

What to do with a deceased’s assets upon his death?

Introduction

It is crucial to find out whether the deceased left behind a Will or not. The application of probate applies to cases where the deceased dies with a Will. If a person dies intestate (without a Will), an application for letter of administration will apply, instead.

Grant of Probate

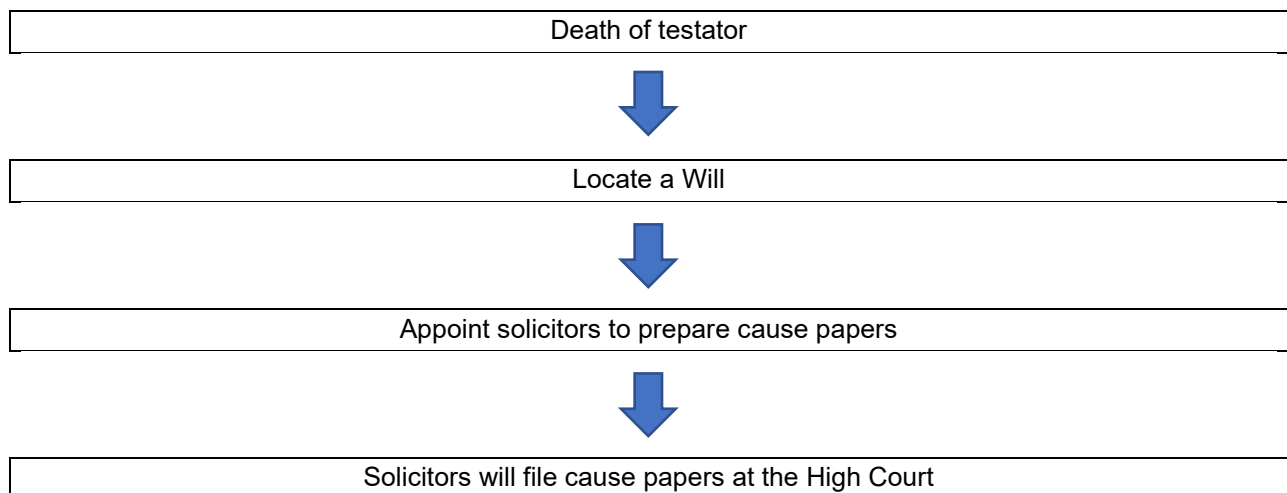
“Probate” is a grant under the seal of the court authorising the executor or executors named therein to administer the testator’s estate. Probate may be granted to an executor appointed by a Will [Section 3(1) Probate and Administration Act 1959].

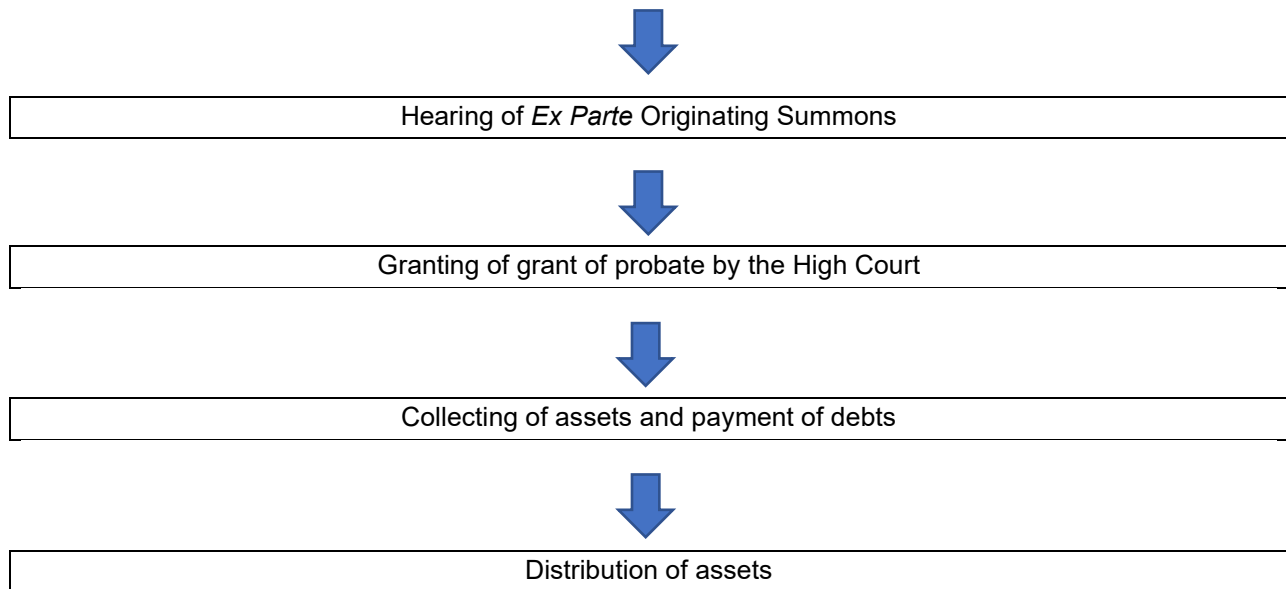
The application of the grant of probate will be made to the High Court. The duration of the same generally takes about 3 to 6 months, depending on the size of the estate. However, we may expect slight delays at the present time, due to the COVID-19 pandemic.

Once the probate is granted, the executor can collect the deceased’s assets, pay off the deceased’s debts and liabilities (if any), and distribute the estate according to the deceased’s Will (Distribution Act 1958).

Upon completion of the above process, the executor shall then distribute the remainder of the estate to the beneficiaries in accordance with the terms of the Will.

Summary of the procedure is as follows:





Letter of Administration

If a person is deceased without a Will, a person who intends to be the administrator shall apply for the grant of Letter of Administration (“LA”).

There are three ways to obtain an LA:-

i. High Court

If the deceased left assets which exceeds RM 2,000,000, (E.g. a land or a house) the administrator will have to obtain the LA at the High Court (Section 30 of Probate and Administration Act 1959).

ii. Amanah Raya Bhd

Under Section 17 of Public Trust Corporation Act 1995, if there is no one entitled to apply for grant of probate or LA, one may apply for summary administration through Amanah Raya Berhad, if the estates of the deceased consists only of movable property and is valued at RM 600,000 or less.

iii. Land Office

Under the Small Estates (Distribution) Act 1995, one may apply to the land office as small estate. In order to apply for the same, there are three requirements that need to be complied with. Firstly, the total value of

the deceased's assets must not exceed RM 2,000,000. Secondly, the deceased must not have a Will. Thirdly, there must be immovable property(s) (E.g. land or house), in the name of the deceased within the jurisdiction of the land office.

Once the LA is granted, the administrator may then transfer all of the deceased's assets to pay off the debts and liabilities of the deceased (if any). Upon settlement of the debts, the administrator shall distribute the remainder of the assets to the beneficiary, according to the Distribution Act 1958. The administrator will need to apply to the High Court for the confirmation on the distribution. A complete list of detailed distribution of the above must also be prepared.

Should you have any queries as to how this update may affect you or your organisation or require further information, please do not hesitate to email us.



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This article is intended to discuss the procedure of Grant of Probate and Letter of Administration in Malaysia, and it is not intended to be comprehensive nor should it be construed as legal advice. This article is updated as of 02.12.2020.

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