



Guide to Probate & Administration in The Bahamas

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Preface

In order to distribute or take possession of a deceased person's property situated in The Bahamas a Grant of Probate or Letters of Administration must be obtained from the Bahamian Courts. Where there has been a grant of probate (or its equivalent) or a grant of letters of administration (or their equivalent) in a foreign country, with respect to a deceased person having property in The Bahamas, the personal representatives may not take possession of, or administer any part of the Bahamian property until they first obtain a resealing of the probate or letters of administration by the Bahamian Courts. When someone dies it will probably be necessary to submit an application to the Supreme Court for either a grant of probate, a grant of letters of administration or a resealing of a grant obtained in a foreign jurisdiction.

A GRANT OF PROBATE

Application for a grant of probate (“**Probate**”) is usually made where the deceased person (the “**Deceased**”) signed a valid will appointing at least one Executor (or Executrix) who survived the Deceased and the Executor is making the application in his or her personal capacity. In order to obtain a grant of Probate in The Bahamas, the Executor will be required to make an application to the Probate Registry of the Supreme Court of The Bahamas. In making any such application, it is necessary for an Executor to submit the following documents:

- A Petition;
- An Oath For an Executor containing the date and place of death, giving in the schedule thereto a description of all the property of the Deceased which will be affected by the grant applied for and stating the estimated value of the personal estate;
- An original of the will; with two (2) photocopies of the same signed in the margin by one of the witnesses to the will.
- An Affidavit of an Attesting Witness in Proof of the Due Execution of the Will or Codicil, and if both attesting witnesses are dead or if from any other circumstances no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the will or codicil. If no affidavit of any such other person can be obtained evidence on affidavit must be procured of that fact and of the handwriting of the Deceased and the subscribing witnesses and also of any circumstances which may raise a presumption in favour of the due execution;
- For persons who died in The Bahamas, an original death certificate of the Deceased or a certified copy of the death certificate of the Deceased or for persons who died in a foreign country, two (2) original death certificates of the Deceased or two (2) certified copies of the death certificate of the Deceased;
- A Bond for making a return into the registry and for paying the relevant fees; and
- A Return of the value of the personal estate and effects of the Deceased.

When all the papers deemed by the Registrar to be necessary in the case of an application for Probate have been filed and no caveat has been entered, the

Registrar, by direction of a Judge, shall fix a day for the hearing of the application and on the day so fixed shall attend before a Judge with the papers. Provided the Judge decides to grant the application, the Registrar shall notify the applicant that upon the execution and filing of the necessary bond, the grant will be issued.

If the Executor has not obtained Probate within three (3) years after the death of the Deceased, then an Affidavit of Delay explaining the reason(s) for the delay, must be submitted along with the other documents identified above before an application for Probate can be successful.

Usually in uncontested matters Probate is granted to the Executor(s) six (6) to eight months (8) months from the date of the filing of the application. However it should be noted that no probate will be issued until after the lapse of fourteen (14) days from the death of the testator except in a case of urgency when the facts of such case shall be laid before a Judge on motion in open court.

Where the Judge decides to grant Probate or Letters of Administration, the applicant will be required, in accordance with the provisions of the Probate Act, to enter into a bond with two or more sureties in the sum of four hundred Bahamian dollars (**B\$400**), with the conditions specified in the first section of the Probate Act.

Legal fees will be based on the value of the assets located in The Bahamas with a minimum fee of two thousand five hundred Bahamian Dollars (**B\$2,500**) plus disbursements.

LETTERS OF ADMINISTRATION

An application for letters of administration (“**Administration**”) is usually made where a person dies intestate (i.e. without a Will). Interested applicants should receive legal advice as to whether or not they have the right to apply for Administration and whether other persons have any prior rights. In order to obtain Administration in The Bahamas, the following documents must be filed at the Registry of the Supreme Court of The Bahamas:

If for administration without a Will:

- An Oath For an Administrator of the applicant proving and stating the same facts as those required in an Oath For an Executor’s affidavit, and stating the grounds on which the applicant bases his claim;
- For persons who died in The Bahamas, an original death certificate of the Deceased or a certified copy

of the death certificate of the Deceased or for persons who died in a foreign country, two (2) original death certificates of the Deceased or two (2) certified copies of the death certificate of the Deceased;

- A description of all assets and/or liabilities of the Deceased in The Bahamas;
- Petition;
- Bond for Making Return;
- Return;
- Administration Bond

If for Administration with the Will annexed:

