

## **GENERAL GUIDANCE & INFORMATION NOTES TO ATTORNEYS-AT-LAW WHEN FILING PROBATE MATTERS**

The information contained in this document is intended to be a guide to assist Attorneys-at-Law when preparing documents to be filed at the Probate Registry. This guide proposes to address those queries which frequently arise and it is hoped that if all the required information and documents are provided at the time of filing this will minimize the number queries issued by the registry and the accompanying delay.

### **APPLICATION FRONT**

#### **General Information**

1. Attorneys-at-Law to include on all documents to be filed the following particulars:
  - a. name;
  - b. name of firm/chambers (if applicable);
  - c. bar number;
  - d. address;
  - e. e-mail address; and
  - f. telephone & fax numbers.
  
2. With respect to Attorneys-at-Law, ensure that:
  - a. Attorney's signature is affixed to the application form;
  - b. Attorney's bar number stated correctly on the application form; and
  - c. Attorney's name and address stated on the application form.
  
3. With respect to Applicant's, ensure that:
  - a. Applicant's signature is on the application front; and
  - b. Applicant's name is printed on the application front.
  
4. Every application front must be dated.
  
5. The use of a **thumb print** (*applicable to all documents filed in the application*):

- a. If using a thumb print on any document e.g. consent, renunciation or affidavit, the jurat must state the reason for the use of the thumb print and that the contents were read over and the person seemed to understand same.

### ***PRINCIPAL AFFIDAVIT***

With the understanding that every application is unique, these are some of the common areas where queries arise and attention should be paid to. It would assist the Probate Registry if the information is set out in a logical and methodical manner.

#### ***General Information***

1. Please ensure that full details of the following information<sup>1</sup> is **stated and correctly spelt** on the application front, affidavit(s) and heading of all documents (where applicable):
  - a. the name(s) of the deceased;
  - b. the address of the deceased i.e. LP No./House No, Street name, town/city;<sup>2</sup>
  - c. the name of the applicant – specific attention to whether the applicant’s name is hyphenated or not;
  - d. the address of the applicant i.e. LP No./House No, Street name, town/city;
  - e. place of death of the deceased;<sup>3</sup> and
  - f. date of death of the deceased.

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<sup>1</sup> Kindly note that this information is needed to be inserted in the advertisement (see Form 1 W&PA) and if not properly provided the estate may not be advertised until clarified.

<sup>2</sup> Please note that if the address is stated as e.g. 25 Duncan Village- we will ask for a street name. If there is no street name this must be clearly stated in the affidavit.

<sup>3</sup> Please use the place of death as recorded on the death certificate. Note:

- If the deceased died at home/his place of residence please indicate same in the affidavit as this information is useful for the wording of the grant.
- If the place of death is spelt incorrectly or erroneously stated - please state what is the correct information together with the erroneous information-
  - e.g. “who died at Harrinauth Street, San Juan and erroneously recorded on the death certificate as Harrynath Street, San Juan”.
  - e.g. “who died at 67 Back Street, Tunapuna, his place of abode, but incorrectly recorded on the death certificate as Back Street, Tunapuna

2. In every application for Letters of Administration, the applicant is required to indicate the following:
  - a. The marital status of the deceased; and
  - b. whether he/she had any children.

Example:

- A bachelor/divorced man / widower without child
  - A spinster/divorced woman /widow without child
3. The correct capacity of the applicant who is applying must be accurately stated in the general affidavit. For example (please note that these examples are not exhaustive):
    - a. lawful husband;
    - b. lawful widow and relict;
    - c. the son (or daughter) and only person entitled to the estate;
    - d. the sole executor named in the will;
    - e. the residuary devisee and/or legatee named in the will;
    - f. the statutory guardian and for the use and benefit of the said Randy Doe and Alexi Doe the son and daughter of Jon Doe, deceased, the only persons entitled to share in the estate who are minors until one of them shall attain the age of 18years and apply for and obtain Letters of Administration for the said estate;
    - g. the lawful attorney and for the use and benefit of Jenni Doe the mother and only next of kin of Jane Doe, deceased who resides out of Trinidad and Tobago until she shall come in and apply for and obtain Letters of Administration of the said estate.
  4. The applicant(s) after identifying the capacity in which he is applying should then clearly set out in his principal affidavit his entitlement to apply for the deceased's estate<sup>4</sup>. All relevant certificates and documents should accompany the application<sup>5</sup>.

