

WHAT IS PROBATE?

*Matthew Wallis, Senior Associate - Litigation and Wills and Estate Planning, and
Paul Greer, Solicitor - Commercial Law & Litigation
Hudson Henning & Goodman*

Dealing with the death of a friend or family-member is often a difficult period, as feelings of grief and loss combine with the realities of settling the deceased estate. In these circumstances, it is useful to be aware of the procedure for administering the estate.

In most cases, the executor appointed by a will must apply to the Supreme Court of Western Australia for a "grant of probate". Probate involves the court approving and confirming the last will of the deceased as their last will, which then authorises the executor to proceed with the administration of the estate. In limited cases, it is possible for the executor to avoid obtaining a grant of probate, for example, where the assets of the deceased are limited to small holdings in bank accounts and administering the estate on the basis of the will only. However, it is often prudent for an executor to obtain a grant of probate even where it is not necessary – for example, there may be disputes.

The application for probate normally includes an affidavit by the executor, confirming the document or documents constituting the deceased's last will, and also a statement of assets and liabilities, summarising the net asset position of the estate. Court fees are charged on the application, with the scale of the fee determined by the value of the estate.

The executor of a deceased estate should consider obtaining legal advice in relation to the probate application, and the administration of the estate in general. If possible, the following information and documents should be brought to the initial meeting with a solicitor:

- Will of the deceased;
- Death certificate;
- Details of all assets of the estate, including all real estate, bank accounts, shares, superannuation, and debts owed to the deceased;
- Details of all liabilities of the estate, including funeral and medical costs, bank debts, and other debts owed by the deceased;
- Whether the deceased has been lodging tax returns.

Once the grant of probate has been obtained, the executor should proceed with administering the estate by taking in and distributing all estate property in accordance with the will.

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HHG Legal Group,
Hudson Henning & Goodman
and Wheatleys Legal
ACN 122 853 507
ABN 54 122 853 507

www.hhg.com.au
reception@hhg.com.au

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