

HOW NOT TO HAVE YOUR DOCUMENTS REJECTED

With the new *Probate Act, Regulations and Forms* in effect in October of 2001 and amendments to the *Regulations* in April of 2024, we have compiled some of the reasons why documents are sent back to the lawyer or applicant for correction. Below are some hints and tips on how to avoid receiving a Notice of Rejection from the Probate office.

1. Applications for a Grant

- *Ensure the Application has been properly signed and executed.*
- Ensure the civic and mailing address and postal codes of the applicant's address are on the applications; (in rural areas, there are often different mailing addresses and civic addresses - please ensure to include both on the application).
- Ensure the date of death on application is the same date on Proof of Death.
- File a Proof of Death with the application (a newspaper clipping of the obituary is not acceptable):
 - You should redact (strike out) the Social Insurance Number on the Death Certificate, if you want this information kept private.
- A copy of any Order granted in another Court (for example: the Supreme Court of Nova Scotia) must be provided if it affects the estate. If there is an outstanding claim or proceeding that have not reached the Order stage, please provide the pleadings.

2. Applications for a Grant involving a Will or a Will and any Codicils

- Ensure that the Original Will or the Original Will and any Codicils is/are attached and correctly marked as an exhibit/exhibits to an affidavit:
 - Refer to the Information Sheet: *Affidavit exhibiting Original Will* for the options to do this.

- If the Will refers to a Memorandum and/or list and it is not delivered with the Will, then a letter or affidavit explaining the existence of the memorandum or list is required (*Probate Regulation 14*).
- Ensure the application identifies whether the deceased was married, unmarried, a widower, a widow, separated, divorced, a registered domestic partner. Please note: the term “single” is not an acceptable entry as it could relate to most of the above categories.
- If someone other than the first executor named in the Will and/or Codicil is/are not applying, then the application must indicate why.
- If the Application involves a Trust Company (*Corporate Applicant using one of Forms 8A, 9A or 10A*), the original Fee Agreement of the Trust Company referenced in the terms of will must be filed.

3. Application for a Grant that includes real property (land)

- If the application for a Grant includes real property, a **NS Land Registry Office Form 44 and/or Form 24 must be completed and filed** with the application. This involves the following steps:
 - Determine whether the parcel of land of the estate is part of the new registration system of the NS Land Registry, or is part of the old registry system: this can be done by contacting the Land Registry Office for the applicable county:
 - *Form 44* is required when the parcel of land of the estate is part of the old registry system (a name based system);
 - *Form 24* is required when the parcel of land is part of the new registration system and a Parcel Identification Number (PID) had been assigned (referred to as migrated land);

➤ *Form 24 must be completed by a lawyer.* If there are other parcels that do not have a PID, the lawyer can advise how the documents should be completed, including *Form 44*.

- Ensure each of the following are done:
 - The correct and current *Form(s) 44* and/or *24* issued by the Land Registry Office are being used;
 - The application for a Grant lists the correct county (or counties);
 - *Form(s) 44* and/or *24* have been *properly signed and completed*;
 - *Form(s) 44* and/or *24* for each county are filed with the application for a Grant at the Court.
- Ensure the Affidavit in Proof of Will and/or Codicil has been sworn before the Registrar, a Deputy-registrar, a Notary Public, a Barrister of the Supreme Court or such other person as the Registrar **directs prior** to the affidavit being sworn (*Section 30(2) of the Probate Act*).
- Complete all of the information required on the application - if a paragraph is not applicable, **state this - do not remove the paragraph.**
- Ensure the name of the deceased on the application is the same name as on the Will and/or Codicil(s). If there is an “also known as”, make reference on the application.
- In applications for Administration or Administration with Will Annexed, ensure the person(s) applying are qualified to apply (*Section 32 of the Probate Act*).
- If the application for a Grant does not include a Codicil, remove the reference to “codicil” from the application or cross the words out and have the changes initialed.

- Ensure the appropriate renunciation(s) is/are filed with the application when applicable.
- Ensure the correct amount of probate tax is being forwarded with the application for a Grant.

4. Form 28 - Affidavit of Service re Notice of Grant

- Attach a photocopy of the completed and signed Notice to the affidavit (do not attach a copy of a blank notice to the affidavit).
- Ensure proof of service has been attached to the affidavit
If service is by registered mail, you must attach the Canada Post registration receipt in accordance [*Probate Regulation s. 22(5)(a)*].
- Ensure the correct notice has been sent to the beneficiary.
- Ensure the Notice re Grant is served within the required time [*Probate Regulation 44(1)*].

