



Real Estate and Succession
4th October 2019.



Tola Ayanru¹

UNDERSTANDING THE PROCESS OF OBTAINING GRANT OF PROBATE AND LETTERS OF ADMINISTRATION AT THE PROBATE REGISTRY (THE LAGOS STATE EXAMPLE)

Introduction

In Lagos State, as in other States in Nigeria, the Probate Registry, under the supervision of the High Court, has the exclusive jurisdiction to issue grants of probate and letters of administration in respect of dead people's assets. It is the center of testate and intestate administration of non-contentious² Probate applications. The family division of the High Court is charged with the responsibility of resolving contentious³ matters that arise in the course of the granting a probate or letters of administration as well as revoking same where found to have been fraudulently obtained.

A grant of probate is a legal instrument which provides the legal basis for the enforcement of the contents of the Will whilst the letters of administration is the basis of the legal right of the Administrators who have been appointed by the Court to supervise the liquidation and distribution of the deceased person's estate. The effect of a grant of probate or letters of administration is that it is accepted as conclusive evidence of the Executors'/Administrators' title as personal representatives of the Estate.⁴

Testate Workflow

At the Probate Registry of every state, there are certain procedures that must be followed before a grant of probate or letters of administration is issued to an applicant. Testate succession involves the issuance of a grant of probate to persons appointed by a deceased

¹ Adetola Ayanru, Senior Associate, S. P. A. Ajibade & Co., Lagos, Nigeria.

² Non-contentious probate is also known as "common form" probate/unopposed probate.

³ Contentious probate is known as probate in Solemn form which requires filing an originating summons and propounding evidence in a court of Law.

⁴ *Tristram and Coote's Probate Practice* (13th Edition), LexisNexis Butterworths, p.7.

person in his Will. In Lagos State, the application forms for grant of probate consist of the following: bank certificate, application for grant of probate of the Will, oath for Executor/s, affidavit of attesting witness of the Will, inventory of assets, particulars of leasehold/freehold properties left by the deceased and lastly, a schedule of debts and funeral expenses.

The workflow for the process of issuing a grant of probate upon the discovery of a Will and after an application has been submitted to the Probate Registry is outlined as follows:

1. Upon the discovery of the Will of the deceased person, whether lodged at the High Court or found in a safe place where the deceased person kept it before passing away, the family members or solicitor representing the family members will apply to the Probate Registry for the official reading of the Will.
2. Probate Registrar shall, based on information supplied by the applicant/s and upon production of an official copy of the death certificate of the deceased person, cause a letter or a series of letters to be issued to the interested members of the deceased's family, inviting them for an opening and reading of the Will, which shall take place at the Will-reading section of the High Court's Probate Registry.
3. At the date of the Will-reading exercise, the delegated officer shall cause to be opened, in the presence of all the invited and present family members, an envelope containing the Will of the deceased person, which would have been sealed upon the lodgment of same. After the public opening of the Will, the reading of same shall be done by the delegated officer.
4. It is only after the Will has been read that the appointed Executors can proceed to apply for a set of application forms to be issued for the purpose of applying for the grant of probate to the Will, in the absence of any opposition to the validity of the Will.
5. After the Executors have filled and signed the forms, they or their appointed solicitor shall submit the set of forms with accompanying requirements/documents which will include the photographs and means of identification of the Executors as well as other affidavits and documents that may be required by the Probate Registry. These requirements may vary because each application for a grant of probate is unique.
6. After the submission of the application, either online or physically at the Probate Registry, a document known as a Bank certificate shall be issued. The purpose of the Bank certificate is to capture all liquid assets such as shares/stock and monies in Bank accounts which hold funds belonging to the deceased person. This Bank certificate could also be obtained at the time the application forms are obtained.

