

GUIDE TO PROBATE

What is Probate?

Probate is an Order of the Supreme Court confirming that the deceased's Will is valid. Whether or not you need a Grant of Probate depends on the type and value of assets held by the person at the time they passed away. To find out more about whether you need a grant of probate check our article: [Is a grant of probate needed?](#)

STAGE ONE: APPLICATION FOR PROBATE

1 The Will

The first step is to get a copy of the deceased's Will. If you aren't sure where the Will is, some important places to look for the Will include:

- Their home office and personal papers;
- A law firm which your loved one used;
- The NSW Trustee & Guardian;
- Banks and financial institutions where accounts were held;
- The Supreme Court Will deposit registry.

2 Your initial appointment

Once you have the death certificate and a copy of the Will, make an appointment to see your Solicitor. At this meeting the solicitor will run through the [Client Probate checklist](#) and the [approximate cost of probate](#).

3 Intended application for probate

A probate filing fee will be noted as a disbursement in the cost agreement, which you sign to proceed with the matter. This is used as a deposit and the money is held in trust, pending the filing of the application. The fee is based on the value of assets held by the Estate, this fee is charged by the Supreme Court of New South Wales and is based upon the gross value of the deceased person's assets in NSW.

During this stage, your Solicitor will publish a Notice of Intended Application for probate. This notice is published on the Supreme Court Online Registry website for 14 days. It allows any potential beneficiaries or other people who may want to make a claim on the deceased Estate to be aware that the person has passed away and the process for probate and asset distribution has begun.



4 Collation of assets

Your Solicitor will then send letters to:

- Asset holders and creditors, including the deceased banks, share registry, and human services to obtain the value of the asset at date of death and the asset holder forms/paperwork to be signed by the executor for release of the assets. This will also be used to calculate the gross value of the Estate and is disclosed to the court in the Inventory of Property.
- Beneficiaries of the Estate, to provide them a copy of the Will, confirm their contact details, and request verification of identity so that any entitlements can be distributed once all assets have been collected.
- Your Solicitor will also do a title search on InfoTrack to see if there were properties held in the deceased's name. This will be declared in the inventory of property to the Supreme Court.

5 Updated cost agreement

Once all the information regarding the assets of the Estate has been collated you will receive an updated cost agreement to confirm any changes to our initial estimate, the filing fee for probate as well as an updated stage 1 and 2 estimate of the cost (only if applicable following enquiries).

6 Probate application

Your Solicitor will then prepare the following documents for your probate application:

Summons for Probate:

- Executor's Affidavit
- Inventory of assets and liabilities
- Original Death Certificate
- Original copy of the Will

7 Submitting the Probate application

When your Solicitor has collected all the information necessary to prepare the probate application, they will schedule a sign-off meeting to go through all the information. Following this they will lodge the application with the Supreme Court. This is when they will use the filing fee paid earlier into the trust account.

Applications can take up to 20 working days from the date of filing. These delays are due to the high number of applications received and the availability of Registrars to assess the applications. If the Court is not satisfied with any aspects of the probate application, it will "raise a requisition" which is essentially a letter to your solicitor seeking further information before the Court will make the grant of probate.

Your Solicitor will contact you if any additional information is required to reply to the requisition. Once the replies to requisitions have been submitted to the Supreme Court it could take up to 20 working days from the receipt of additional information. If the court is satisfied with all of the information they will grant the Sealed Probate.



STAGE TWO: REALISATION OF ASSETS

Once your Solicitor has received the grant of probate, they will proceed to the administration and distribution of the Estate in accordance with the deceased's Will and the executor's instructions. The distribution and finalisation of the Estate is charged by hourly rates and the time will be estimated during stage 1. Your Solicitor will update the cost agreement if required following the searches.

With a copy of the sealed Probate, your Solicitor will send asset release forms to each asset holder to request the funds. This step can take a few weeks as your Solicitor will write to all asset holders with the release forms to authorise the asset holder (bank, share registry) to release the money held by the deceased to our trust account to hold pending distribution.

Any money that has been collected from the deceased's assets will be held in the Solicitor's Trust account. The money is kept separate from the executor's personal bank accounts and can only be paid out by the asset holder to either the Solicitor's Trust account or a bank account in the name of "Estate of the Late..."

STAGE THREE: DISTRIBUTION OF FUNDS

When your Solicitor starts receiving funds from the asset holders, including closed bank accounts, funds from shares, sale of cars etc they will file the notice to creditors in preparation for distribution.

During this stage, a second notice may be published in the online registry, called the "Notice to Creditors". This step is completed to advise any creditors or interested parties that after 30 days from the notice and 6 months from the date of death, the executor intends to distribute the assets.

Once all funds are received, your Solicitor will prepare a statement of proposed distribution that includes the amounts to be paid to each beneficiary in accordance with the Will. They then contact the beneficiaries to obtain their payment instructions by letter and phone.

The final step is providing the executor with a statement of proposed distribution and seeking their authority to sign and authorising your Solicitor to make payments to everyone.

As you can see applying for probate is a lengthy and time-consuming process. The process is formal and all steps must be completed correctly to ensure the Grant of Probate is issued by the Court. Our friendly probate team is experienced and empathetic to your situation. Contact us on 9523 5535 for a free 15-minute consultation to discuss your situation in relation to your loved ones Estate.

9523 5535

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