- For persons who died in The Bahamas, an original death certificate of the Deceased or a certified copy of the death certificate of the Deceased or for persons who died in a foreign country, two (2) original death certificates of the Deceased or two (2) certified copies of the death certificate of the Deceased;
- The original Last Will and Testament of the Deceased and any Codicils;
- An Affidavit of Attesting Witness in Proof of the Due Execution of a Will or Codicil will have to be sworn by one of the Witnesses attesting to the fact that the Testator/Testatrix executed the Last Will and Testament in their presence (Higgs & Johnson will provide you with this form);
- If the Executor named in the Last Will and Testament of the Deceased is not a resident of The Bahamas a Power of Attorney must be executed by the Executor entitled to administer the Estate of the Deceased (Higgs & Johnson will prepare this document once we have received items b (i) and b (ii)) appointing an Attorney or resident or citizen of The Bahamas to act on behalf of the Executor in The Bahamas;
- A Letter of Instruction from the Executor entitled to administer the estate of the Deceased directing how the assets in The Bahamas should be distributed;
- A description of all assets and/or liabilities of the Deceased in The Bahamas;
- Petition;
- Bond for Making Return;
- Return;

Administration Bond with a Will respectively, must be given in double the amount of the estate. If the estate is under Two Hundred (**\$200**) Dollars, one surety will be required, if it is over that amount, two sureties will be required unless, in any particular case, the Judge approves one surety only;

Where Administration is applied for, the Registrar shall, on the filing of the necessary papers, insert a notice of the application in three successive issues of the Gazette stating that the application will be set down to be heard by a Judge at the expiration of the time to be specified in such notice.

When all the papers deemed by the Registrar to be necessary in the case of an application for Administration have been filed, the time mentioned in the Gazette notice has expired and no caveat has been entered, the Registrar, by direction of a Judge, shall fix a day for the hearing of the application and on the day so fixed shall attend before a Judge with the papers. Provided the Judge decides to grant the application, the Registrar shall notify the applicant that upon the execution and filing of the necessary bond or bonds, the grant will be issued.

Usually in uncontested matters Administration is granted to the Administrator(s) six (6) to eight (8) months from the date of the filing of the application.

Legal Fees will be based on the value of the assets located in The Bahamas with a minimum fee of two thousand five hundred Bahamian dollars (**B\$2,500**) plus disbursements.

RESEALING APPLICATIONS

An application for resealing (“**Resealing**”) is usually made where there has been a grant of probate (or its equivalent) or a grant of letters of administration (or their equivalent) in a foreign country, with respect to a deceased person having property in The Bahamas. The personal representatives may not take possession of, or administer any part of the Bahamian property until they first obtain a Resealing of the probate or letters of administration by the Bahamian Courts. In order to obtain Resealing in The Bahamas, the following documents must be filed at the Registry of the Supreme Court of The Bahamas:

- Petition;
- Bond For Making Return;
- Return;

- Power Of Attorney (Executed by The Executor/ Personal Representative Of The Deceased's Estate);
- Attorney's Affidavit (Outlining The Assets And The Value Of Such Assets Of The Deceased In The Commonwealth Of The Bahamas);
- Two (2) original death certificates or two (2) certified copies of the death certificate of the Deceased;
- Two (2) court certified copies of the Last Will and Testament of the Deceased (if any); and
- Two (2) court certified copies of the Grant or such similar Order issued out of the Courts of the domicile of the Deceased.

Where Resealing is applied for, the Registrar shall, on the filing of the necessary papers, insert a notice of the application in three successive issues of the Gazette stating that the application will be set down to be heard by a Judge at the expiration of the time to be specified in such notice.

When all the papers deemed by the Registrar to be necessary in the case of an application for Resealing have been filed, the time mentioned in the Gazette notice has expired and no caveat has been entered, the Registrar, by direction of a Judge, shall fix a day for the hearing of the application and on the day so fixed shall attend before a Judge with the papers. Provided the Judge decides to grant the application, the Registrar shall notify the applicant that upon the execution and filing of the necessary bond or bonds, the grant will be issued.

Usually in uncontested matters Resealing is granted six (6) to eight (8) months from the date of the filing of the application.

Legal Fees will be based on the value of the assets located in The Bahamas with a minimum fee of two thousand five hundred Bahamian dollars (**B\$2,500**) plus disbursements.

SAFEGUARD FOR TRUSTEES OR PERSONAL REPRESENTATIVES

Section 33 of the Trustee Act 1998 provides a valuable safeguard for trustees or personal representatives in the execution of their duties. Section 33 explains that where personal representatives wish to make any conveyance or distribution of real or personal property to the beneficiaries entitled to such property, the trustees or personal representatives may place a notice in the Gazette and in a local newspaper, requiring interested persons to submit particulars of their claims on the property.

Upon the expiration of the fixed period set out in the notice, the personal representatives will be able to distribute any of the property specified in the notice to the beneficiaries and will be bound only to have regard to the claims in respect of property of which they received notice. In addition, the personal representatives are not liable in respect of property that has been distributed in accordance with section 33, where the personal representatives did not receive notice within the time period specified in the notice.