Gibney & Gunson | LAWYERS
New South Wales & Victoria

APPLYING FOR A GRANT OF PROBATE IN VICTORIA

A grant of probate

- Other than in very small estates, the executor must apply to the Supreme Court for a grant of probate.

- Wills and estates are under the supervision of the Supreme Court. It is necessary for the will, with supporting documents, to be submitted to the Supreme Court for approval. This process is known as *application for a grant of probate*.

- The grant of probate by the Supreme Court confirms the validity of the will and the appointment of the executor. The grant of probate entitles the executor to deal with the estate assets.

- If there is no will, a person close to the deceased will apply for a grant of *letters of administration*. Letters of administration refers to a certificate issued by the Supreme Court that authorises the administrator to deal with the estate, and puts the administrator in the same position as an executor. The administrator is able to manage the estate of the deceased, including paying all the liabilities and, once all estate liabilities are paid, attending to payment to the beneficiaries of their entitlements.

- The process of obtaining a grant of probate or letters of administration involves the following:

    - First, placement of an electronic advertisement.

    - Second, preparation of the application documents, including a sworn affidavit. By this affidavit, the executor/administrator informs the Court as to the death of the deceased, the deceased's will (if there is one), and the assets and liabilities of the deceased.

    - Third, the executor/administrator will swear the application documents (these are required to be sworn on oath).

    - Fourth, Gibney & Gunson will lodge the application with the Supreme Court, together with the Court's filing fee.

- The Court will usually grant probate or letters of administration within about ten days and will send the original probate document to us, at which time we will notify the executor/administrator that estate administration may commence.

Frequently asked questions

Q: Is a grant of probate or letters of administration always required?

A: *The need for a grant of probate or letters of administration often depends on the nature and extent of the assets of the deceased. Asset holders such as banks, insurance companies, and superannuation funds will usually require probate before releasing or transferring assets. Banks will usually release monies to pay the funeral account. Real estate held in the name of the deceased will require a grant in order to be dealt with (unless the property is held as joint tenant).*

Q: How much does it cost?

A: *The Supreme Court charges a filing fee for probate applications, and the fee depends on the value of the estate. Refer to the current schedule of Supreme Court filing fees. In addition to the filing fee, the government sets the fees charged by solicitors in connection with probate application, and, again, this depends on the value of the estate. Refer to the Supreme Court (Administration and Probate) Rules 2004, Order 9. The fees charged by solicitors in connection with probate application are separate from fees charged for the actual administration of the estate.*

Q: Can more than four executors apply for probate?

A: *Generally, the Supreme Court does not permit probate to be granted to more than four persons.*

Q: If the will has not been executed correctly, can probate be granted?

A: *The Supreme Court may grant probate in relation to a will that fails to comply with the usual formalities, and it may also grant probate in relation to a duly executed will that contains informal alterations, if it is reasonably satisfied that that the deceased intended the document or the alteration to the document to be his or her will.*

Q: If there isn't a will, who receives the deceased's assets?

A: *Parliament has established a scheme for the distribution of assets. Refer to Division 5 and 6 of the Administration and Probate Act 1958, particularly Section 51 (Distribution if intestate leaves a partner) and Section 52 (Distribution on intestacy).*

Q: What assets have to be disclosed in the inventory?

A: *Strictly speaking, only Victorian assets must be disclosed. It is good practice, though, to disclose interstate assets.*

Q: Must jointly-owned assets, such as the family home, be disclosed?

A: *Yes.*

Q: Are valuations of assets required?

A: *The Supreme Court does not require formal valuations, but nevertheless a realistic estimate of value should be made by the executor. For other purposes, such as taxation, it may be necessary to have assets formally valued.*

Q: What are probate accounts and do I need to lodge them?

A: *Every person who is administering an estate is under a duty to account to the beneficiaries, but formal accounts are not required to be filed in smaller estates.*

Q: What happens if an executor dies before fully administering an estate?

A: *The Court has power to appoint an administrator among the beneficiaries to enable finalisation of estate administration.*

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