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<sup>4</sup> See Rule 32 of the NCBR.

<sup>5</sup> For example birth certificates, death certificates, decree absolutes, consents, renunciations.

5. If the applicant or deceased changed his/her name by deed poll a certified copy must be annexed to the general affidavit.
6. Where an applicant or the deceased has various names, an **Affidavit of Alias** will now be required to account for the differences in the names. A statutory declaration will only be accepted to account for a name that is not stated on a birth certificate.
7. The affidavit of the applicant should clearly state, preferably in the last paragraph of the principal affidavit, the names of the deceased and names of the applicant in which the grant is required.
8. If the application is made more than three (3) years after the date of death of the deceased the affidavit must include the reason for the delay<sup>6</sup>.
9. The applicant must depose to the value of the estate as at the date of death of the deceased in the principal affidavit and the inventory must be annexed to the affidavit.<sup>7</sup>
10. With respect to payments to the Registrar General please ensure that:
  - b. the correct registration fee is paid<sup>8</sup> to the Registrar General;
  - c. the correct receipt from Registrar General for the deceased is provided<sup>9</sup>; and
  - d. the deceased's name as it appears on the death certificate and variations thereof are correctly endorsed on the Deed Cover sheet.<sup>10</sup>

**Note:** If the inventory is amended and the value of the estate has increased please ensure the difference in the registration fee is paid and the receipt provided.

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<sup>6</sup> See rule 7 NCBR

<sup>7</sup> See Form 2 para. 8 & Form 3 para 7 of the Wills and Probate Act Chap 9:03(W&PA) for wording

<sup>8</sup> See Third Schedule Part II W&PA for the registration fee payable to the Registrar General.

<sup>9</sup> Please ensure receipt provided was the one generated for the deceased named on the application to be filed. If the receipt number does not correspond with the records at Registrar General the grant will be returned by the Registrar General for clarification.

<sup>10</sup> If incorrect Registrar General will return the grant to the Probate Registry for correction and no Will Number will be issued until this is addressed.

If one Attorney pays the registration fee and another Attorney files the application then it is presumed that there was a change of attorney and the relevant documents evidencing such a change are to be filed.

### ***Marital Status***

11. The Marital Status of all FEMALE applicants and deceased persons must be stated in the principal affidavit. For the avoidance of doubt, the following terms should be used for defining the marital status of a woman:
  - a. spinster;
  - b. married woman;
  - c. divorced woman; or
  - d. widow.
  
12. In every application for Letters of Administration, the marital status of a deceased male and female<sup>11</sup> is required in the principal affidavit. For the avoidance of doubt, the following terms should be used for defining the marital status of a man:
  - a. bachelor;
  - b. married man;
  - c. divorced man; or
  - d. widower.
  
13. Where a deceased person was in a union sanctioned under religious rights and such union was not legally registered then the deceased was not legally married. In those circumstances, the marital status of a deceased woman is spinster and deceased man is bachelor.

### ***Occupation***

14. The occupation of all MALE applicants and deceased persons must be stated in the principal affidavit e.g. Medical Doctor, Teacher, Clerk III, Bank Manager, Gardener, Fisherman, Baker, Labourer etc.

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<sup>11</sup> Except where the lawful widow and relict or lawful husband is making the application.

**Note:**

- For a retired applicant or deceased - must state occupation prior to retirement e.g. retired teacher, retired linesman, retired nurse etc. The description of “old aged pensioner” will not be accepted.
- For an unemployed applicant or deceased- use the description of “no occupation”.

