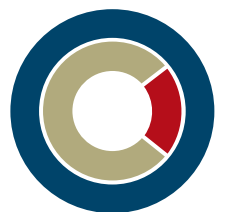




WILLS, PROBATE AND ESTATE PLANNING



MJ O'Connor Solicitors

Probate and Administration

If someone close to you has passed away and made you Executor of their Will, you are responsible for disposing of the Estate, paying any outstanding bills and distributing the remainder, according to their wishes. You will normally require a Grant of Probate so that financial institutions and others will recognise your authority and deal with you.

What is Probate in Ireland?

A grant of probate in Ireland (where there is a will), or letters of administration (where there is no Will), is normally required before the estate of a deceased person can be distributed. The estate can consist of property, money or other possessions.

Probate or administration authorises the executor of a Will in Ireland or the administrator to deal with the assets and pay the estate's debts before proceeding to distribute bequests and legacies under the will or under the rules of intestacy.

What do I Need for my Probate Solicitors?

You should bring as much as you can of the following:

- The Will. If it is unavailable, a copy. If neither is available or there is no Will we can still proceed.
- Death Certificate. This is available from the local Registry of Births, Marriages and Deaths. If the certificate is not immediately available we can source it later.
- Such of the deceased's papers as you can find which are relevant to property, financial or related matters. These include books of account, certificates of ownership, title documents, insurance policies, bills etc.
- Funeral account, hospitality bill etc. If these are not immediately available they can be obtained later.
- The deceased's PPS Number.
- Names and addresses of the next of kin.

If you cannot find everything just bring what you can and we will take it from there.

Representation for International Lawyers & Clients for Probate in Ireland

We are delighted to act for international or foreign based lawyers and solicitors, and for non-resident beneficiaries, family members or executors of a Will who need help with Irish property or assets.

Where a person living outside the Republic of Ireland dies leaving assets within the Republic an Irish Grant of Probate or Administration is almost always needed so that assets can be accessed and realised. We have many years experience acting as solicitors for foreign lawyers and non-resident clients and are delighted to help.

First Steps

To get started we ask that such of the following documents and/or information as is available is forwarded to us. You can use info@mjoc.ie to send what you have or fax +353 53 9124365. If you would like to ring please call +353 53 9122555. Supplying this information does not create any obligation whatsoever and please feel free to ask any question you wish.

- Name, address, occupation and marital/relationship status of the deceased
- Copy of the Death certificate

- Copy of the Will or foreign Grant of Probate/Administration
- List of assets of the deceased in the Republic of Ireland

Next Steps

Once we have studied what you send us we will revert with our initial analysis and recommendations. It is likely at least some of the following will then arise for attention:

1. Original Documents

If a foreign Grant of Probate or Administration has been taken out we will usually need an official sealed and certified copy. Normally this is obtained from the Registry that issued the foreign grant. If there is no foreign Grant of Representation and it is not intended to extract one we will need the original Will, if it exists. We may also need an official death certificate.

2. Assets & Liabilities

A list of the deceased's assets and liabilities in Ireland with supporting documentation will be required.

3. Beneficiary Details

The names and addresses of the beneficiaries and their relationships with the deceased will be needed.

4. Taxation

a. Capital Acquisitions Tax (CAT) also known as Inheritance Tax

CAT is often a major factor in this type of case. Unlike other jurisdictions, such as the UK, in Ireland Inheritance Tax (Capital Acquisitions Tax) is a tax on the beneficiary, not on the estate. Special rules apply to ensure compliance by non-resident beneficiaries. Where the personal representative or executor is Irish resident, he or she has a personal exposure if non-resident beneficiaries do not meet their pay and file commitments. If the personal representative or executor is not Irish resident he or she must appoint an Irish solicitor who then becomes personally assessable and chargeable for CAT if the person primarily liable defaults in making returns or payment. Prompt action is necessary to avoid interest, surcharges and penalties.

b. Income Tax

The deceased's Irish Income Tax affairs, if any, must be wound up.

c. Source of Funds Where the aggregate value of the Irish funds exceed €100,000 the Irish Revenue Commissioners will want to be satisfied as to the source of funds.

5. Personal Public Service (PPS) Numbers

To process a Probate or Administration application in Ireland PPS numbers must be provided for the deceased and most beneficiaries. Sourcing these can take time and is one of the biggest causes of delay. Any person born in Ireland automatically has a PPS number even if he or she is unaware of it. The format is seven digits and a letter. Irish PPS numbers can be obtained on application from the Department of Social and Community Affairs.

