, as assets held jointly automatically pass to the other joint owner. Joint ownership is similar to joint tenancy or survivorship in England & Wales.

Where probate has already been obtained in other jurisdictions (including those issued in England and Wales, Scotland or Northern Ireland), this does not remove the need to obtain probate in Guernsey and there is no 'fast-track' or 're-seal' process.

## What is 'personal estate'?

Broadly speaking, 'personal estate' means assets not comprising real estate. Examples of Guernsey personal estate include accounts at Guernsey banks, shares and other securities issued by Guernsey companies and tangible assets such as jewellery, furniture, paintings and cars physically situated in Guernsey.

## What is the difference between an executor and an administrator?

A person who dies leaving a valid will is said to have died 'testate'. The person or persons named in that will to administer the estate and distribute it is called the 'executor' and, assuming that person is able and willing to act, will be the person applying for the grant of probate.

A person who dies without leaving a valid will is said to have died 'intestate'. When a person dies intestate, letters of administration, rather than a grant of probate, will need to be obtained and a person, known as an 'administrator', will have the power to administer and distribute the deceased's estate and be the person applying for the letters of administration.

Where there is a will but the executor named in the will has died or is otherwise unable or unwilling to act, the person appointed is known as the administrator. Letters of administration with the will annexed will need to be obtained.

Collectively, executors and administrators are known as 'personal representatives'.

## How can we help?

We routinely assist clients with obtaining probate so that Guernsey assets can be realised and distributed efficiently. We understand that no one relishes the prospect of dealing with this and aim to make the process as efficient as possible.

### Documents that we require

In order to obtain a grant of probate, the following documents are required:

- the original will of the deceased (if any)
- the original death certificate of the deceased
- details of the gross value of the estate held in the deceased's sole name. If probate has not yet been obtained in any other jurisdiction, then details of the gross value of the worldwide estate will be necessary. However, if probate has already been obtained somewhere else, then only the details about the gross value of the estate in Guernsey will be necessary, and
- correspondence from an institution stating that it requires a grant of probate to release assets to the executor/administrator.

If the deceased died intestate, we also require:

- an 'intestate affidavit', setting out who is entitled to share in the estate under the law of the domicile of the deceased
- a statement containing the name, address and occupation of the proposed administrator, and
- if the deceased was domiciled outside of Guernsey, an affidavit from a lawyer in the jurisdiction of the deceased's domicile confirming the personal estate's lawful heir(s).

### If probate has already been obtained elsewhere

If a grant of probate has already been obtained in another jurisdiction (eg in England and Wales), but a Guernsey grant of probate is required, then we may also require the following documents:

- a statement from the asset holder/institution stating the gross value of the Guernsey estate, and
- a copy of the foreign grant of probate (with any will annexed) that is sealed and certified by the issuing probate registry.

### Documents in a foreign language

Where documents are in a foreign language they must be accompanied by an official government or court approved certified translation into English.

### The process

Once we have received the required documents, we will be in a position to prepare the papers needed to make an application to the Registry for the grant. When the Registry confirms that it is satisfied with the documents provided, it will ask how the personal representative wishes to make their oath. There are two options:

- **Postal oath.** The Registry prepares an oath and emails this to us, or directly to the personal representative. The personal representative signs the oath in the presence of a notary public and sends the original to the Registry.
- **In-person oath.** Either the personal representative or their nominated attorney attends the Registry to take the oath in person.

Following the grant, the personal representative can begin to liaise with the asset holders, such as banks or portfolio managers, in order to call in the deceased's movable estate. The Registry retains original documents submitted to it as part of the application.

### Costs of probate

The Registry charges a fee based upon the gross value of the deceased's personal estate. For estates over £80,000, the fee is £155 plus £35 for each additional £10,000 of value of the personal estate plus some nominal additional amounts for additional documentation. For personal estates with a value greater than £57,000,000, the fee is capped at £200,000.

Whether or not probate has already been obtained in another jurisdiction can have financial implications for the level of the Registry charges due to the Registry's method of calculation of a personal estate's gross value. Where probate has not been obtained elsewhere, the gross value of the deceased's personal estate is calculated based on worldwide assets. This will increase the Registry's charges. Where probate has already been obtained elsewhere, only the gross value of the Guernsey estate is considered. Careful estate planning is therefore required; one potential recourse for testators is to create a will that deals only with Guernsey assets.

## Contacts

A full list of contacts in our International Trusts & Private Client team who specialise in this area can be found [here](#).

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](https://www.mourant.com). © 2023 MOURANT OZANNES ALL RIGHTS RESERVED