***Entitlement to apply***

In every application, an applicant is required to provide original certificates to establish his/her entitlement to a grant. Copies are not accepted in Probate Applications.

15. If a parent is making the application in the estate of a deceased child, the following information should be noted:

- if both parents names are inserted on birth certificate but only one applying parent is making the application, the other parent must either renounce or consent.<sup>12</sup>
- if the father’s name is not on the birth certificate and the father is applying he must:
  - first obtain a Declaration of Paternity in his favour before making the application; and
  - provide the consent/renunciation/death certificate of the mother.
- if the mother is applying and the father’s name is **not** on the birth certificate then his consent is not required.
- if the mother is applying and the father’s name is **not** on the birth certificate BUT in the application she identifies the father by name then his consent or renunciation must be provided.

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<sup>12</sup> If the other parent is deceased must provide the death certificate.

16. If the applicant is applying for his deceased father's estate but the deceased's name does not appear on the applicant's birth certificate a **Declaration of Paternity** in favour of the applicant is required before making the application.

An OFFICE COPY of the Declaration of Paternity together with the applicant's birth certificate must be provided.

17. If a sibling is making the application in the estate of a brother/sister the following information is required in the general affidavit:

- a. the deceased's marital status;

**Note:** If the deceased was **not** a bachelor/spinster, the applicant must account for and clear off any spouse who would be first entitled by providing the necessary documentary evidence (e.g. marriage certificate and decree absolute, death certificate) or renunciation.

- b. whether he/she had any children;

**Note:** If the deceased had children, the applicant must provide renunciation(s) or death certificate(s) of all the children of the deceased.

- c. account for the mother and father of the deceased;

**Note:** The deceased's parents must be cleared off by providing their respective death certificates or their renunciation.

- d. whether the deceased had other siblings or if the applicant is the sole person entitled to apply;

**Note:** If there are other siblings:

- i. *for siblings residing in Trinidad & Tobago*- provide consent of those siblings or evidence that notice of this application was brought to their attention by letter and the original TT Post receipt;

- ii. *for siblings who reside abroad*- indicate that they reside out of jurisdiction and provide last known foreign address and indicate whether they are aware of application<sup>13</sup>.

18. Consents and Renunciations should be used based on the situation for which they are required. Consents and renunciations should at no time be combined as they serve different purposes and can have unintended consequences.<sup>14</sup>

- Forms 19, 20 & 21 of the Wills & Probate Act Chap 9:03 to be followed. The signature of every person consenting or renouncing **must be witnessed by an independent third party**. The following information must be endorsed on the consent or renunciation:

- i. signature of witness;
- ii. name of witness in block letters;
- iii. address of witness; and
- iv. occupation of witness

**Note:** Ensure that the names, addresses, date of death, type of application etc. are correctly recorded and spelt on the consent or renunciation.

If the person resides abroad the consent or renunciation must be signed before a Notary Public.

- Where a person has a **higher entitlement** than the person making the application for the grant then a **renunciation only** is needed.
- If persons are **equally entitled** to administer then they must either consent to the application **OR** renounce. Kindly note that:

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<sup>13</sup> If the sibling residing abroad is not aware, applicant to indicate what attempts have been made to notify the sibling of the application. See rule 23 NCBR.

<sup>14</sup> See rule 37 NCBR.

- *for persons equally entitled residing in T&T*- provide consent or renunciation of those persons or evidence that notice of the application was brought to their attention by letter and original TT Post receipt.
- *for persons equally who reside abroad*- indicate that they reside out of jurisdiction and provide last known foreign address and indicate whether they are aware of application