6. Other

Depending on the circumstances it may be necessary to obtain an Affidavit of Law (as to the law in the non-Irish jurisdiction). If so we can provide precedents. A Power of Attorney to extract the Irish Grant may be needed. The question of a spouse's or civil partner's legal right share and provision for dependents may arise.

FAQs Probate & Administration

See below for a list of Frequently Asked Questions (FAQ's) in probate and administration. We hope these will be of assistance to you.

- What is an "Estate"?
- What is Probate?
- What is a Grant (or Letters) of Administration and Intestate?
- What is a Personal Representative, Executor or Administrator?
- What does the Personal Representative, Executor or Administrator do?
- Tell me more about a Personal Representative's responsibilities?
- When someone dies what are the immediate steps?
- What are the Benefits of Consulting MJ O' Connor?
- What documentation and information should I bring to MJ O' Connor?
- Property passes according to the Will, if there is one. If there is no Will? What are the Rules of Intestacy?
- What is Capital Acquisitions Tax (CAT)?
- What is the legal right share?
- How does the legal right share affect the Family or Shared Home?
- How long does Probate take?
- What should I do if the deceased left property in a foreign country?
- What do I do if someone disputes the Will/Estate?
- I want to contest the Will – What do I do?
- Is there anything else I should consider?
- What is an Inquest?

What is an "Estate"?

When someone dies, everything he or she owns is referred to as the "estate." Debts and taxes must first be paid. Once this is done the estate is divided as set out in the deceased's Will. If there is no Will, the estate is divided under rules set out in the Succession Act 1965 ("the rules of intestacy"). These are a relationship based pecking order of rights to inherit (see below).

What is Probate?

Where the deceased has made a Will, the process that allows the assets to be realised and distributed is called Probate. The representative(s) of the deceased is known as the Executor(s). The deceased is said to have died testate.

If there was no Will the process is called Administration.

What is a Grant (or Letters) of Administration and Intestate?

Where the deceased has not made a Will, the process that allows the assets to be realised and distributed is called Administration. The representative(s) of the deceased is known as the Administrator(s). The deceased is said to have died intestate.

If there was a Will, the process is called Probate

What is a Personal Representative, Executor or Administrator?

A Personal Representative (or representatives – there can be more than one) is the person who legally represents the estate.

The Personal Representative can be either an “executor” (Will) or an “administrator” (no Will). The Executor(s) is/are the person/people named in the Will to deal with the estate. Where someone dies without making a Will, the right to be Administrator(s) follows the same order as the rules of intestacy (see below).

What does the Personal Representative, Executor or Administrator do?

The Personal Representative (sometimes called the Executor or Administrator) is responsible for administering the estate. The law imposes extensive and, sometimes demanding, duties on this person or these people.

Tell me more about a Personal Representative's responsibilities?

Once a person starts to act as Personal Representative (sometimes called the Executor or Administrator), he or she cannot withdraw without getting a Court Order. Other extensive and onerous personal legal responsibilities also attach. These include duties to:

- gather in, protect and keep assets safe, disconnect services etc.,
- maintain insurance. If the deceased owned property such as a house the personal representative should contact the property insurer to ensure that the insurance will remain in place,
- pay debts,
- hold the estate as Trustee for the persons entitled.
- identify and contact beneficiaries
- identify and contact potential beneficiaries. This is an increasingly complicated area. Irrespective of what a Will may say, spouses, civil partners, cohabitees and children have legal rights and options which must be addressed (see below)
- proceed as obliged by law, disregarding one's own preferences, except where specifically allowed,
- exercise proper care and attention, taking appropriate professional advice,
- make full and accurate disclosure to the Revenue and other authorities, and
- act without delay.

When someone dies what are the immediate steps?

Notwithstanding that bereavement is a stressful and upsetting time certain decisions and arrangements have to be made.

Relatives and friends will have to be informed. The first practical step is usually to contact an Undertaker to make arrangements. We advise all our Will making clients to let their families know any particular funeral or related wishes. If there is any doubt you should check if there is a Will to see if this has anything to say on the matter. You will need to check if there is a Will in any event so that the estate is dealt with. Most original Wills are kept by solicitors. Feel free to contact us to see if we hold one by clicking [Contact us](#) or ringing +353 53 9122555. We will respond quickly and can call back at a time suitable to you without obligation. We can also check with other solicitors for you.

After the funeral, the death needs to be registered with the Registry of Births, Marriages and Deaths.

When the funeral account is received we will be able to arrange for immediate payment from any bank, building society, post office etc. account of the deceased.

What are the Benefits of Consulting M J O Connor?

