

Generation GAME



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Section 61(7) of the *Registration of Title Act 1964* dispenses with the need to raise representation to the estate of a deceased registered owner. It allows a person, entitled in succession, to become registered as the owner of registered land. **Samantha Geraghty cuts the red tape**

An application pursuant to section 61(7) of the *Registration of Title Act 1964* is a very useful device that is especially helpful in complex probate transactions. Traditionally, this type of application was made by a handful of practices around the country but, in more recent times, the application has become more widely used, given the considerable savings in terms of time, costs and administration.

In the course of administration of estates, it is not uncommon to encounter a situation where, having dealt with the estate of the deceased person, it becomes necessary to extract further grants of representation in order to complete your client's application to be registered as owner of their property. The extraction of grants of representation for and by persons who are not directly your clients can prove difficult and time consuming, and often requires the cooperation of third parties and relatives who are not always willing to facilitate your client. In addition, your client can be faced with the expense and difficulty of extracting representation to an estate where he/she may neither be the executor/administrator or the beneficiary.

Section 61(7) states: "Where, on the application of any person claiming to be registered as owner of registered land in succession to a deceased full owner of such land, the court is satisfied that (a) at least six years have elapsed since the death of the deceased full owner, and (b) that the personal representatives of such owner are dead or out of the jurisdiction, the court may, if it thinks fit, notwithstanding anything in the *Administration of Estates Act 1959* or this act, dispense the applicant from the necessity of raising representation to the deceased full owner or of giving notice to his personal representatives and may order that the applicant be registered as owner of the land."



at a glance

- Many titles have not been updated, despite several deaths and changes of ownership over a long number of years. Section 61(7) reduces the work and time involved in rectifying such titles
- The application is based on succession. It does not apply to an adverse possession situation
- If granted, an order pursuant to section 61(7) will be registered by the PRA much quicker than a section 49 or similar application with few, if any, queries arising



“ If the application is successful, the county registrar or judge will grant appropriate orders dispensing with the requirement to extract one or more grants of representation and directing the Registrar of Titles to register the applicant as full registered owner of the property ”

The essential components of the application are:

- Unlike an adverse possession application pursuant to section 49 of the *Registration of Title Act 1964*, this application is based on ‘succession’, not possession. The applicant must prove a chain of succession from the deceased registered owner to him/herself.
- The deceased registered owner must be dead for more than six years.
- The ‘personal representative’ must be dead or out of the jurisdiction.

‘Personal representative’ is defined by the *Registration of Title Act 1964* as being “the executor, original or by representation, or the administrator of a deceased person”.

‘Administrator’ is defined by the *Succession Act 1965* as “a person to whom administration is granted”.

In order to satisfy this condition, you must have a ‘personal representative’, that is:

- An executor appointed under a will in respect of which probate has or has not been granted, or

- A grant of administration appointing an administrator.

It is important to note that you cannot proceed with the application in a case where you have an intestate registered owner and no subsequent grants of representation, as in that situation you do not have a ‘personal representative’ within the meaning of the act, being either an administrator appointed by a grant of administration or an executor appointed by will.

A section 61(7) application typically arises where the registered owner of the folio is long-since deceased and where the successors in title have gone into possession of the property without extracting a grant of representation to the estate of the deceased registered owner or bringing the folio up to date. If this has happened two or three times on the same property, you can find yourself dealing with a probate transaction that proves to be very slow and difficult to deal with, especially where executors have died without dealing with registrations or have intermeddled in the estate.

The application is made in situations where, at the very least, it is necessary to extract a *de bonis non* grant. You must have a situation whereby one estate has been intermeddled with and is partly unadministered (that is, the personal representative is deceased or out of the jurisdiction). Usually, the applicant will seek an order dispensing with the necessity of extracting two or more grants

of representation or just one grant if the extraction of that grant would be complicated by some factor.

Procedure and proofs

The application is made by notice of motion and supporting affidavit, which is lodged with the Land Registry's court registrar in the case of proceedings in the High Court or with the county registrar in the case of proceedings in the Circuit Court. The supporting affidavit will typically set out the sequence of events from the death of the deceased registered owner up to and including the right of the applicant to become registered as owner "in succession" to the deceased registered owner. A well-drafted

grounding affidavit will deal with each person on the chain of succession, from the registered owner down to the applicant (dealing also with spouses, issue, and so on) and should exhibit:

- The folio or folios for the lands that are the subject of the application,
- The death certificate of the deceased registered owner and details of whether or not he or she died testate or intestate,
- Death certificates for all persons mentioned in the chain of succession and details of whether or not they died testate or intestate and whether representation was raised to their estates,
- All or any grants of representation granted in respect of persons in the chain of succession or wills made,
- Certificate of rateable valuation,
- Disclaimers or deeds of release executed by other beneficiaries of the deceased registered owners where applicable.

