



MackeyWales

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PROBATE

If you are named as an executor in someone's Will, you have the responsibility of carrying out the terms of their Will when they die. This means that you have to deal with their property (commonly known as their "estate").

To act on the Will, you may find that you are required to apply for probate.

WHAT IS PROBATE?

Probate is official recognition that a Will is legally valid and is the last known Will of the deceased.

HOW DOES THE PROCESS WORK?

As executor, you apply to the Supreme Court for a "grant of probate". The grant is a document certifying that the Supreme Court recognises your authority to deal with the estate.

The court will only issue the grant once it is satisfied that the Will you seek to act on is the *last* Will of the person who has died and has been signed in accordance with the relevant legislation.

BUT AREN'T THE CONTENTS OF A WILL PRIVATE?

No. Once a will is filed at the court it becomes a public document, and anyone who asks at the court can see it on payment of a small fee.

WHY WOULD I NEED A GRANT OF PROBATE?

The main reason is that some people or organisations holding assets of the estate will not release them without sighting a grant of probate which they can then rely upon to ensure they are dealing with the people authorised to deal with the estate assets.

DO I HAVE TO APPLY FOR A GRANT OF PROBATE?

Not necessarily. By consulting a solicitor you will be able to ascertain whether or not a grant is necessary as there are advertising and court costs associated with the probate application.

Built on reputation

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DO I HAVE TO MAKE THE APPLICATION MYSELF?

No. You can engage a solicitor to assist you. We have a fixed fee for this type of work.

HOW LONG DOES IT TAKE?

Approximately two to three months from the date of death of the deceased.

WHAT ELSE AM I REQUIRED TO DO?

An executor has many duties, such as:-

- gathering or taking control of estate property;
- lodging tax returns and finalising tax affairs;
- advertising for any debts owing, and paying those debts out;
- finalising any financial or business affairs;
- paying out legacies;
- distributing or transferring the estate property according to the terms of the Will.

You must be very careful in your administration of the estate, because you can be held accountable for any losses. For more detailed information see our information sheet "Duties of An Executor".

WHAT IF THERE IS NO WILL?

If a person dies without leaving a will, the court can make a similar grant, known as "Letters of Administration". Rule 610 of the *Uniform Civil Procedure Rules* allows a de facto spouse to apply for letters of administration.

As there is no executor, the next-of-kin takes on the role of dealing with the deceased's estate. Remember that this cannot be done until a grant of letters of administration is made.

Letters of administration are essentially the same as a grant of probate – they show that the court has examined the relevant documents and is satisfied that the person named in the letters has the authority to administer the estate.

HOW IS THE ESTATE DIVIDED IF THERE IS NO WILL?

The assets go to the next-of-kin according to rules set out in the Succession Act 1981. Changes in the Act in 1997 recognise de facto relationships of five years for this purpose.

WHERE CAN I GET HELP?

It's a good idea to consult a solicitor before applying for either a grant of probate or letters of administration. You may decide that it will be cheaper and quicker in the long run to engage a solicitor than to do it yourself. If you make a mistake and have to re-advertise, for example, you could have wasted several hundred dollars.

Mackey Wales Law have an excellent team of estate lawyers who assist executors every day with the administration of estates. We know the issues involved and deliver our services in a timely and friendly manner.