



## Personal Law

# Jargon Buster

### Probate Terms:

#### Probate

Both the document issued by court and the process to obtain the right to deal with the Estate of the recently deceased.

#### Estate

Everything owned by the deceased in real estates and other assets such as bank accounts, jewellery, valuable collections (e.g. art, vintage cars), insurance policies, bonds and shares.

#### Grant of Probate in Jersey

The document issued by the Royal Court of Jersey if the deceased left a will. It entitles the Executor to access and distribute the estate. This document is issued after the will (and any codicils) are proven before court. The grant of probate must be applied for if the total value of Jersey assets is over £10,000.

#### Letters of Administration

The document issued by court if the deceased person left no will which entitles the "Administrator" to access and distribute the Jersey Estate.

#### Probate application

The process to obtain the Grant of Probate or Letters of Administration.

If you are named as Executor/trix in the will you can do this in person or appoint a Jersey Advocate through a Probate-specific Power of Attorney to make the Probate application on your behalf as your Attorney Executor.

#### Estate Administration

A 3 stage process which starts after the Grant of either Probate or Letters of Administration. Firstly, the Estate is collected, secondly any outstanding debts such as utility bills and funeral costs are paid off. Thirdly, stamp duty is paid on the remaining net Estate and distributed in accordance with the will(s) and/or the law.

#### Rapport a la Masse

This is relevant when one of the heirs has received one or several significant gifts from the deceased during his lifetime. An example of this would his father helping his son buy his flat. Such gifts are considered to be *avancement de succession*, or advances of inheritance.

The other heirs can demand that the value of such gifts be thrown back into the 'pot' of inheritance for the purpose of calculating their respective shares of the Estate. This is called '*Rapport à la masse*'.

#### Avancement de succession

Jersey French for anticipation or advance of inheritance. Where someone is given a gift of significant value during the lifetime of the person he will inherit from.

An example would be a father (the donor) giving a substantial gift to one of his three children (heirs) during his lifetime. Often referred to as significant lifetime gifts.

#### Succession

The order in which people benefit from the Estate of the deceased. If testate, the will details the order of inheritance. An example would be a grandmother naming her husband first, her children second and her grandchildren third. If intestate (no will) the order is fixed by law. Succession can also be another word for the Estate of the deceased.

#### Inheritance

That which a person is entitled to as heir following the death of another. This can be either under the provisions of their will or by law.

#### Partie Disponible

The part of the Estate which the maker of the will may distribute as he/she wishes. This part is unaffected by the forced heirship rights of *légitime*.

#### Fast track probate

Accelerated procedure available in Jersey for recognising Probate already granted in the following jurisdictions: England, Wales, Northern Ireland, Guernsey, Scotland or the Isle of Man.

#### Offshore Estates

Any assets held in an offshore jurisdiction, be they movable or immovable property. This includes real estate, investments, investment portfolios, shares, cash/money, stocks and bank accounts.

#### Death Certificate

A document issued either by a medical practitioner or state authority stating the location, time, date and cause of death along with the deceased's full name, age and date of birth.

#### Testate

When the deceased died leaving a will. This can be a mixed will combining movable and immovable estate, or two separate documents.

## Intestate

When the deceased left no will or no valid will detailing his or her instructions as to the distribution of their Estate. In the event of only a letter of wishes but no valid will, the Estate is still intestate.

## Partial intestacy

It is possible for an Estate to come under both testate and intestate succession. This occurs when part of the will fails or only covers certain portions of the Estate.

## Beneficiary/heir

A person inheriting from the Estate of the deceased. This can be either under the provisions of the will only or under the will as well as by operation of law.

## Executor

Person named by the deceased in their will to carry out their instructions in relation to the administration of their Estate. Their authority is validated when the will is proven in court (when Probate is granted).

## Executrix

A female Executor.

## Executor Nominate

The person(s) named in the will as Executor(s).

## Alternate Executor

The second person named in the will as Executor should the first Executor pre-decease the maker of the will or be unable (or unwilling) to fulfil their duties.

## Executor Dative

An Executor appointed by the court not named in the will. This happens should both the Executor Nominate and Alternate Executor be unable or unwilling to fulfil their duties.

## Administrator

The equivalent of an Executor if the deceased died without a will. Carries out the same duties, the only difference being that authority comes from the Letters of Administration.

## Attorney Executor/Administrator

This is the qualified Jersey lawyer acting on behalf of the Executor or Administrator. Their authority to act comes from a Probate-specific Power of Attorney which allows them to act for that person.

## In-house Executor Company/Professional Executor

Specialise in taking the burden of probate application and Estate administration off the shoulders of the Executor/Administrator. For the first stage of probate application, this is usually because the person is unwilling or unable to come to court in person. In the later stages of the Estate administration process, the Lawyer has the an option to take the burden off the shoulders of the Executor/Administrator at this difficult time.

## Stamp duty

Fee payable to the States of Jersey Treasury: £50 for every £10,000 in the Estate of the deceased.

## Assets/Jersey assets

All property of financial value held in Jersey. This can be real estate, money held in a bank account, shares, stocks, insurance policies, jewellery, valuable collections or other possessions.

## Special Power of Attorney

Gives permission for an in-house executor company to apply for probate on a person's behalf as their Attorney Executor or Attorney Administrator.

## Capacity

To have the mental capacity to satisfy the legal requirements for the ability to make or change one's will. Relevant factors include being of sound mind and memory and understanding the implications of one's decision.

## Probate Registry/Registrar

This is the department headed by the Probate Registrar within the Judicial Greffe's office in the Royal Court which deals with Grants of Probate and Letters of Administration.

## Country of domicile

The country in which the deceased spent the greater portion of their time in residence.

## Testamentary Powers/Testamentary freedom

The limits under the law as to what the person making their will is allowed to do.

## Estate Accounts

The record of all payments into and out of the deceased's Estate from the date of death until the final distribution of the assets to the beneficiaries.

Estate account (singular) can also refer to the separate bank account opened by the Executor or Administrator for the purpose of collecting the Estate, paying off all debts and distributing to the beneficiaries.

## Certified true copy/authenticated copy

A photocopy which has been endorsed or "certified" as a true copy of the original by any of the following persons:

- Lawyer
- Bank Manager (recognised bank)
- UK Consular Official
- Accountant (recognised qualification e.g. ACA, ACCA)
- Notary Public
- Commissioner for Oaths
- Justice of the Peace

## Sealed and certified

A copy of the Grant of Probate or Letters of Administration certified as being a true copy and bearing the court seal.

## Joint ownership

A form of shared ownership. Upon the death of one owner, ownership passes automatically (by operation of law) to the remaining living owners. This means the deceased's share does not form part of their estate and does not pass to his or her heirs.

## Affidavit

A written document in which the person signing swears the facts stated to be correct to their knowledge.

For expert legal advice or more information on any of our legal services, please contact us:

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