### ***Exhibits and Certificates***

19. The following should be noted with respect to all exhibits filed in an application:
- a. exhibits to be correctly **marked with the reference**, i.e letter(s) or number(s) as stated in affidavit/statutory declaration;
  - b. jurats for exhibits to be correctly **dated** to correspond with the date contained on the affidavit/statutory declaration;
  - c. jurats for exhibits to be marked with the correct name of the deponent to which it is annexed;
  - d. all affidavits / statutory declaration /exhibits to be **correctly dated, signed and stamped** by the Commissioner;
  - e. any changes, corrections and/or insertions on any affidavit or statutory declaration to be signed and stamped by the Commissioner of Affidavit; and
  - f. the dates, names, numbers etc. stated on any affidavit or statutory declaration to correspond with the information stated on the certificates provided.
20. Every Certificate exhibited and filed in an application must be sufficiently identified in the affidavit or statutory declaration to which it is annexed. For example the following information should be provided when exhibiting the following certificates:

- a. Birth certificates – date of birth, name of child and names of parents to be stated as it appears on certificate.
- b. Death certificates – name of deceased, date of death, and place of death to be stated as it appears on death certificate.
- c. Marriage certificate – name of bride, name of groom and date of marriage to be stated as it appears on marriage certificate.

### **ATTESTING WITNESS AFFIDAVIT**

**Reference:** Form 4 of the Wills and Probate Act.

It is noted that at paragraph 1 of Form 4 (attesting witness affidavit), the Will is referenced but exhibited to the executor’s affidavit. In the forms distributed along with these guidelines, it is further noted that the Will is exhibited to the affidavit of the attesting witness and referenced in the executor’s affidavit. The latter was done in an effort to merge the form with Rule 3 (1) (b) of the NCBR.

**Note:** Attorneys-at-law will not be penalized for following either form, however special attention should be paid to who is annexing the will and the wording used to do so. For example, “annexed hereto” suggests that a document is annexed and failure to find a corresponding exhibit will result in a query.

1. Where the deceased used his/her thumb print to execute his/her Will the attesting witness is required to state the following:
  - i. where more than one thumb print appears on the document, the attesting witness should state which thumb print was placed first on the document;  
and

- ii. the reason for the use of the thumb print and (if applicable) that the contents were read over and the person seem to understand same.<sup>15</sup>

### **POWERS OF ATTORNEY**

1. The Power of Attorney given to an applicant to make the application must contain the following information:
  - a. It must be specific, i.e. specifically grant the power to the applicant or shown in the power that its purpose is to authorize the attorney to apply for and obtain letters of administration or letters of administration with will annexed of the estate of the deceased;
  - b. type of grant to be applied for;
  - c. under seal;
  - d. witnessed by a disinterested person;
  - e. the name and address of the donor and donee;
  - f. donor's title/entitlement to apply for the deceased's estate;
  - g. all the names of the deceased, date of death and place of death; and
  - h. Date of will (if applicable).

A certified copy (not a photocopy) of the Power of Attorney must be annexed to the general affidavit.

2. Where the executor of the will has appointed a person by Power of Attorney or someone other than the named executor e.g. residuary devisee and/or legatee is making the application- **please note that this is an application for Letters of Administration with Will annexed and NOT an application for a Grant of Probate.**

### **WILLS**

1. The will must be marked by the applicant (i.e. with the applicant's signature) and the Commissioner of Affidavits<sup>16</sup>.

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<sup>15</sup> See rule 13 NCBR.

2. If relying on a photocopy of the deceased's will permission of the court (by court order) to use the copy of the will is required.

**Note:** An OFFICE COPY of the order must accompany the application. The copy will must be marked by the applicant and Commissioner of Affidavits.

3. Where the appearance of a testamentary document shows, for example:
  - a. staple marks or imprint of a rusted paper clip or signs that some other document was attached- must account for same and further state whether there were papers of a testamentary nature annexed to the will;
  - b. folds;
  - c. holes;
  - d. torn, pieces of the will broken off and/or edge of the will is missing;
  - e. paper discoloured, water stains, ink stains; or
  - f. traces of adhesive or tape,

**the applicant** must account for the plight and condition of the document.

4. Where there are alterations, interlineations and/or obliterations e.g. scratches, liquid paper, correction markings **the attesting witness** must account for same and indicate if made before or after execution of the Will.

