



## When is probate required in NSW?

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When a person passes away, there are important legal steps that must be taken before their estate can be finalised and their assets distributed to the intended beneficiaries. One of those steps may involve the executor applying for a Grant of Probate to allow them the authority to administer the estate. While probate is commonly required, it is not necessary in every case.

This article sets out a general guide to understanding when probate is necessary, when it may not be, and what steps you should take next. However, each estate is different, and we strongly recommend obtaining advice tailored to the specific assets and circumstances involved.

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## What is a Grant of Probate?

A Grant of Probate is a legal document issued by the Supreme Court of New South Wales. It confirms that [the Will of the deceased person is valid](#) and the last Will left by the deceased. It gives the appointed executor(s) the authority to deal with the estate, including managing the deceased's assets and distributing the estate to the beneficiaries according to the terms of the Will.

In practical terms, a Grant of Probate acts as a form of licence or endorsement from the Court. It tells banks, share registries, the NSW Land Registry Services, and other asset bodies and organisations that the executor has been officially recognised as the appropriate person representing the estate, who is authorised to deal with the deceased's assets.

Probate ensures the proper legal process is followed and provides protection to those holding the deceased's assets (such as financial institutions) in releasing funds or [transferring title of property of the deceased](#).

Whether a Grant of Probate is needed depends on the nature of the deceased's assets, how they were owned, and the requirements of the institutions holding those assets. Understanding when probate is required can help avoid unnecessary delays and ensure the estate is administered correctly from the outset.

## When is probate not required?

There are some circumstances where probate may not be required, particularly if the estate is simple, small, or where assets are held in a specific way. The most common examples include:

### Assets held jointly (as joint tenants)

If the deceased person owned property jointly with another person, such as a spouse, the asset typically passes automatically to the surviving joint owner. This is common for:

- the family home or other real estate held as joint tenants;
- joint bank accounts;
- jointly held investments or shares.

In these cases, the surviving joint owner usually needs to provide a death certificate, complete some forms and attend to some more straightforward steps, but no probate is required to transfer ownership.

It is important to check whether ownership was held as joint tenants, which would not require probate, or as tenants in common, which will likely require probate.

### Superannuation with a nominated beneficiary

Superannuation does not automatically form part of a deceased's estate. If the deceased had a [valid binding nomination](#) (often to a spouse or dependant), the superannuation fund may pay the death benefit directly to the nominated person, bypassing the estate and avoiding the need for probate.

Even where the deceased did not leave a binding nomination for their superannuation, the superannuation proceeds may be able to be paid to the deceased's dependents without the need to obtain probate.

However, if the superannuation proceeds are to be paid to the estate, probate may then be required to release those funds.

### Low value assets

If the deceased only had small amounts of money in bank accounts or minor assets held solely in their name, financial institutions may allow the funds to be released without probate.

Many banks will release funds under \$50,000 without probate. However, each bank has its own internal policies, and some may require probate at a much lower threshold.

For share registries or investment bodies, the limit is often stricter, and probate is commonly required even for smaller holdings.

As a first step in administering an estate, it is usually necessary to contact the relevant institutions to confirm the value of the asset at the date of death and their requirements to administer the asset.

## When is probate required?

There are clear situations where probate will definitely be required to deal with the assets of the estate. This typically applies when the deceased owned assets in their sole name or held assets in a manner that cannot transfer automatically.

### Real estate in sole name

If the deceased owned any property in their name alone, you will need to obtain a Grant of Probate to sell or transfer the property.

### Property held as tenants in common

Where the deceased held a share of property with another person as tenants in common, their interest does not automatically pass to the surviving owner. Their share forms part of the estate and must be dealt with under the terms of the Will.

### Bank accounts in sole name over \$50,000

Most financial institutions will not release funds from accounts with a balance above \$50,000 unless you produce a Grant of Probate. Some may have lower thresholds, especially for term deposits or investments.

### Shares or managed funds in sole name

If the deceased owned any listed shares, managed investments, or company interests in their own name, you will likely need probate to transfer or sell those assets.

## Significant value assets in general

Even if the estate doesn't include property, if the total value of all assets exceeds \$50,000, most institutions will require probate to protect themselves before releasing any funds or securities.

## Are there other reasons to obtain probate?

Even if probate is not strictly required, there are several situations where it may still be beneficial or advisable for the executor to obtain probate.

### The Will creates a testamentary trust

If the Will establishes a testamentary trust, it is often advisable to obtain probate, even if all assets are held jointly or otherwise do not legally require it.

Probate acts as formal recognition by the Court that the Will is valid and that the executor has authority to act. This adds legal certainty and credibility when the trustee of the testamentary trust starts administering the trust.

Some third parties (including accountants, investment managers, or the ATO) may be more comfortable dealing with a trustee under a formally probated Will, especially where trust income is distributed to minor or vulnerable beneficiaries.

You can learn more about testamentary trusts in our earlier blog, ["A guide to using Testamentary Discretionary Trusts"](#).

### Protecting the executor from liability

Probate provides the executor with certain statutory protections. If the executor acts in good faith under a Grant of Probate, they are generally protected (subject to certain limitations) from personal liability in the event that an unknown Will surfaces or a dispute arises later.

Without probate, there is a risk that:

- a later Will could be found;
- a family provision claim could be made without the executor having formal standing in court; or
- the executor might unknowingly distribute assets incorrectly and be exposed to personal liability.

### Formal recognition of authority

Even if all known assets pass automatically (for example, via joint ownership), the Grant of Probate serves as official proof of the executor's authority. This can be helpful for:

- accessing digital accounts or subscription services;
- negotiating or [defending claims on behalf of the estate](#); or
- communicating with government bodies (such as the ATO or Centrelink).

## Why does it matter?

If you try to deal with certain assets without a Grant of Probate when it is required, the banks, investment bodies or land registry will refuse to act. They would generally not want to expose themselves to the risk of releasing the deceased's assets to the incorrect person. This can cause delays and unnecessary costs.

Probate provides security for institutions and certainty for the executor. It also sets the legal process in motion for distributing the estate in accordance with the deceased's Will.

## How we can help

We understand that dealing with a loved one's estate can be overwhelming, especially during a time of grief. Our team regularly assists clients in determining whether probate is necessary and in guiding executors through the application process.

We can:

- help identify the assets of the estate and confirm ownership structures;
- liaise with banks, superannuation funds and investment bodies;
- prepare and file the probate application with the Supreme Court of NSW; and
- support you through the administration and distribution of the estate.

At E&A Lawyers, we are here to guide you through the process, whether you need help getting started or comprehensive support with administering the estate from beginning to end.

## Contacting E&A Lawyers

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

[02 9997 2111](tel:0299972111)

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