

APPLYING FOR A GRANT OF PROBATE IN NEW SOUTH WALES

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 is the process 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 involves:
 - First, placement of an electronic advertisement in prescribed terms.
 - Second, preparation of the application documents, including a sworn affidavit. By this affidavit, the executor informs the court as to the death of the deceased, the deceased's will, and the assets and liabilities of the deceased.
 - Third, the executor will swear the application documents (these are required to be sworn on oath).
 - Fourth, we 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 10 days and will send the original probate document to us, at which time we will notify the executor that estate administration may commence.

Frequently asked questions

Q: Do I need a grant of probate?

A: *There is no requirement to obtain probate in every case, but 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: Can an executor outside New South Wales apply for probate?

A: *Where the application is for a grant of probate, yes. For a grant of letters of administration, the applying administrator must reside within New South Wales.*

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 the [Supreme Court filing fees](#), under the heading "Probate." 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 Schedule 3 of the [Legal Profession Uniform Law Application Regulation 2015](#). The fees charged by solicitors in connection with probate application are separate from fees charged for the actual administration of the estate.*

Q: Do I need to advertise before distributing the estate?

A: *It is not required, but an executor may, in certain circumstances, obtain personal protection from any liability from unknown claims on the estate if a proper notice has been published.*

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

A: *Strictly speaking, only New South Wales 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: 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 Chapter 4 of the [Succession Act 2006](#), specifically Part 4.2 (Spouse's Entitlements) and Part 4.3 (Distribution Among Relatives).*

Q: Can the executor resign after obtaining probate?

A: *A person may resign or retire from being an executor if he or she appoints the NSW Trustee & Guardian or a trustee company in his or her place. Otherwise, an executor is generally not allowed to resign or retire as executor.*

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