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### MAGCO LEGAL LESSONS NO. 32

#### LEGAL TOPIC: GRANTS OF REPRESENTATION

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#### INTRODUCTION

The death of a person is undoubtedly an event that is tragic and often turns the worlds of those close to them upside down. Aside from the emotional challenges presented by such a tragedy, the family of the Deceased faces the question of what would happen to the estate of the Deceased, particularly how it is to be distributed.

In our seventh article, we explored the requirements for the creation of a Will, the instrument by which the Deceased may, prior to their death, express their wishes as to how they desire their estate to be distributed. This article also explored the effects of the Deceased failing to leave a valid Will, inclusive of how their estate would be distributed per the **Administration of Estates Act Chap. 9:01** (hereinafter referred to as “the AEA”).

In furtherance of the learning of our seventh article, we will now examine, from a non-contentious legal perspective, the documents which must be obtained from the Court to allow for the distribution of the estate of the Deceased in accordance with their intentions

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expressed in their Will, if they left one, and if not, for the distribution of their estate per the rules of intestacy.

The Court derives this power to allow for the distribution of the Deceased's estate by virtue of **s.3 of the Wills and Probate Act Chap. 9:03** (hereinafter referred to as "the WPA"). This section provides that the Court has the jurisdiction to determine the validity and admissibility to probate or to prove a Will or to grant the administration of the estate of the Deceased.

The above-mentioned documents which must be acquired from the Court are known as Grants of Representation, and there are three principal Grants which can be obtained from the Court as follows:

1. Grants of Probate;
2. Grants of Letters of Administration; and
3. Grants of Letters of Administration with Will Annexed.

We will now examine these Grants, particularly the instances where each would be applicable, who can apply for them, and the process and documents required to obtain them.

## **GRANTS OF PROBATE**

A Grant of Probate is obtainable where the Deceased leaves a Will. The Deceased would be known as the Testator of the Will and usually appoints an Executor to fulfil their wishes expressed in the Will. A Grant of Probate may be applied for and obtained by the Executor of the Will to distribute the estate in accordance with the Will, as an unproved Will has no effect to pass any right, title, or interest. This is in accordance with **s.21 of the WPA** and was applied in the case of **In the matter of Bonaficio Meloney CV2010-04871 [14]**), which states as follows:

"No Will of any person Deceased shall have any effect whatever, either in law or in equity, or shall pass any right, title, or interest whatever, until the same has been duly proved in accordance with the provisions of this Act."

According to **Rules 1 and 2 of the Non-Contentious Business Rules** (hereinafter referred to as “the NCBR”), an Application for a Grant of Probate must be made by an Attorney-at-Law and submitted to the Probate Registry of the Supreme Court. Further, per **Rule 3 of the NCBR**, the Application must be made in writing and include:

1. An Affidavit of the Applicant, who is the Executor of the Will, in support thereof;
2. The original Will marked by the signature of the Executor and the person before whom it was sworn to, per **Rule 6 of the NCBR**;
3. An Affidavit of Due Execution which is sworn to by the person(s) who witnessed the signing of the Will and states that the requirements for the creation of the Will as stipulated by **the WPA** have been satisfied. This is important as the onus of proving a Will as having been executed as required by law is on the one propounding it (**Lalla v. Lalla Civ. Appl. No. 102 of 2003**; **Marilyn Lucky v. Elizabeth Thomas-Vailoo HCA No. Cv. 1926 of 1996**; **Trudy Lisa Cox v. Mark Cox & Anor. CV2011-04815**; and **Mitchell Davis v. Veronica Basillo CA S050 of 2013**);
4. The Certificate of Death or Burial Certificate of the Deceased, or in the absence thereof, a written statement explaining why such Certificates could not be provided;
5. An Inventory of the particulars of the estate of the Deceased, showing the assets thereof and the estimated gross value of the same;
6. A Certificate or Affidavit of Search indicating that no other application for probate or administration in the same estate has been made and that the Deceased left no other Will; and
7. A Filing Fee Receipt.

## **GRANTS OF LETTERS OF ADMINISTRATION**

When a person dies without leaving a Will, that is, when they die intestate, their estate would be distributed per the rules of intestacy, namely to kin or next of kin. This is in accordance with **s.23 of the AEA**:

“An estate or interest to which a deceased person was entitled on his death in respect of which he dies intestate shall, after all payment of debts, duties, and expenses be distributed or held on trust amongst the same persons being kin or next of kin in accordance with sections 24, 25, 26 and 26A.”

Please see our seventh article for further information on the above-mentioned rules of intestacy.