### **BONDS**

1. The only persons **exempt** from providing an administration bond<sup>17</sup> are:
  - a. spouse
  - b. only child
  - c. sole next of kin
  - d. Administrator General
  - e. Public Trustee

If the applicant is not one of the persons identified above then a bond must be provided.

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<sup>16</sup> See NCBR 6.

<sup>17</sup> See sec. 81 Wills & Probate Act.

## **DOMICILE OF DECEASED**

1. The domicile of the deceased must be clearly stated on the principal affidavit<sup>18</sup>. This requirement is fulfilled by stating in the principal affidavit either:
  - a. The deceased died domiciled in Trinidad and Tobago or died domiciled in Grenada etc.; or
  - b. The deceased's fixed place of abode was at No. 123 Sesame Street, Tunapuna, in the island of Trinidad.

If the deceased was **not domiciled in Trinidad & Tobago** please note that the principal affidavit must address the following:

- If domiciled in a Commonwealth country e.g. England, Canada, Barbados – the applicant must address in the principal affidavit:
  - whether a grant was obtained in the commonwealth country (*if yes then application for resealing to be made*).

(Note: a limited grant cannot be resealed without a court order)

  - if no grant was obtain then an affidavit of law must accompany application.
- If domiciled in a non-commonwealth country e.g. USA – the applicant must address in the principal affidavit:
  - whether a grant<sup>19</sup> was obtained in the non-commonwealth country (*if yes then application must state same & exhibit a certified copy of grant (and will if applicable)*). *Please see form provided as a guide for making these applications.*
  - if no grant was obtained then an affidavit of law must accompany application.

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<sup>18</sup> Note section 3 & 4 of the Wills and Probate Act Chap 9:03(W&PA).

<sup>19</sup> Where a grant of Voluntary Administration (small estate) or a limited grant is obtained in a non-commonwealth country, an Affidavit of Law is required, particularly in relation to whether the applicant can make an application for a full grant.

### ***Exemplifications revised***

It has been noted that the use of the terminology “exemplification” has created great difficulty in the drafting of applications as the learning on this type of grant appeared to be lacking. Applications being made in the estate of persons who died in non-commonwealth countries will be identified as traditional applications i.e. Grant of Probate, Letters of Administration, Letters of Administration with Will Annexed etc. Applicants will still be asked to provide information relative to whether a grant was previously issued in the country of domicile and if so, details will be required. In all cases where no grant was issued an **Affidavit of Law** will be required. Please see the form provided as a guide for further assistance in making these applications.

Please note that the use of the term “exemplification” in relation to the type of grant being applied for and issued will no longer be utilized effective 1<sup>st</sup> January 2016.

### **INVENTORY**

1. The value the inventory must be correctly totaled and stated in the principal affidavit.
2. On every Inventory all values must be stated as at the date of death of the deceased. **Please note a value is required for each item and a total is required at the end:**

#### **1. Real property-** the following information must be provided:

- i. no need to state the postal address; and
- ii. the description of the property must be as stated in the schedule to the deed and the deed number must be stated; **or**
- iii. where there is no deed number available for the property/possessory title then an address is required and the description of the boundaries must be provided and the nature of the tenure must be stated.

#### **2. If a chattel house-**

- i. description of house;
- ii. location & boundaries; and
- iii. nature of the tenancy.

**3. Cemetery plots**

- i. name of cemetery; and
- ii. number of plots and location.

**4. Cash in bank-** the following information must be provided:

- i. name of bank;
- ii. account number; and
- iii. amount.

**5. Mutual funds**

- i. name of bank/financial institution;
- ii. account number; and
- iii. amount.

**6. Locally held US Accounts**

- i. name of bank;
- ii. account number;
- iii. total US Dollar and exchange rate used for conversion (eg US\$560.45 x TT\$6.40 = TT\$3,586.88).

