



## Wills & Deceased Estates Team May 2025

### Estate Administration Process

#### Estate Administration process - is a grant of probate or letters of administration always necessary?

What is a grant of probate or letters of administration?

A grant of probate is the document that legally confirms your executor's authority to deal with your estate and is a requirement of third parties to release your assets to your executor.

To obtain a grant of probate, your executor must file various legal documents at the Probate Registry including your original will and a complete statement of all your assets and liabilities as at the date of your death.

Until probate is granted by the Supreme Court, your executor does not have the legal protection of the court to collect in your assets or distribute any assets to your beneficiaries (although, in certain circumstances, an institution such as a bank may not require a grant of probate).

If you die without making a will the application is for a grant of letters of administration and the person dealing with your estate is known as the administrator. We will only refer to a grant of probate and executor in this article.

#### When is a grant of probate needed?

Your executor will need to apply for a grant of probate in the following instances:

- if you have assets in your sole name (eg bank accounts and shares) which are over the institution's internal limits;
- if you are due a refundable accommodation deposit from a residential aged care facility or retirement village refund;
- if you own a property in your sole name or as tenants in common with someone else.

#### When is a grant of probate not required?

If the only asset held in your sole name is either a bank account or small shareholding, the bank or share registry may not require a grant if the value is less than a certain amount (usually between \$15,000 and \$50,000 depending on the bank, or less than \$50,000 depending on the share registry). Your executor may be able to deal with these assets by signing a Statutory Declaration or Indemnity Form instead.

If you completed a non-lapsing binding death nomination form or a reversionary beneficiary nomination for your superannuation fund, the funds will pass directly to your nominated beneficiary without the need for a grant of probate.

Assets you hold jointly with another person (eg your spouse) do not require a grant of probate as the asset will pass to the survivor automatically on the production of a death certificate.

For most couples a grant of probate will not be required on the first death as you will hold your assets jointly. On the second death, a grant of probate is usually required as assets will be held in the survivor's sole name.

#### How does my executor apply for a grant of probate?

Your executor can instruct a solicitor to act on their behalf or they can make the application personally. This article only focuses on the process where a solicitor is instructed.

The application process is completed through the CourtSA website and requires the completion of an online form which is split into the following sections:

1. solicitor's details, details about your will (including any defects) and information contained in the death certificate (including any defects);
2. your details (place of death, last known address, marital status);

3. your executor's details including reasons why an executor is not applying for a grant;
4. details of all your assets and liabilities at the date of your death.

If there are any defects with your will your executor, or the person with relevant knowledge of the circumstances, will be required to swear an affidavit to explain the defect.

### Does my executor have to act?

Sometimes the person you have appointed to act as your executor may not want to act or is unable to act on behalf of your estate. There is no obligation for them to act and they have two options:

#### **Option 1 - Renounce Probate**

This means that your executor is removed from the role altogether and does not take any part in the administration of your estate.

If you have named more than one executor in your will, or you have provided for a substitute executor, they will now act as the executor on behalf of your estate (the proving executor).

Your executor can only renounce probate if they have not 'intermeddled' in your estate which means they have not acted in a way which implies they are your executor (eg collecting assets and paying debts).

If they choose this option they will need to sign a renunciation form which will be lodged with the probate application. They must sign the form before the proving executor signs any paperwork.

#### **Option 2 – Leave Reserved**

If one of your executors does not wish to act (non-proving executor) they can have what is known as 'leave reserved' to them, which means if for any reason your other executor cannot complete the

administration of your estate, or the non-proving executor wishes to reactivate their role, they can apply to have their name added to the application. Your executor can have leave reserved to them even if they have 'intermeddled' in your estate.

### The importance of naming a substitute executor

If you have not provided for a substitute executor in your will and your executor does not wish to act, then an administrator will need to be appointed which can be either someone who you have left something to in your will, a relative or the executor of someone who is mentioned in your will but who died before you, or it can even be a creditor.

The application for a grant is known as Letters of Administration with the Will annexed.

### Application and Lodgement

Before the application for probate can be submitted, your proving executors must have their identity verified by the solicitor acting for the estate. They must also mark the back of your will, which is their way of confirming that it is your last will.

The online form is submitted to the Probate Registry of the Supreme Court and the original will is lodged at the court at the same time. It takes between 4-8 weeks (depending on their backlog) for the grant to issue. Once the grant has been issued, your executor can then begin to call in your assets, pay your outstanding liabilities and distribute your assets to your beneficiaries according to your will.

If you are an executor of a will (or administrator of an intestate estate) and need assistance with applying for a grant of probate, our Wills & Deceased Estates Team would be happy to assist you.

“ *Until probate is granted by the Supreme Court, your executor does not have the legal protection of the court.* ”

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