

Information on

# Non-Contentious Probate

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*A Resource for Litigants In Person*



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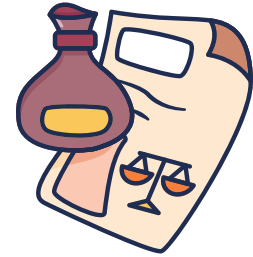
**ACKNOWLEDGMENTS**

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## What is probate?

**Probate** is a legal process that takes place after someone's death. Probate allows the deceased person's assets to be transferred to other identified living persons – or beneficiaries.



**If someone has died and left you money, property, or other belongings, here are some initial steps to follow as part of non-contentious probate process:**

## Overview of probate steps:

### 1. Find out if there is a will for the deceased person

A **will** is a legal document that states what an individual wishes to do with their property and belongings after they die. The belongs are called an estate. An estate can include:

- money
- land
- a house
- a car
- businesses
- jewelry
- personal items

The court can allow other things to be included in a will. These are things like:

- money in a joint account
- land with a joint tenant
- some forms of life insurance policies
- credit union shares
- gratuity/pension benefit



➤ ***If you have a copy of the will:***

You can apply for the Grant of Representation if you are allowed or entitled to do this. See more information below on this process.

➤ ***If you don't have the will or you don't know if there is a will, you can first check in the following places:***

- the bank – the will may be in a safety deposit box or the bank may be the named party to handle the will
- a trusted family member or friend
- a lawyer or someone who prepared the will
- anybody who was present at the signing of the will
- the Probate section at the Hall of Justice in Port of Spain or High Court, Tobago – the will may have been deposited there

➤ ***If you don't think there is a will, but you believe the money/property/belongings belong to you:***

You can still apply for the Grant of Representation from the court if you have a legal right (are entitled) to do so. See the below for more information.



## 2. Apply for the Grant of Representation

There are 3 main types of **Grants of Representation**:

1. **A grant of probate** — there is a will and someone is named to carry out the terms of the will (the executor)
2. **A grant of letters of administration with will annexed** — there is a will, but no individual (executor) is named to carry out the terms of the will
3. **A grant of letters of administration** — there is no will or the will is not valid

You can apply for the Grant of Representation if you are one of the following persons:

- **A beneficiary** — a close relative of the person who died. Beneficiaries are those persons named in the will. If there is no will, beneficiaries are persons that are still alive, but in the following order:
  1. A husband or wife  
If the spouse is not alive, then...
  2. The children  
If there are no children or the children are not alive, then...
  3. The parents  
If the parents are not alive, then...
  4. The brothers or sisters
  5. Step-brothers or step-sisters
- **An executor** — the person named in the will who is responsible for distributing the property/belongings.
- **A person entitled** — the closest relative or next-of-kin.



## Do I need a lawyer to apply for a Grant of Representation?

- If the monetary value of the items left by the deceased is below TT\$4,800.00, you do not need a lawyer to file the grant of representation. You can apply on your own.
- If the monetary value of the items is TT\$4,800 or more, a lawyer will need to apply for you.
- If you don't have a lawyer or cannot hire a lawyer, you can apply for legal aid services at the Legal Aid and Advisory Authority (<https://laaa.org.tt/>).

## How do I apply for a Grant of Representation?

To apply for the Grant of Representation, follow these steps:

**STEP 1:** Apply for a search at the Probate Office (Hall of Justice or High Court, Tobago) to see if anyone else has applied for the same property/belongings.

**STEP 2:** Gather these documents:

- A certified copy of the death certificate
- An inventory or list of the items, property, or belongings
- The original will and not a copy (if there is a will)

You can make an appointment to speak with a court officer who will guide you on the required documents for the application.

**STEP 3:** Apply for the Grant of Representation at the Probate Office at the Hall of Justice or High Court, Tobago.

**Remember!**

If the monetary value of the items is under TT\$4,800.00	If the monetary value of the items is TT\$4,800.00 or more
You can file the application yourself.	You need a lawyer to file the application.

**STEP 4:** The Probate Office will check the application and supporting documents. They also check to make sure that nobody else has filed a **caveat** which will block the application.

**STEP 5:** The application will be advertised for 14 days. If there are no responses to the advertisement, after 21 days, the application moves forward to the next stage. In this stage, more information is gathered so that the grant can be prepared.

**STEP 6:** Once finalised, either you or your lawyer will receive the grant via email to the email address on your application.

## ADDITIONAL INFORMATION

### What are my rights as a beneficiary?

- You can ensure that any entitled person applies for the Grant of representation as soon as possible.
- If there is a person named in the will to distribute the belongings (an executor), and they receive the grant first, you can make sure that the estate (property or belongings) is properly distributed, without wasting time.

If you are concerned about any of the points above, you should speak to a lawyer.

### Is a common-law spouse entitled to the estate?

A common-law spouse has the same entitlement as a spouse. Cohabitants who have obtained a **cohabitational order** from the court are entitled to 50% of the deceased's estate.

### I have a child with someone who died, but we were never married. Is my child entitled to the estate (property/belongings) of the deceased parent?

Yes, if the parent died without a will. If there is a will, the will should provide details of how the property or belongings will be distributed. If the deceased parent is the child's father, this must be proven with the child's birth certificate or a paternity order from the court.





## Where is the best place to keep a will?



It is up to you to decide, but make sure that it is in a safe place, and cannot be easily damaged. The court will need the original will to process the application for a grant. The safest option is to deposit your will at the Probate Office at the Hall of Justice in Port of Spain. The Probate Office has a **Depository of Wills of Living Persons**.