Our job is to make your job easier. We provide a specialist probate service. We are a practical law firm with offices located in Wexford & Cobh. The benefits of using our firm in probate cases are:

- **Reducing the Personal Representative's Load**
We relieve the burden by guiding Personal Representatives through the legal process. Our work includes preparing the various legal documents and dealing with beneficiaries, claimants, financial institutions, the Revenue, Probate Office and government departments for the estate.
- **Protecting the Personal Representative**
We help Personal Representatives protect themselves from the extensive and onerous legal duties the law imposes on them personally. Once a Personal Representative starts to act he/she cannot withdraw without getting a Court order.
- **Experience and Expertise**
Established in 1888, we are an expert and experienced Probate firm. Our tried and tested procedures and IT systems enable us deliver prompt and efficient conclusions.
- **Value and Valuing the Relationship**
Our fee structure is competitive and flexible. We try to get to know our clients personally and gain a thorough understanding of their concerns. Realising that the building of trust and partnership are crucial, we gear our costs towards the long term relationship. Our Probate fee includes a COMPLIMENTARY standard form Will for Personal Representatives.
- **Sensitivity and Respect**
We know how important it is the affairs and wishes of the deceased are dealt with in a respectful and sensitive manner. We endeavour to ensure the legal process does not make a tough situation more difficult.

What documentation and information should I bring to M J O Connor?

You should bring as much as you can of the following:

- The Will. If unavailable, a copy. If neither is available we can still proceed.
- Death Certificate. This is available from the local Registry of Births, Marriages and Deaths. Usually we need four originals.
- Such of the deceased's papers as you can find which are relevant to property, financial or related matters. These include books of account, certificates of ownership, title documents, insurance policies, bills etc.
- Funeral account, hospitality bill etc
- The deceased's PPS Number
- Any social welfare book held by the deceased
- Names and addresses of the next of kin
- Details of the Deceased's personal circumstances for example, marriage certificate, occupation, divorce order, children's names and ages
- If you cannot find everything just bring what you can and we will take it from there.

Property passes according to the Will, if there is one. If there is no Will? What are the Rules of Intestacy?

The estate will pass under the Rules of Intestacy set out in the Succession Act 1965 which, generally speaking, stipulate the following order of entitlement:

Spouse and Children/Civil Partner and Children – generally two thirds to the surviving spouse/civil partner and one third equally between children.

Grandchildren

Great-Grandchildren

Great-Great Grandchildren

Parents

Brothers and Sisters

Nieces and Nephews

Grandparents

Uncles and Aunts

Great-Grandparents

First Cousins/Great Uncles and Aunts / Great Nephews and Nieces

Great-great Grandparents

What is Capital Acquisitions Tax (CAT)?

Capital Acquisitions Tax (CAT) is comprised of Gift Tax, Inheritance Tax and Discretionary Trust Tax. The tax is charged on the taxable values of the gift or inheritance.

For the purpose of Gift and Inheritance Tax, the relationship between the person who provided the gift or inheritance ("the disponent") and the person who received the gift or inheritance ("the beneficiary"), determines the maximum tax free threshold - known as the "group threshold".

A beneficiary has three group thresholds. Each threshold relates to the relationship between the disponent and the beneficiary. The thresholds since 12 October 2016 are: -

Relationship to Disponent

Group A: Son/ Daughter

€310,000.00

Group B: Parent*/ Brother/ Sister/ Niece/ Nephew/ Grandchild

€32,500.00

Group C: All other relationships not covered above

€16,250.00

* In certain circumstances, a parent taking an inheritance from a child can qualify for a Group (A) threshold

The thresholds are cumulative (as opposed to gift by gift or inheritance by inheritance) for all gifts or inheritances within the particular class taken since 5th December 1991.

When total gifts or inheritances to a beneficiary exceed the relevant tax free threshold, tax at a rate of 33% applies on balance of the gift or inheritance.

A number of exemptions and reliefs can be used to minimise CAT including:

- Spouse to Spouse and Civil Partner to Civil Partner exemption
- Surviving Spouse Relief
- Small Gift Tax exemption of €3,000
- Agricultural Relief
- Business Relief
- Dwelling House Relief
- Child to parent Relief and Exemption
- Favourite Niece/ Nephew relief
- Specialised tax advice may be needed.

Taxation is often a major factor in this type of case and needs to be dealt with promptly to avoid interest, surcharges and penalties.

What is the legal right share?

This is one of the exceptions to the rule that property passes according to the Will or the rules of intestacy.

