

Why Do You Need To Apply For A Grant Of Probate?

Estate Administration Information Sheet

If you have been appointed as an executor under a Will you are likely to need to obtain a Grant of Probate of the Will.

What Is A Grant Of Probate?

A Grant of Probate is a document issued by the Queensland Supreme Court that recognises that the Will that has been produced to it has been validly signed by the Willmaker and is legally binding. It also gives an executor the Court's authority to administer the estate and distribute the Willmaker's assets in accordance with the Will.

Obtaining a Grant of Probate generally gives an executor protection from a claim that the executor has not lawfully dealt with the Willmaker's estate.

Who applies for the Grant of Probate?

The executor is responsible for applying to the Queensland Supreme Court for the Grant of Probate.

While it is possible for an executor to apply for the Grant of Probate themselves, it is usual for the executor to engage a solicitor of their choice to apply for the Grant of Probate because of the complexity of the process and preparation of the documents that need to be lodged with the Court.

What Is The Process?

The solicitor must place a notice in a major daily newspaper (or if the Willmaker lived in a regional area, in a local paper) that must be worded to comply with the relevant legislation.

The notice must also be advertised in a government publication and a copy delivered to the Public Trustee.

After all of those requirements have been satisfied, the solicitor must wait 14 days before lodging all of the documents (including the death certificate and the original Will) with the Court. The purpose behind the advertising and notification to the Public Trustee is to allow anyone who may have a more recent Will to come forward before Probate is granted and the estate assets distributed. It also provides notice to creditors in case the Willmaker has outstanding debts.

Once the Court has issued the Grant of Probate document it will usually be collected by the executor's solicitor.

Why is a Grant of Probate so important?

An executor who is administering a deceased estate usually has the following main duties:

- Locating the last Will and identifying the assets and liabilities of the Willmaker;
- Taking control of those assets, selling them if necessary or desirable (e.g. to pay creditors) and distributing the assets or net sale proceeds of the assets to the beneficiaries named in the Will;
- Paying creditors and satisfying liabilities of the Willmaker;
- Notifying all relevant government authorities of the Willmaker's death, including lodgement of a final tax return for the Willmaker.

It will usually be necessary for the executor to produce certified copies of the Grant of Probate to life insurance companies, financial institutions, share and government land registries when dealing with the estate assets or transferring ownership of those assets under the Will. This will satisfy those organisations that the executor has the necessary authority to deal with the estate assets.

Generally an executor will engage a solicitor to assist them to administer the estate because of the complexities of dealing with the organisations mentioned. However, this may not always be necessary if the estate is very simple. The solicitor's fees for assisting the executor can be paid out of the estate.



Can An Executor Claim Commission?

Anyone appointed as an executor of a deceased estate may claim commission for the work they do in administering the estate. Usually an application to the Court is required to be made by the executor but in some instances it may be possible for an executor to agree on the amount of commission with the beneficiaries of the estate. It is common for family members or friends of the Willmaker, who have been appointed as an executor, not to charge commission. However, any professional person such as an accountant, lawyer or financial planner, is likely to charge commission for acting as executor.

What if someone dies without a Will?

If someone dies without a Will they are said to have died "intestate". An administrator will need to be appointed to manage the estate.

Usually a member of the deceased's family will apply to the court to be appointed as the administrator. If there is no-one suitable, the court can appoint a third party to act as administrator.

The estate assets must be distributed by the administrator in accordance with rules in the Queensland Succession Act.

The document appointing the administrator issued by the Court is called a Grant of Letters of Administration and it gives the administrator the same protection and authority that a Grant of Probate gives an executor who is appointed under a valid Will.

Once the Letters of Administration has issued the administrator will administer the estate in the same way as an executor acting in accordance with a Grant of Probate.

Disclaimer: This information sheet is for general information only and should not be relied on as, or substituted for, professional legal advice.