When do you have to get a Grant of Probate?

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Often, when getting started with the administration of a deceased estate, the focus is to work towards preparing a Grant of Probate.

But is it always necessary to obtain a Grant of Probate? The answer is often, but not always. There are certain instances where it is possible to deal with the assets of a deceased estate without the need to obtain a Grant of Probate.

What is a Grant of Probate?

A Grant of Probate is effectively a 'licence' granted by the Supreme Court of New South Wales to the executors named in the Will. The Grant provides the executors with the authority to be able to administer the deceased's estate, to be able to deal with the assets and liabilities of that estate and then distribute the remainder of the assets to the beneficiaries provided for in the Will.

When is it possible that a Grant of Probate may not be required?

You may not need to obtain a Grant of Probate where:

- all the assets were owned by the deceased jointly, as joint tenants, with their spouse or another party. This would include assets such as:
  - the family home;
  - an investment property:
  - jointly held bank accounts;

- jointly held shares or other investments;

- the primary asset in the deceased's name alone was a superannuation benefit, and the deceased made a Binding Death Benefit Nomination to a surviving spouse or other relevant dependant;

- the only assets owned by the deceased, in their name alone and in New South Wales, had a combined value of less than $50,000.00. This value is a general guide only and may be less depending on the specific rules and requirements of the relevant bank or investment body.

When will a Grant of Probate definitely be required?

It will definitely be necessary to make an Application for a Grant of Probate of the Will to deal with the assets of an estate when the deceased held:

- any real estate in their name alone;

- a share of real estate with others as tenants in common. In this case, the deceased might own a specific share of the property in their own name, as opposed to holding the whole property as joint tenants with a spouse or other party;

- any bank accounts held in their name alone with a value in excess of $50,000.00 (this is a general value used by most banks, although on occasions some financial institutions will have a lower threshold at which they will require Probate);

- any company shares in their name alone;

- any other assets with a value in excess of approximately $50,000.00.

A Grant of Probate may also be needed where there is a dispute with one or more parties contesting the Will or who should benefit from the estate. For example, although the deceased may only have a superannuation benefit, there may be a dispute as to whether the benefits should pass to a surviving spouse or to children of the deceased.

As an executor, I don't know where to start

Often, the best place to start is to identify the assets and liabilities of the estate. From there it is possible to build a plan for how to administer the estate.

If you're struggling with confirming the assets and liabilities, we are able to assist you in making the relevant enquiries to the investment bodies as to the value of the asset and the requirements for dealing with the asset.

How can a Probate lawyer help?

It is often difficult to get started with administering a deceased estate. Often, it is both an emotional procedure as well as a major undertaking. At E&A Lawyers, we can assist you with the necessary steps to get started or manage the administration from start to finish.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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