It can often be the case that death certificates cannot be found in respect of persons long deceased or who have left the jurisdiction and, in those instances, the best evidence rule will apply. Courts have been known to accept memorial cards, photographs of tombstones, and church certificates as evidence of death.

PRAI

If granted, an application for registration is made to the PRA as follows:

- Application for registration on form 17,
- Official copy of the court order (as per PRA rule 95),
- PRA fees.

If a subdivision of a folio is required, a map marked appropriately for land registry purposes must also be lodged and applicable fees for subdivision.

Interestingly, section 62 of the *Capital Acquisitions Tax Consolidation Act 2003* does not appear to apply to an application for registration on foot of section 61(7), and therefore the PRA does not call for a certificate of clearance from CAT to be produced, as it does in the case of a section 49 application.

However, due regard should be had to the provisions of the 2003 act as they would apply in the normal way to an inheritance situation.

Jurisdiction

The county registrar now has jurisdiction to deal with an application made pursuant to section 61(7) of the *Registration of Title Act 1964* at the motions court, although in the past there was a tendency by some county registrars to transfer these applications into the judge's list. Where the rateable valuation of the property exceeds

You cannot proceed with the application in a case where you have an intestate registered owner and no subsequent grants of representation as in that situation you do not have a 'personal representative'

FOCAL POINT

example

The registered owner of folio 12345 Co Mayo is Granny Bloggs. She dies a widow on an unknown date, leaving her son, Daddy Bloggs, surviving her. Daddy Bloggs dies intestate in 1973, leaving his widow and six children surviving him. Mammy Bloggs dies testate in 1995, but probate to her estate was never extracted. Under her will, she appointed Child A as her executor and she bequeathed the property to child E and child F. She was survived by her six children. Three of the children survived Mammy Bloggs, but have since died, including her executor. Three of the children are still alive. One vacated the property 20 years ago and has made no claim against the estate. The remaining two brothers, the beneficiaries, remained in occupation of the property and farmed the land.

An application pursuant to section 61(7) in this situation would allow the two brothers to be registered as owners of the property without the need to administer the following estates:

- Granny Bloggs (the registered owner),
- Daddy Bloggs,
- Mammy's Bloggs will.

In light of the fact that Mammy Bloggs made a will (even though her estate has not been administered), you have a 'personal representative' within the meaning of the act, and that personal representative is "dead or out of the jurisdiction". If Mammy Bloggs had died intestate, it would be necessary to extract a grant to her estate in order to fulfil the 'personal representative' criteria.

The application can also be brought in circumstances where more than six years and less than 12 years have passed since the death of a registered owner and where the personal representative has died. The application in this situation can be used in lieu of an application for a *de bonis non* grant.

If an inhibition is entered on a folio against all dealings "except in the administration of the estate of the former deceased registered owner", an order of the court pursuant to section 61(7) can be obtained to deal with the registration.

€253.95, an application should be made to the High Court. Readers are referred to the recent *Finnegan* decision (2015 IEHC 304, currently under appeal) in relation to rateable valuations and the question of applicable jurisdictions.

When to use this application?

While the application can technically succeed where a dispensation from extracting only one grant of representation is required, judges and county registrars have displayed a certain reluctance to grant the application unless the process of extracting the requisite grant is complicated by some factor or unless further grants of representation would be necessary. Therefore, if your rectification requires you to extract one grant of representation *de bonis non*, you will be well advised to extract that grant in the normal way rather than having your client incur the expense of this court application. However, if two or more grants of representation are required, this application may well prove to be a very

expeditious way of resolving matters.

If the application is successful, the county registrar or judge will grant appropriate orders dispensing with the requirement to extract one or more grants of representation and directing the Registrar of Titles to register the applicant as full registered owner of the property. The order is then lodged in the Land Registry with the appropriate fees and, as is common with most court orders, the registration usually completes in a timely manner.

Succession v possession

While it is the case that a section 49 application based on adverse possession is often made in circumstances where a section 61(7) application is appropriate, the converse is not true. One cannot succeed in a section 61(7) application where one is in possession of lands but where one cannot show a chain of succession.

The dispensation from extracting the grant(s) of representation applies only to the registered land, the subject of the application,

and all other assets of the deceased registered owner must be dealt with in the normal way.

Although this remedy has been available to practitioners for decades, its advantages in terms of time, administration, and cost savings have been underestimated. This provision should be considered by probate practitioners in many situations that arise on a regular basis.



look it up

Cases:

- *Bank of Ireland v Finnegan* [2015] IEHC 304
- *Moloney v Moloney* (1894) 58 ILTR 81

Legislation:

- *Capital Acquisitions Tax Consolidation Act 2003*, section 62
- *Registration of Title Act 1964*
- *Succession Act 1965*