

## ● Probate & Estate Administration

### ● What is Probate?

A grant of Probate is certification by the Courts (the Supreme Court in Victoria) that the Will is the Last Will and Testament of that person and that it has been appropriately signed and is therefore legally binding.

Estate assets cannot be distributed until a grant of Probate (from the Supreme Court) is obtained and once granted, the documents act as proof that the executor has the authority to deal with the estate.

### ● Who is responsible for applying for probate?

The Executor of the Will is responsible for applying to the Supreme Court for that grant of Probate.

However whilst it is possible for an Executor to apply for Probate themselves, because of the legal complexities involved, lawyers are usually employed to undertake the process.

The Executor is responsible for appointing the lawyer if required and may need to assist them with preparing the relevant documents that are sent to the Court.



### ● What is the process?

The lawyer must place a notice in a major daily newspaper (or if the Willmaker lived in a regional area, in a local paper) that must be worded very specifically to meet legislative requirements.

This must be placed in the newspaper 14 days before the Will is sent to the Court for probate. This serves as notice to anyone who may have a more recent Will to allow them to come forward before probate is granted and the estate assets distributed. It also provides notice to creditors in case the deceased had outstanding debts.

After 14 days has passed the lawyer can apply to the court for probate.

Once the court has granted probate, the applicant (usually the lawyer) will receive the original Will back with a red seal on it indicating probate has been granted.

### ● Why is this so important?

The executor will need to present the Will with the red seal on it, as proof of their authority in dealing with the estate assets. This may be needed, for example, in order to access funds at financial institutions or to transfer the ownership of any vehicles, real estate or shares etc.

### ● Does the executor have to manage the transactions required to wind up the estate?

Once the probate has been granted, the executor can manage the winding up of the estate on their own or can choose to have a Financial Adviser to assist with

some or all of it. The lawyer can also assist if required. This is known as 'Estate Administration'.

The fees for assistance with estate administration can be paid out of the estate.

### ● What if someone dies without a Will?

If someone has died intestate, in other words without a Will, an 'administrator' will need to be appointed to manage the estate.

Usually the next of kin will apply to the court to appoint an administrator. If there is no-one suitable, the court can appoint a third party to act as administrator.

Regardless, the estate assets must be distributed according to the formula prescribed in State legislation.

So, where a grant of probate is a validation of the executor's appointment and the validity of the Will, Letters of Administration are issued by the Court to certify that the administrator has the authority to manage the estate where there has been no valid Will in existence.

### ● Need help?

For more information please contact Irongroup on 03 8621 9000 and we will work with you to help manage what needs to be done to wind up or administer an estate.