**7. Credit Union**

- i. Name of credit union;
- ii. Number of shares and value; and
- iii. amount held as cash.

**8. Insurance policies** - the following information must be provided:

- i. name of insurance company; and
- ii. policy number.

**9. Vehicles-** the following information must be provided:

- i. make & model of vehicle e.g. Nissan X-trail; and
- ii. registration number e.g PCH 7860.

**10. Jewellery/Furniture/Tools/Artwork-** the following information must be provided:

- i. description of item.

**11. Promissory notes-** the following information must be provided:

- i. name of debtor;
- ii. date of note; and
- iii. amount.

**12. Gratuity**

- i. name of Ministry/company paying same; and
- ii. amount.

**13. Death benefit**

- i. name of Ministry/company paying same; and
- ii. amount.

**14. Monies paid into court/Judgment debt-**

- i. the high court action number/civil action number; and
- ii. the award/amount

**15. Shares**

- i. name of company; and
- ii. number of shares and value per share at time of death (e.g. 560 ordinary shares x \$24.35= \$13,363.00).

**16. Mortgage debts- i.e. money owed to the deceased** the following information must be provided:

- i. deed number;
- ii. name of mortgagor; and
- iii. amount.

**Note:** Where an applicant is making an application for pursuing or continuing a Court Action on behalf of the deceased, which has not yet been filed or for which a judgment has not yet been delivered, the appropriate application is for a **NIL estate** and an application cannot be made for a large estate. Once judgment has been obtained, the application may be amended to reflect the new value of the estate.

### **SEARCHES**

To avoid delays and requests for searches to be completed in additional names following the filing of applications, it is suggested that the following information is searched and contained in every search praecipe:

- a. all names the deceased was known by (see all certificates);
- b. names of the deceased spelt correctly;
- c. correct date and place of death;
- d. correct address of deceased;
- e. Attorney's signature on the search instrument; and
- f. Copies of death certificates and grants (where necessary).

**Note:** please check all documents and certificates submitted on which the deceased's name appears and search all those names (even if spelt incorrectly).<sup>20</sup>

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<sup>20</sup> E.g.

- if on the deceased's death certificate he is called "John Doe", on his marriage certificate his name is recorded as "John Alvin Doe", on his wife's death certificate his name as informant was recorded as "Alvin Doe" and on his child's birth certificate his name is recorded as "Alvin John Doe". **The search should be conducted in the names "John Doe otherwise John Alvin Doe otherwise Alvin Doe otherwise Alvin John Doe"**
- if on death certificate deceased called "Ramday Singh" on her children's respective birth certificates the deceased's name is recorded as "Ramdaye Singh", "Ramdai", "Ramday" and "Ramdaye". **The search should be conducted in the names "Ramday Singh otherwise Ramdaye Singh otherwise Ramdai otherwise Ramday otherwise Ramdaye"**
- if on death certificate called "Frank Mohammed" and on deceased's birth certificate his given and other names were recorded as "Frank Lennox Harry". **The search should be conducted in the names "Frank Mohammed otherwise Frank Lennox Harry Mohammed"**

## **MISCELLANEOUS ITEMS**

### **Attorneys are asked to note the following in relation to all documents filed:**

1. All affidavits are required to be intituled.
2. Paragraphs in affidavits are to be consecutively numbered.
3. Affidavits are to be printed double sided.
4. All affidavits and statutory declarations should be checked to ensure that the proper pronouns are used when identifying persons.
5. All exhibits referenced in documents are to be filed.
6. Where an affidavit or statutory declaration is queried, only the deponent to that document can answer the query. For example, if the attesting witness affidavit is queried, then the attesting witness must answer the query by supplemental affidavit. An applicant cannot answer a query on a witness affidavit. Please note attorneys and clerks cannot do a supplemental affidavit on behalf of the applicant.
7. The jurat (i.e. showing the signature of the applicant and commissioner of affidavits) of an affidavit should not appear on a separate page from the contents of the affidavit.