

Probate and Estate Administration



Chamberlains. Law Firm

What is Probate?

Probate is the process of proving and registering in the Supreme Court the last Will of a deceased person.

The Court will normally issue a 'Grant of Probate' to the Executor(s) appointed in the Will. This grant gives the Executor(s) the authority to collect all estate assets of the deceased and to deal with the assets in accordance with the terms of the Will and applicable State law.

Grant of Letters of Administration

Where the deceased dies without leaving a valid Will, a legally entitled person may make an application for a 'Grant of Letters of Administration.' The person to whom the Grant is made is called the Administrator and will usually be the spouse and/or next of kin of the deceased.

A grant of Letters of Administration entitles the Administrator to collect all estate assets and deal with them in accordance with the rules of intestacy.

Death Certificate

In order to apply for a Grant of Probate or Letters of Administration, the Executor(s) will require the Death Certificate to be issued by Births, Deaths and Marriages.

The Death Certificate is usually posted to the person listed as informant when arranging the funeral. It can take between 2-7 weeks for a Death Certificate to be issued.

Role of the Executor(s)

The first thing that has to be done is to arrange the funeral. This is usually arranged without the need to consult with a lawyer and involves the close cooperation of family and friends. If there is any doubt about the funeral arrangements, the Executor(s) appointed in the Will is the person by law entitled to make decisions about the funeral arrangements. A grant of probate is not necessary at this stage. The role of the Executor(s) is to carry

out the wishes of the testator as specified in the Will and in accordance with the applicable State law.

The Executor(s) is responsible for managing and preserving the assets of the Estate from wastage or diminishing in value until they are distributed to the beneficiaries. They are also responsible for ensuring that all of the liabilities of the estate are paid where appropriate.

Executor(s):

- should keep full and accurate records of how the estate has been managed and distributed.
- can delegate or engage others to act and assist them such as funeral directors, lawyers, accountants and real estate agents. However, the Executor(s) is still responsible for the actions of those they have engaged.

Funeral Account

Funeral Directors will usually seek payment of a deposit and final payment within 30 days. A grant of Probate or Letters of Administration is not required to pay the Funeral Account and can usually be arranged directly from the deceased's bank account upon production of the Death Certificate or funeral notice.

Reading of the Will

There is no need for a formal reading of the Will. The Executor(s) informally notifies interested parties of the terms of the Will. Close relatives are entitled to a copy of the Will should they request it.

After the funeral, the Executor(s) will usually instruct a solicitor to apply for a Grant of Probate to authorise the Executor(s) to deal with the assets of the deceased. If there was no Will, a legally entitled person may apply for a Grant of Letters of Administration of the Estate.

Assets of the Estate

Survivorship

If the Deceased owned assets jointly with a spouse or partner, then the legal principle of Survivorship applies. This means that those assets will automatically pass to the surviving joint tenant upon lodgement of appropriate forms. This simplifies matters as a grant of Probate is not required to transfer ownership.

Small Estate

If the assets of the Estate do not include real estate (land) and are valued at less than \$50,000, then it is usually possible to deal with the Estate without the need for a Grant of Probate or Letters of Administration. Asset-holders (usually banks) will allow accounts to be closed and the proceeds paid to the Estate upon signing of indemnity documents. However, each asset holder will have their own requirements and limits before releasing assets.

Larger Estates

An Estate with assets valued at more than \$50,000 or where the deceased was the owner of real estate (other than as a joint tenant) can only be administered with a Grant of Probate or Letters of Administration.

Obtaining a Grant of Probate or Letters of Administration

This involves collecting and confirming details of the deceased's assets with asset-holders, preparing an Inventory of Assets, having the Executor(s) or Administrator sign an Affidavit. The documents are then presented together with the original Death Certificate and original Will (if applicable) to the Registrar for Probates who will then seal the relevant Grant.

Administration of the Estate

Once an inventory of assets has been finalised and a Grant obtained the estate assets are collected, dealt with and then distributed in accordance with the Will or laws of Intestacy. Prior to the final distribution the Executor(s) or Administrator resolves matters relating to tax, social services entitlements, payment of outstanding liabilities and ensures that any assets of the Estate are insured until the estate is finalised.

The main assets are usually:

1. Real Estate
2. Aged Care Accommodation Bonds
3. Bank Accounts
4. Shareholding in Public Companies

Time for Completion

The time for completion will vary case by case depending on the assets of the deceased and the number of parties involved.

The Executor(s) should ensure that the estate is not to be distributed until six months have passed from the date of the Grant in the ACT, and in NSW the Executor(s) should ensure that at least six months have passed since the date of death to avoid being personally liable for any claims made by a creditor or other beneficiary.

Legal Costs

In NSW, costs for legal fees for the Grant of Probate are scaled in accordance with Schedule 3 of the Legal Profession Uniform Law Application Regulation 2015. The costs are based on the value of the estate's assets. The filing fee is also scaled based on the value of estate's assets. However, once a grant has been obtained, the costs for legal fees associated with the administration of the estate are usually charged at an agreed fixed fee arrangement or hourly rates.

In the ACT, where a Grant of Probate or Letters of Administration is required, legal fees will be approximately \$3,500-\$7,000 plus GST and Government fees are also scaled based on the value of the estate's assets.

Legal costs will increase if the deceased had a large number of assets, or the Estate is more complex than described above, either because of issues with the Will, complex assets or complex distribution.

Disputes

Disputes regarding estates are not part of the probate or administration process and separate costs are involved in instigating or defending any claims or disputes.

Definitions

Deceased: The person who has died

Testator: The deceased, if the deceased left a Will

Intestate: The deceased, if the deceased did not leave a Will

Estate: The assets of the deceased

Executor(s): The person named in the Will to finalise the Estate of the deceased

Administrator: The person who applies for approval to finalise the Estate of the deceased

Beneficiary: A person who is entitled to share in the Estate of the deceased

Grant of Probate or Administration: The legal authority for the Executor(s) or Administrator to represent the Estate

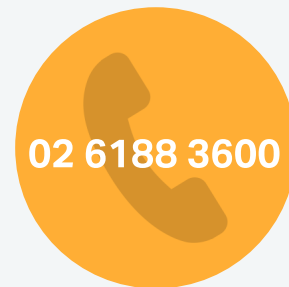
Asset-holder: A person or organisation that holds assets on behalf of the deceased, such as a bank, nursing home or the Land Titles Office.

Registrar: The Registrar of Probate is an official appointed by the Supreme Court to supervise the administration of estates

Re-seal: A re-seal of the Grant may be required in respect of assets held in more than one State or Territory.

Chamberlains help clients create, grow, protect and pass on their wealth. Our team specialises in developing and putting solutions in place to achieve our clients objectives in a tax-effective manner.

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