7. This Bank certificate will be taken to all the Banks and Registrars of the Companies where the deceased person owned accounts and shares, where the information relating to such accounts and shareholding will be filled and endorsed on the Bank certificate. Such information includes the Bank balances and share portfolio.
8. Where real property forms part of the Estate's assets, the Valuation Unit of the Registry may be required to conduct an inspection of the property/ies for the purpose of ascribing a value thereto, after which an assessment for the payment of estate duty shall issue. This is usually calculated as a certain percentage of the value of the Estate. The sum contained in the assessment sheet/probate pay sheet shall constitute the money to be paid as probate fee/estate duty.
9. After the assessment has been issued by the Probate Registry, the applicant shall collect same and proceed to a designated collection Bank to make the payment after which an official government receipt, acknowledging payment will be issued to the applicant/s for submission at the Probate Registry.
10. After submission and verification of payment, the file shall be passed to the department in charge of the marking of the Will. The appointed Executors are expected to attend the Registry for the Will-marking exercise which entails the Executors attesting that they shall do as expected by the Will and by law. They will also be required to sign against their names as stamped on the original Will.
11. After the Will has been marked, the file shall be passed to the typing pool for the preparation of the Minutes and Order, which the Probate Judge is expected to approve before the preparation of the Grant of Probate.
12. After this, the file is sent back to the Registry and the Grant of Probate is prepared, checked and sent to the office of the Probate Registrar for approval. The Probate Registrar, after verifying that due process has been followed, will append her/his signature to the Grant of Probate and the file shall be returned to the Probate Registry for the sealing of the Grant of Probate and delivery of same to the applicant/s or the applicant/s' representative.

Intestate Workflow

The procedure outlined above also applies to intestate administration. However, the difference with the application for letters of administration is that the deceased person did not write a Will to guide the administration of his/her estate. It is important to note that not just anyone can apply for the letters of administration. The Probate Registry usually considers the provisions of the Law which states the order of distribution of an intestate's

assets with the spouse and children of the deceased person as first in line⁵. The application forms for letters of administration consist of the following: bank certificate, application for letters of administration (without Will), oath for administration (without Will), administration bond (without Will), declaration as to next of kin form, inventory of assets form, particulars of freehold/leasehold properties left by the deceased, schedule of debts and funeral expenses.

1. Once the forms have been filled and a value of the assets declared is calculated, the assessment sheet/pay sheet is issued for the applicants to pay the probate fees. After payment is made, there is the publication of the Estate in a National daily newspaper. The purpose of the publication is to ensure that the public is aware that letters of administration will be issued to the applying administrators, in the absence of any opposition. This publication is an opportunity for the any member of the public to file a caveat or enter an opposition to the process, which will be upheld and referred to the court, if the basis of the opposition is substantial ⁶.
2. Where there is no opposition, after 21 days from the date of the publication, the process will continue by the preparation of the minutes and order.
3. The minutes and order with the file will be passed to the Probate Judge for approval. After approval, the final letters of administration will be prepared and thereafter dispatched to the Probate Registrar to be signed and delivered to the applicant/s.

Conclusion

It takes an average of 4 to 6 months to obtain a grant of probate or letters of administration in Lagos State once the forms have been properly filled and returned with accompanying documents/requirements to the probate registry and payment of the estate duty is made immediately after the issuance of the assessment/ pay sheet, barring bureaucratic delays. With the introduction of the electronic filing system⁷, it is expected that with time, the process will become faster.

For further information on this article and area of law, please contact **Tola Ayanru** at:
S. P. A. Ajibade & Co., Lagos by telephone (+234 1 472 9890), fax (+234 1 4605092)
Mobile (+234.802.561.0311; +234.807.819.1720) or
Email (aayanru@spaajibade.com).
www.spaajibade.com

⁵ Section 49(e) Administration of Estates Law CAP A3 Laws of Lagos State 2004.

⁶ Provisions for filing a Caveat can be found in Order 63, Rule 18, High Court of Lagos State (Civil Procedure Rules) 2019.

⁷ <https://probate.lagosjudiciary.gov.ng/> (accessed on 4th October 2019).