



## What is Probate?

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PROBATE

### What is Probate?

A Grant of Probate is an official document issued by the Court confirming:

- the Executor named in the Will has the right to administer the estate; and
- the Will is the last valid Will of the deceased.

IS ONE NECESSARY?

### Do I need Probate?

If an Executor obtains Probate, it will facilitate the obtaining of information and assets relating to the deceased.

If a claim is brought against the estate, the Executor will be recognised as the person who has the authority to represent the estate and defend against any claim.

Organisations often require a Grant of Probate before discussing the affairs of the deceased or releasing the deceased's assets. With Probate, an organisation can be confident that they are dealing with the right person.

Some organisations will always require Probate, others will require Probate only in certain situations. Ultimately, whether Probate needs to be obtained depends on the policy set by the organisation.

Organisations which do not require Probate will usually require the Executor to personally guarantee the organisation from loss.

With Probate, the Executor may not be liable if assets are distributed in accordance with the Will, even if a newer Will is later located.

NO WILL OR EXECUTORS

### The Executors can't act or there is no Will

An application for a Grant of Letters of Administration is available:

- if no Will exists;
- if named Executors cannot act; or
- if named Executors do not wish to act.

The law determines who can apply for the Grant, and the order of priority if multiple parties are interested in making the application.

## OBTAINING PROBATE

### What's involved to obtain Probate?

The steps are:

1. prepare notice of intention to apply;
2. advertise in publications as directed by the Court;
3. respond to deficiencies in the Will or capacity issues in the Death Certificate;
4. effect service on the Public Trustee of Queensland;
5. prepare affidavits;
6. file documentation with the Court;
7. respond to third party challenges to the application; and
8. provide further information or documentation requested by the Court.

If Probate is required, the proper administration of the estate will be delayed until Probate is granted.

This can be a lengthy and complicated process. An experienced Wills and Estates Lawyer can address any questions you have and keep the process moving.

## CLIENT TESTIMONIAL

*My elderly mother passed away. Probate needed to be granted because my mother spent her final years in a nursing home.*

*Loan Chow was very approachable, professional and knowledgeable. Loan quickly put my mind at ease with regards to the process of obtaining Probate. Loan answered all my questions in a manner which I could easily understand. She outlined the options for my involvement in the process and listened to and acted upon my preferences.*

*Extensive notes were taken during each meeting. I received regular and prompt correspondence via email regarding both the meetings and other pertinent information.*

*My experience with YHC Lawyers was very positive. I would certainly use YHC Lawyers in the future.*

*- D. R., an Estate Administration Client*

### More Questions?

For more information or to enquire about how we can assist you, please contact Loan Chow on **(07) 3160 3300** or [lchow@yhclawyers.com.au](mailto:lchow@yhclawyers.com.au).

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