A Grant of Letters of Administration, which allows the appointed Administrator to administer the estate, may be applied for pursuant to **s.25 of the WPA**. This section provides that the administration of an estate would be granted to the person entitled to the same in the following circumstances (**Dr. Ramraj Deonarine v. Laura Seejattan et. al. CA P. No. 66 of 2018 [65]**):

1. Where the Deceased fails to leave a Will, that is, when they die intestate;
2. Where the Deceased leaves a Will but:
  - i. Fails to appoint an Executor or the appointment of the Executor fails (**In the matter of Bonaficio Meloney CV2010-04871 [15]**); or
  - ii. There is a named Executor, but they are under twenty-one (21) years of age or are absent from Trinidad and Tobago or did not prove the Will; or
3. Where the Deceased dies outside of Trinidad and Tobago but leaving estate therein.

Further, **s.30(a) of the WPA** contains the order of the persons who would be entitled to apply for the administration of the Deceased’s estate in cases of intestacy (**Dr. Ramraj Deonarine v. Laura Seejattan et. al. CA P. No. 66 of 2018 [66]**), and said order is as follows:

1. The surviving husband or widow of the Deceased;
2. The next of kin; and
3. The Administrator General.

In accordance with **Rule 3 of the NCBR**, an Application for a Grant of Letters of Administration must be made in writing by an Attorney-at-Law and must include:

1. An Affidavit of the Applicant indicating that the Deceased left no Will and showing the relationship or other circumstances alleged as entitling the Applicant to such administration;
2. The Certificate of Death or Burial Certificate of the Deceased, or in the absence thereof, a written statement explaining why such Certificates could not be provided;
3. An Inventory of the particulars of the estate of the Deceased, showing the assets thereof and the estimated gross value of the same;
4. A Certificate or Affidavit of Search indicating that no other application for probate or administration in the same estate has been made and that the Deceased left no Will;
5. An Administration Bond with one or more sureties for duly collecting, getting in, and administering the estate, pursuant to **s.81 of the WPA**;
6. A Justification of Sureties where required by the Registrar of the Court; and
7. Consents of and/or Notices to other persons who may be entitled to apply for the Grant.

It is important to note that where the Deceased left a Will, but it has not been proved, a Grant of Letters of Administration would be voidable, and would become void if the Will is proved. This is according to **s.26 of the WPA (In the matter of Bonaficio Meloney CV2010-04871 [20])**:

“All letters of administration granted at a time when there shall be an executor who has not proved the Will shall be voidable and not void; but such administration shall become void when and so soon as a Will of the person of whose estate such administration shall have been granted shall be duly proved by any executor or when such administrator shall be revoked by order of the Court.”

#### **GRANTS OF LETTERS OF ADMINISTRATION WITH WILL ANNEXED**

A Grant of Letters of Administration with Will Annexed may be applied for where the Deceased left a Will, but the following circumstance arise:

1. The Executor failed to apply for a Grant of Probate or failed to sign a declaration of renunciation (**s.31 of the WPA**);
2. No Executor is appointed by the Will;
3. Where the appointed Executor passes away before the Deceased; or
4. Where the appointment of the Executor fails.

It is notable that where a person appoints an Executor by a Will, but the Executor dies before proving the Will, is cited to take out probate and does not appear to the citation, or renounces probate of the Will, the Executor's right in respect of the executorship will cease and the administration of the estate would be treated as though no Executor was appointed. This is in accordance with **s.12 of the WPA (Dr. Ramraj Deonarine v. Laura Seejattan et. al. CA P. No. 66 of 2018 [62])**.

The order of the persons entitled to apply for this Grant is contained in **s.30(b) of the WPA**, which is as follows:

1. The residuary devisee or residuary legatee;
2. A devisee or legatee;
3. The next of kin; and
4. The Administrator General.

In accordance with **Rule 3 of the NCBR**, the Application for the Grant must be made in writing by an Attorney-at-Law and must include:

1. An Affidavit of the Applicant showing the relationship or other circumstances alleged as entitling the Applicant to the Grant and exhibiting the Will of the Deceased;
2. The Certificate of Death or Burial Certificate of the Deceased, or in the absence thereof, a written statement explaining why such Certificates could not be provided;

3. An Inventory of the particulars of the estate of the Deceased, showing the assets thereof and the estimated gross value of the same;
4. A Certificate or Affidavit of Search indicating that no other application for probate or administration in the same estate have been made, and that the Deceased left no other Will;
5. An Administration Bond with one or more sureties conditioned for duly collecting, getting in, and administering the estate, pursuant to **s.81 of the WPA**;
6. A Justification of Sureties where required by the Registrar; and
7. Consents of and/or Notices to other persons who may be entitled to apply for the Grant.

### **CONCLUSION**

It is of extreme importance that an Application for any of the above Grants must contain all that is required for obtaining of the same. Should there be any deficiencies in the Application, the Court may issue a query to the Applicant, which must be answered for the Applicant to obtain the Grant applied for. However, this could cause severe and lengthy delays in the acquisition of any of the Grants.

*Much research and guidance for the preparation of this Article were derived from Non-Contentious Probate Practice in the English Speaking Caribbean, 2<sup>nd</sup> edn., by Karen Nunez-Tesheira.*

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