Irrespective of what a Will may say a surviving spouse or civil partner is entitled to half of the estate where there are no children and one third of the estate if there are children. This is of the “net estate” i.e. all the estate “not ceasing on” a person’s death. This excludes from the net estate trust property, joint property passing by survivorship, property in which the deceased had a limited interest, and validly nominated property (e.g. credit union accounts, post office saving certificates, nominated pension schemes).

The spouse or civil partner may elect to take the legal right, the share bequeathed in a Will or renounce.

Children are entitled to be provided for in a prudent and just manner. This varies from case to case.

Executors are under an obligation to notify surviving spouses or civil partners of the option to exercise the legal right share. Dissatisfied parties (which may include cohabitees) can make application to Court within certain time limits.

How does the legal right share affect the Family or Shared Home?

A surviving spouse or civil partner may claim the family or shared home to satisfy the legal right share. This is so even if the home was left to another person by Will. If the home is worth more than the legal right share, the surviving spouse or civil partner will normally have to pay the difference to the deceased’s estate. In cases of hardship, the surviving spouse or civil partner may apply to Court to receive the home either without paying the difference or by paying such sum as the court deems reasonable. In certain circumstances cohabitees may also be entitled to apply for redress.

How long does Probate take?

At the time of writing, standard grants of representation take three to six months to extract.

The personal representative must distribute the estate as after death as is reasonably practicable. Generally proceedings cannot be brought against before twelve months have passed since the death. This is known as “the Executor’s Year”.

The time frame for obtaining a grant of Probate depends on the circumstances of each case and is influenced by:

- the nature and extent of the assets and liabilities
- the complexity or otherwise of the decisions that need to be made as to how to deal with them,
- the tax affairs of the deceased,
- the solvency of the deceased,
- the number of beneficiaries and the availability of PPS numbers
- the residence of beneficiaries which is relevant to tax treatment as is the question of whether they have received previous inheritances and gifts
- the speed of outside agencies such as banks, insurance companies, government departments etc.
- whether the Estate is testate or intestate
- any difficulties identifying if a will was made or not or its validity
- any challenges to the Estate

What should I do if the deceased left property in a foreign country?

While the Irish Will may try to deal with foreign property, local law will still apply. The first thing an Executor or Administrator should do is seek to establish if the deceased left a foreign Will. Consideration can then be given to whether it will be necessary to take legal advice from a lawyer in the country in which the property is situated. We can discuss this further with you.

What do I do if someone disputes the Will/Estate?

Disputes can arise in several different ways. Disappointed family members, civil partners, cohabitees, heirs, beneficiaries or others may make claims for what they consider their entitlements or the validity of the Will may be challenged.

I want to contest the Will – What do I do?

A person making a Will does not have unlimited freedom to leave his or her estate any way he or she wants. The law imposes a number of restrictions, especially as to the treatment of spouses, civil partners, cohabitees and children and these can override a Will.

Very strict format and signing requirements apply for Wills to be valid

Wills can be set aside if made under unsatisfactory circumstances such as undue influence, lack of knowledge and understanding or mental incapacity. They can also be set aside where someone shows that he or she was made a promise, relied on that promise and the promise is unfulfilled.

Claims can also be made against negligent and/or fraudulent executors/administrators.

When it comes to contesting Wills the law is complex and strict time limits can apply.

If you are contemplating a claim or simply want to know where you stand you should say nothing and consult us immediately by clicking [Contact us](#) or ringing +353 53 9122555. We will respond quickly and can call back at a time suitable to you without obligation.

Is there anything else I should consider?

You may be entitled to a Bereavement Grant. This is a once-off payment based on the deceased person's PRSI payments and other criteria. See <http://www.welfare.ie> for application form.

What is an Inquest?

An inquest is the official, public enquiry, presided over by the Coroner into the cause of a sudden, unexplained or violent death. When a jury is present at an inquest, the jury rather than the Coroner returns the verdict.

You should seek our advice promptly as it is in your interest to have the facts recorded, to consult and be advised.

The purpose of the Inquest is to establish and publicly record the facts surrounding the death. The inquest is not allowed decide criminal or civil liability. When the proceedings have been completed, a verdict is returned in relation to the identity of the deceased, and how, when and where the death occurred. The range of verdicts open to the Coroner or jury include accidental death, misadventure, suicide, open verdict, natural causes and unlawful killing. When the inquest is completed, the Coroner issues a certificate so that the death can be formally registered. The Coroner decides which witnesses should give evidence at the inquest and the order in which they should give their evidence. Reports of inquests may be carried in national and local newspapers. In practice only a minority are reported.

Inquests are conducted in public. Only certain persons are entitled to be legally represented.

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