5. Advertising in Royal Gazette

- The Advertisement Request Form for an Estate Notice is found here:
<<https://novascotia.ca/just/regulations/advertising.htm>>
- This Notice is required by the Royal Gazette Office and is approved by the Registrar for use as the Request for Advertisement instead of using Form 31.
- The fee is \$68.15. Make the money order or cheque payable to the “Minister of Finance.”

6. Inventories

- Ensure the full address(es) including postal code of the real property and/or PID numbers (if available) are stated on part 1 of the inventory.

- Ensure the amount of a mortgage which has been registered at the Land Registry is subtracted from the value of the real property (do not subtract outstanding taxes, house loans, funeral expenses or lines of credit not registered at the Land Registry) (*Probate Regulation 41*).
- Ensure the inventory values have been added correctly.
- Ensure the values listed on the inventory are fair market values at the date of death (e.g. – the **assessed value** of the real property *{not the capped value}* at the date of death is the valuation most often used).
- Ensure the affidavit at the end of the Inventory is correctly completed.
- Ensure the appropriate box is checked off on the affidavit (if unsure of amount of refund or tax owing (give the probate office a call to verify the correct amount).
- If the value on the inventory is within the same tax range as set out in the application, then check off the box that indicates value is unchanged.
- If an asset does not fall under a category set out in the inventory, list the asset under miscellaneous.
- When entering values under the household, personal effects, vehicles, etc., make sure a description of the asset is included (e.g. if a value for a vehicle is given , then describe the type of vehicle).
- An Inventory (*Form 29*) cannot be signed and filed until the Grant has been issued.

7. Accounting Not Required

- This process only applies to probates (with Wills) and Administration with Will Annexed.
- The six month advertisement period must be complete and a copy of the Royal Gazette should accompany the documents; the inventory

and the affidavit re notice of Grant must be filed with the Court before filing the documents for accounting not required.

- A Power of Attorney cannot sign a consent; the consent must be signed by the individual receiving the gift or part of the residue.
- A parent or guardian cannot sign a consent on behalf of a minor beneficiary.
- The personal representative can not file an accounting not required when a residual beneficiary is a minor.
- Releases (*Form 36*) and Consents (*Form 38*) are to be filed from all persons interested in the estate, as applicable (*Probate Regulation 54*).
- Releases regarding Specific Gift (*Form 36A*) are to be filed with respect to all specific gifts.
- If the personal representative is the sole beneficiary/heir, ensure the personal representative completes and files an Affidavit - Accounting Not Required (*Form 37*) and a Consent (*Form 38*).

8. Application to Pass Accounts

- If there is more than one personal representative, ensure all of the personal representatives sign the application to pass accounts; a Proctor can sign the application on behalf of either the personal representative or personal representatives.
- Contact the Probate staff before filing the application to discuss the process for obtaining a date for the hearing of the passing of the accounts (*Probate Regulation 55*).
- Ensure the six month advertisement is complete, and the Inventory (*Form 29*) and the Affidavit of Service - Notice of Grant (*Form 28*) have been filed with the court, **before** filing the application to pass accounts.

- Ensure the application to pass accounts and supporting documents are filed **at least** 45 days before the date set for the passing of the accounts.
- It is recommended that two copies of the application be filed with the Court; one is filed with the estate file and the second copy is date stamped and returned to the proctor/personal representative to make copies of the date-stamped copy to send to the interested persons.
- All persons interested in the estate [*this is defined in Probate Regulation 52(1)*] **must be served** with a copy of the following after the originals have been filed at Probate Court:
 - [a] the application to pass accounts;
 - [b] the accounts; and
 - [c] a blank notice of objection (*Form 42*).
 - These materials must be served **at least 30 days before** the date set to pass the accounts (*Probate Regulation 22* sets out the type of service).
- **Proof of service** of the application for an order passing the accounts on each person served is done using the Affidavit of the Personal Representative (*Form 43*):
 - *Form 43* must be filed **not less than 10 days** before the date set for the passing of the accounts;
 - Ensure that the documents referenced in the applicable paragraphs of *Form 43* are attached;
 - Ensure a copy of the Royal Gazette advertisement is attached to *Form 43* (in support of paragraph 7 of *Form 43*).

9. Filing of Claims

- A claim can be filed against an estate during the six month advertising period of the Royal Gazette without the consent of the Court [*Probate Regulation 48(1)*].
- A claim can be filed against an estate after the expiration of the six month advertising period of the Royal Gazette **only** with the prior consent of the Court [*Probate Regulation 48(2)*].