



## PROBATE/ESTATE INFORMATION SHEET

### The meaning of Probate

Many people equate Probate with the payment of tax but there are no Death Duties in Victoria and obtaining Probate describes the process associated with proving to the Supreme Court that a person has died, that they left a Will and owned real estate or other assets valued at over \$50,000

### Death Certificate

A Grant of Probate cannot be applied for until the Death Certificate has issued. This will usually be posted to the family member who notified of death 2-3 weeks after death.

### Grant of Probate

The Court will normally issue a Grant of Probate to the Executor named in the Will. This Grant gives the Executor the authority to collect all assets of the deceased and to then deal with the assets in accordance with the Will, with a view to distributing the assets to beneficiaries and thereby finalising the estate.

### Grant of Letters of Administration

If the deceased did not leave a Will an application is made for a Grant of Letters of Administration. The person to whom the Grant is made will usually be a close relative and the Grant entitles the Administrator to collect the deceased's assets and distribute them in accordance with the laws of intestacy.

### Role of the Executor

The first challenge for people who need to deal with the death of a family member or friend is to arrange the funeral. This is usually arranged without the need for consultation with a lawyer and involves the close co-operation of other family and friends. If there is any doubt about those arrangements, the Executor does have the benefit of being nominated in the Will to attend to the affairs of the Estate

generally but, at this early stage there will not be a Grant of Probate recording the final appointment of the Executor.

## **Funeral**

Funeral Directors are experienced in handling the emotions associated with the recent death of a loved one. They will usually seek payment of a deposit and final payment within 30 days. Payments can usually be arranged directly from the deceased's bank account upon production of the Death Certificate.

## **Reading of the Will**

Usually there is no need for a formal reading of the Will and the Executor informally notifies interested parties of the terms of the Will. Close relatives are entitled to a copy of the Will if they request it. After the funeral, the Executor will usually instruct a solicitor to apply for a Grant of Probate to authorise the Executor to deal with the assets of the Deceased. If there was no Will, a suitably qualified person will apply for a Grant of Letters of Administration of the Estate.

## **Assets of the Estate**

### Survivorship

If the Deceased's assets were all jointly owned with a spouse or partner, then the legal principle of Survivorship means that all those assets automatically pass to the survivor. This simplifies matters and the change of ownership is usually achieved by providing a copy of the Death Certificate and, if necessary, completion of a Survivorship Application.

Legal costs in such situations are normally between \$500 and \$1,000.

### Small Estate

If the assets of the Estate do not include real estate (land) and are valued at less than \$50,000, then it is usually possible to deal with the Estate without the need for a Grant of Probate or Administration. Asset-holders (usually banks) will allow accounts to be closed and the proceeds paid to the Estate upon signing of Indemnity documents.

Legal costs in such situations are normally between \$500 and \$1,000.

## Larger Estates

An Estate with assets valued at more than \$50,000 or where the Deceased was the owner of real estate (other than as a joint owner) can only be administered with a Grant of Probate or Administration.

This involves collection of details of assets, confirmation with asset-holders, preparation of an Inventory of Assets, having the Executor or Administrator sign an Affidavit and present these documents, with the Death Certificate and original Will, to the Registrar of Probates who will then seal the Grant.

## **Administration of the Estate**

Once the Grant is obtained, the Executor or Administrator may collect the assets and then divide them in accordance with the Will or Rules of Intestacy. Main assets are:-

Real Estate	Insurance
Bank Accounts	Shareholding in Private Companies
Superannuation	Shareholding in Public Companies

Once an inventory of assets has been finalised and a Grant of Probate or Administration obtained those assets are collected and become available for distribution to beneficiaries. Prior to final distribution the Executor or Administrator resolves matters relating to tax, social services entitlements, payment of outstanding liabilities and ensures that any assets of the Estate are insured until the estate is finalised.

## **Time for Completion**

Most Estates consist of a principal place of residence, perhaps another property, money invested with banks, superannuation and perhaps some shareholdings. Such Estates can usually be finalised within three to four months of death, provided that the death certificate is available. If there is any possibility of a contest in relation to the Estate, it is wise to wait six months from the date of the Grant before distribution.

## **Legal Costs**

If a Grant of Probate or Administration is required our costs will usually be approximately \$3,500 - \$4,000 plus GST and Government fees of approximately \$500. These costs will increase if the Estate is more complex than described above, either because of complex assets or complex distribution. We always keep the Executor or Administrator informed of any increase in costs.

## Definitions

Deceased:	The person who has died
Testator:	The deceased, if the deceased left a Will
Intestate:	The deceased, if the deceased did not leave a Will
Estate:	The assets of the deceased
Executor:	The person named in the Will to finalise the Estate of the deceased
Administrator:	The person who applies for approval to finalise the Estate of the intestate
Beneficiary:	A person who is entitled to share in the Estate of the deceased
Grant of Probate or Administration:	The legal authority for the Executor or Administrator to represent the Estate
Asset-holder	A person or organisation that holds assets on behalf of the deceased, such as a bank or the Land Titles Office
Registrar	The Registrar of Probate is an official appointed by the Supreme Court of Victoria to supervise the administration of estates
Re-seal	A re-seal of the Grant may be required in respect of assets held outside of Victoria
Superannuation	Benefits flowing from a superannuation fund may pass directly to beneficiaries or to the Estate