

Applying for Probate

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

What is Probate?

In Australia our system of law is still largely based on the English system. Over many centuries in England the Church and the Government developed the law in various areas, including in the area of ownership of property. At one stage you had no right to choose how you left your property. It would automatically pass to your eldest son. There was also a time when a married woman was not able to own property herself, it automatically belonged to her husband. Fortunately, the law has evolved considerably since those days.

The Supreme Court in each state has the power to make an order appointing a person (or more than one person) to deal with the property belonging to the deceased. This order is called either a **Grant of Probate**, or a **Grant of Letters of Administration**.

Where the deceased leaves a valid Will, appointing an Executor, the Executor may either apply to the Supreme Court to be given the power to deal with this estate or renounce (or reject) the appointment as Executor. If the Executor chooses to apply to the Supreme Court and once the Executor has complied with the Court's requirements, the Court makes an order granting Probate, which then empowers the Executor to administer the estate of the deceased by transferring or selling the property of the deceased to pay the debts of the deceased, meeting any claims against the deceased, and carrying out the wishes of the deceased as set out in the Will.

What Happens If There Is No Will/ The Named Executor is Unwilling or Unable to Apply for a Grant of Probate?

If an adult Australian dies without leaving a current and valid Will (Intestacy), if the Executor named in the Will has died or is unable or unwilling to act as Executor, or if there is no Executor named in the Will, then it is necessary for another person to apply to the Supreme Court for a **Grant of Letters of Administration** instead of a Grant of Probate. The person appointed by the Supreme Court to administer the estate pursuant to a Grant of Letters of Administration is called an Administrator.



All mail to:

PO Box 460
NEDLANDS WA 6009

Nedlands (Head Office)
83-85 Stirling Hwy
NEDLANDS WA 6009

Fremantle
3/18 Parry Street
FREMANTLE WA 6160

Bunbury
119 Beach Road
BUNBURY WA 6230

Associated Firm
Malaysia
Jerald Gomez & Associates
KUALA LUMPUR
MALAYSIA

Telephone calls
Answered 24 hours

Telephone:
(08) 9386 5200

Country Calls:
1800 675 200

Facsimile:
(08) 9386 4650

Email:
legal@butlers.com.au

Website:
www.butlers.com.au

Copyright © 2003 - 2012 - Butlers Barristers & Solicitors

Disclaimer : This handout is provided by Butlers for general information purposes only. While every care has been taken in preparing this handout, it is intended to be a guide only, and no warranty is given as to the accuracy, currency or completeness of the information contained herein. It is not intended to be, nor should it be, relied upon as a substitute for legal or other professional advice. Formal legal advice should be sought in particular matters.

Applying for Probate

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

This involves more work than an application for a Grant of Probate because it is necessary to locate and seek the consent of (or notify) all next of kin and all beneficiaries to the appointment of a particular person (or more than one person) as Administrator of the Estate. There can be even further work required if any of the next of kin or beneficiaries are minors and/or reside out of Western Australia

How Do I Apply For Probate?

The first requirement is to locate the signed original of the last Will of the deceased. This is sometimes much more difficult than you would anticipate. There are often situations where the family believe that the deceased may have made a later Will than the one which has been located. It is then necessary to write to any solicitors whom the deceased may have seen, enquire of accountants and banks, and even to advertise to locate the last Will.

A "document" expressing the testamentary intentions of a deceased may be proved as the Will of the deceased even if that document does not comply with the formal requirements for the making of a Will. Recent amendments to the legislation also provide that "informal Wills" may include not only "documents" in writing, but, also documents that are video recordings or recordings made by some other technology such as disks, flash drive or memory stick.

The next requirement is to identify all of the assets and liabilities of the deceased. This can be extremely difficult where there are no comprehensive records and where property may be interstate or overseas.

To apply for Probate it is necessary to prepare a statement listing all of the assets and all of the liabilities of the deceased as at the date of death. This involves writing to any banks, investments managers and superannuation funds with which the deceased had accounts and obtaining from those institutions an actual balance of each account, including interest, as at the date of death.

The Supreme Court requires that all assets and liabilities of the deceased at the date of death be accurately identified and the location of those assets and liabilities are to be shown on the statement.

Once an affidavit of the Applicant Executor or Administrator is prepared attaching the statement of assets and liabilities, this Affidavit is filed at the Supreme Court with all other necessary supporting documents.

If the Supreme Court is satisfied with the information contained in the documents which have been lodged, then the Grant of Probate or Grant of Letters of Administration will be made.

Copyright © 2003 - 2012 - Butlers Barristers & Solicitors

Disclaimer : This handout is provided by Butlers for general information purposes only. While every care has been taken in preparing this handout, it is intended to be a guide only, and no warranty is given as to the accuracy, currency or completeness of the information contained herein. It is not intended to be, nor should it be, relied upon as a substitute for legal or other professional advice. Formal legal advice should be sought in particular matters.

Applying for Probate

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

If the Supreme Court is not satisfied with the information contained in the documents which have been lodged, or requires further information or evidence then the Supreme Court will issue requisitions asking that further information or evidence be provided before a grant will be made.

Where the deceased has left adequate records of their assets and liabilities and the original of their last Will and the nominated Executor is available and willing to act as Executor, it is a relatively simple exercise to obtain a Grant of Probate. It is usually where there is no valid Will, the deceased has left an informal Will, the nominated Executor has died, or all assets and liabilities cannot be easily identified, that an Application for a Grant of Probate or Grant of Letters of Administration becomes more complex and expensive exercise.

Butlers

At Butlers we pride ourselves on being “The Personal Law Firm”. Our commitment at Butlers is to make the law more accessible, affordable, understandable and human. We aim to reduce your concerns by speaking and writing in plain English, cutting through legal jargon and keeping you informed at all times. Through it all, we work closely with your family’s accountant, bank manager, financial adviser, and other professionals as required. We therefore encourage you to contact us if we may be of any assistance.

Copyright © 2003 - 2012 - Butlers Barristers & Solicitors

Disclaimer : This handout is provided by Butlers for general information purposes only. While every care has been taken in preparing this handout, it is intended to be a guide only, and no warranty is given as to the accuracy, currency or completeness of the information contained herein. It is not intended to be, nor should it be, relied upon as a substitute for legal or other professional advice. Formal legal advice should be sought in particular matters.