

## HOW NOT TO HAVE YOUR DOCUMENTS REJECTED

**With the implementation of the New Probate Act, Regulations and Forms in October of 2001, we have compiled some of the reasons why documents are sent back to the lawyer or applicant for correction, etc. 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 civic and mailing address and postal codes of the applicant's address are on the applications; (in rural areas, there are often different mailing addressed 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);
- 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, widowed, unmarried or divorced;
- If someone other than the executor(s) named in the Will and/or Codicil is/are not applying, then the application must indicate why;
- If the application for a Grant indicates real property, a form 44 and/or form 24 must be completed and filed with the application (*note:- state the name of the estate on form 44 or 24*) ;
- Ensure the application and the form(s) 44 and/ or 24 have been properly signed and executed;
- Ensure form(s) 44 and/or 24 are the current forms issued by the

Registry of Deeds;

- Ensure the correct county (counties) are listed on the application and a form 44 and/or 24 is included for each county;
- Ensure the Affidavit in Proof of Will and/or Codicil has been sworn before the appropriate court officer (*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 word “codicil” from the application or cross the word out and have it 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;

2. **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 (You are no longer required to obtain signature verifications from Canada Post)
- 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)*);

### 3. **Inventories -**

- Ensure the address(es) of the real property is/are stated on part 1 of the inventory;
- Ensure the amount of a mortgage which has been registered at the Registry of Deeds 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 Registry of Deeds) (*Probate Regulation 41*);
- Ensure the inventory values have been added correctly;
- Ensure the values listed on the inventory are the date of death values (e.g. - do not list the sale price of the real property if sold after the date of death);
- 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 cannot be signed and filed until the Grant has been

issued;

4. **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 are to be filed with respect to 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*);

5. **Application to Pass Accounts:-**

- Obtain a date for the passing of the accounts from the Probate staff before filing the application to pass accounts;
- Ensure the six month advertisement is complete, the inventory and 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 who can make copies of the date-stamped copy and send out to the interested parties;
- The interested parties are to be served with the application to pass accounts and supporting documents after the originals have been filed at Probate Court; (Probate Regulation 22 sets out the type of service)
- If 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 the personal representative(s);
- The Affidavit of the Personal Representative (*form 43*) is to be filed 10 days before the date set for the passing of the accounts; Ensure a copy of the Royal Gazette advertisement is attached to the affidavit.

6. **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)*);