IM LAWYERS



A guide to probate in Queensland

Date: Sunday August 18, 2024

What is probate?

An application for probate is an application to the court to request that it confirm a deceased person's estate should be administered in accordance with their last will and testament ('Will'). Essentially, it is an approval from the court to show that the executor has the authority to carry out the necessary tasks to distribute the deceased person's estate. Once approved, the court will issue a Grant of Probate which basically provides the executor with permission to distribute the assets of estate in accordance with the Will.

Where a person passes away without a valid Will, then an application for probate will not be applicable. Instead, an application for letters of administration will need to be made.

This blog is applicable only for applications of probate. You can learn about letters of administration in our earlier blog, "Applying for Letters of Administration when someone dies without a Will".

Who can apply for probate?

Generally, the person (or people) who will apply for probate will be the executor/s who is/are named in the deceased's Will.

The executor is the person who will be responsible for the administration of the deceased's estate.

Documents and information required to apply for probate

To apply for probate of a Will, you will need to provide:

the original of the deceased's last Will (you will also need to provide copies of this with forms as well);

the necessary forms and enclosures; and

an original of the deceased's death certificate.

It is important to remember that the original Will should not be marked. Therefore, it should not be pinned or stapled to any other document when provided to the court registry for filing.

Depending on the circumstances of various parties (for example, executors), you may also require a marriage certificate or change of name information for certain parties (e.g. to show that a person referred to in the Will has changed their name but is, in fact, the person referred to in the Will).

What forms will I need to fill out when applying for a Grant of Probate?

When applying for a Grant of Probate in Queensland, you will need to fill in the following documents:

Form 101 – Application for Probate (Will);

Form 105 – Affidavit (probate application) – an affidavit supporting the application for the Grant of Probate;

Form 103 – Notice of Intention to Apply for a Grant; and

Form 104 – Affidavit of publication.

What process do I follow once I have completed the probate application forms?

Advertise intention

Before you apply to the court for a Grant of Probate, you must advertise your intention to do so in the Queensland Law Reporter ('QLR'). This advertisement is the words in Form 103. You can apply to advertise in the QLR through their online portal (the link is available at the end of this linked article about the advertising process).

The fee to advertise in the QLR is $161.70 (current July 2024 and subject to change).

Inform the Public Trustee

Once your intention has been advertised, you are required to provide a copy of the advertising notice to the Queensland Public Trustee. The Public Trustee's contact information can be found on their website. If emailing the notice, the appropriate email address is currently noi@pt.qld.gov.au.

Wait for the objection period to pass

You will need to wait 14 clear days following the appearance of the advertisement in the QLR, and 7 clear days from the time of notification to the Public Trustee ('the objection period') until any further formal steps can be taken.

This gives a period for any objecting parties to be able to take the appropriate steps with their objection. A common objection is where someone believes that there is another later Will of the deceased.

Prepare documents

While you are waiting for the objection period to pass, you can prepare all the documents necessary for the next step so that you are prepared once the objection period has passed.

File probate application with the Supreme Court

Once the objection period has passed, the documents can be filed with the Supreme Court at a registry.

This can be done either in person or by post. Information about the Supreme Court Registry office locations and more information can be found on the Queensland Courts website:

information about Supreme Court registries; and

- addresses for all courthouses.

When selecting a registry to file your documents with, it is important that you ensure that

you do so at a ‘Supreme Court’ registry, and not another court like the a ‘District Court’ or ‘Magistrate’s Court’ registry.

You will need to provide the court with all the necessary forms, supporting documents and exhibits (attachments) to support the information provided in these forms.

Gathering all the required information and ensuring you have everything you need for a smooth probate application can be tricky. If you do not include all the required information, the process will be delayed. If you’re unsure about what to gather and file with your application and you need assistance, speak with one of our probate lawyers for advice and assistance.

GET ADVICE FROM A PROBATE LAWYER: 1800 001 339

How long will it take once I have filed the probate application?

Once an application for probate has been filed with the Supreme Court, it generally takes between 4 and 6 weeks for the court to consider the application and grant probate (if the application is approved).

When filing the documents, you can select to either have the grant posted to you or your lawyers or pick the documents up from the registry. If you would like the documents to be posted to you, then you need to ensure that an appropriately stamped and addressed envelope is included with the documents for use by the courts.

Why might an application for a Grant of Probate not be approved?

If there are problems with your application, then the Supreme Court may request that they be rectified. This could include:

- documents missing from the application;
- inconsistent information being provided in the documents;
- the wrong parties applying for the probate.

If this occurs, then this will likely extend the period of time that it takes for the Grant of Probate to be included.

If you have been asked to rectify issues with an application for a Grant of Probate and are unsure of how to proceed, you may wish to engage an experienced estates lawyer to assist.

How can a probate lawyer help with this process?

If you engage IM Lawyers to assist with a Grant of Probate for a deceased estate, then we will gather all the necessary information and documents, prepare all the necessary documents and forms and perform each of the steps referred to above.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.