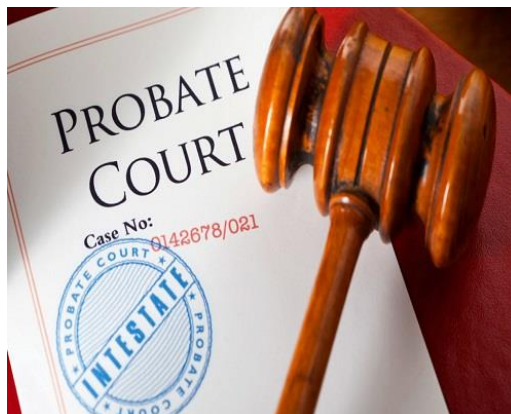


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Wills & Estates

Updated April 2019



Probate?

WORKING FOR YOU

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The Law in respect to Wills and Estates in Queensland is legislated in the **SUCCESSION ACT 1981 Qld**

Probate is the legal process for dealing with the estate of someone who has died. It's the responsibility of the executors named in their will. In most cases, these will be family or friends of the deceased (lay executors), but some people appoint professional executors (a solicitor). Professional executors will expect to be paid from the proceeds of the estate for acting in this capacity. They normally carry out the entire probate process and receive a fee for this, too.

Letters of Administration are sought in the absence of an executor being appointed or where there is no will. (See Laws of Intestacy). Whilst the information sought in Letters of Administration is more complex the process of applying to appoint an Administrator is much the same as applying for Probate.

Lay executors may choose to appoint a professional (normally a probate solicitor) to carry out probate on their behalf, or they can opt for DIY probate, where they fill in the relevant forms and deal with the Supreme Court Registry directly. This is quite common, although professional assistance may be essential for complicated estates. DIY probate is far cheaper, but very time consuming.

For free initial advice and guidance on any Probate matter, call our Estate Management Team on 3818 4056 or contact us on line and we will help you.

Is a grant of probate required?

There is no statutory requirement to obtain a grant. Most banks and financial institutions will not insist on a grant if the amount they hold for the deceased is less than \$20,000. In these circumstances they will normally accept evidence of death, entitlement and signing of indemnities by the executor named in the will.

Land/property registered as a joint tenancy only requires a record of death accompanied by the death certificate to effect the registration of the survivor as the registered proprietor.

Other land can be transmitted without a grant by preparing a transmission application in either form 5A or form 6 if the land is not worth more than approximately \$150,000. Otherwise land cannot be transmitted unless a grant appointing an administrator or probate has been obtained, and a transmission application, in either form 5A or form 6, lodged supported by the letters of administration/probate.

Probate Definition: In Australia probate is the word normally used to describe the legal and financial processes involved in dealing with the property, money and possessions (called the assets) of a person who has died.

Before the next of kin or Executor named in the Will can claim, transfer, sell or distribute any of the deceased's assets they may have to apply for Probate.

When Probate has been granted through a Grant of Probate or Letters of Administration the next of kin or Executor can start to deal with the deceased person's assets in accordance with their Will. If the deceased died without a Will the law will determine who should receive everything. This is what we call Intestacy, dying without leaving a valid will.

The cost of obtaining Probate and/or Letters of Administration is usually met by the Estate and we (Hodgson Lawyers) are prepared to waive payment of our fees until such time as the estate is determined, provided of course, that there are sufficient Assets of the estate to meet our fees. We may ask for an initial deposit as security of our professional fees.

The process:

The Probate process often involves a lot of complicated legal, tax and financial work which can be broken down into five different phases.

Probate Phase 1. Identifying all of the deceased's assets (property, investments and possessions) and all of their liabilities (debts ranging from loans to utility bills), in order to determine the value of their Estate. At the same time, verifying entitlement to the Estate under the terms of the deceased's Will, or in accordance with Intestacy laws if they died without a Will, and obtaining the necessary identification documents for those beneficiaries.

Probate Phase 2. Applying to the Probate Registry in the Supreme Court of Queensland, for the Grant of Probate or Letters of Administration, being a document confirming the legal authority to administer the Estate. This application needs to be in a specified format and accompanied by a supporting affidavit. You also need to place a prescribed Notice in the Queensland Law reporter and serve same on the Public Trustee.

Probate Phase 3. After the Grant of Representation has been issued by the Probate Registry, liquidating (selling) the deceased's assets, settling their liabilities, paying the final Estate administration expenses and accounting to the Australian Taxation Office for any Tax, any Income Tax or Capital Gains Tax due to or from the Estate.

Probate Phase 4. Preparing Estate accounts documenting all payments into and out of the Estate, and showing the balance left for distribution to the beneficiaries. Sending the Estate accounts to the Personal Representatives (such as the Executor in the Will) for approval.

Probate Phase 5. Providing there are no challenges to the Estate or other complicating factors preventing distribution at this stage, the final phase will involve transferring any assets that the beneficiaries wish to retain, and distributing the balance of the Estate funds. In doing so you should as Administrator or executor of the Estate obtain an indemnity from each of the beneficiaries therefore protecting yourself from any outstanding claims and/or potential complaints and litigation down the track.

Hope this helps, if not sure, contact us on 07 38184056.

Thank you

John O'Byrne
Principal Solicitor