

WHAT IS PROBATE?

Probate is an official recognition by a court that a Will is legally valid.

DO I NEED PROBATE?

In some circumstances, it is necessary to make an application for Probate. For example, an application for Probate may be required when there is a dispute with respect to the provisions of the Will, or if an institution such as a bank or insurance company requires that probate be obtained prior to releasing funds to the estate.

In some circumstances a grant of probate is not required (eg. if an asset such as a home is held in joint names, it will be automatically transferred to the surviving joint owner). It is important to always check with the organization that you are seeking to obtain money from as to whether or not they require a grant of probate.

WHO APPLIES FOR PROBATE?

The executor of a Will is the person entitled to apply to the Supreme Court for a grant of probate. The court will only issue the grant of probate when it is satisfied that the Will presented to the court is the last Will of the person that has died.

HOW TO APPLY FOR PROBATE

To apply for a grant of probate there are five basic steps: -

1. You must advertise your intention to apply for a grant of probate in both the Queensland Law Reporter and the Public Notices section of the daily paper in the area the deceased last lived.
2. You must provide a copy of that advertisement to the Public Trustee.
3. You must wait for a period of two weeks after the advertisements have been placed to give other parties time to object to the grant of probate. Anyone wishing to object can file a caveat in the court which will stop a grant of probate being made until that claim has been resolved.
4. The appropriate documentation must be prepared to make your application and support your application. This is very important, as the court will carefully consider each application. To make the application you will also need:
 - a) the original Will
 - b) a certified copy of the death certificate
 - c) a copy of the advertisements
5. The application is to be filed in the Supreme Court nearest to where the deceased lived.

After a Court receives an application for a Grant of Probate the court will consider the application and if satisfied will order the Grant of Probate.

At Ferguson Cannon we have extensive experience in this area and would be more than happy to discuss with you details of costs and outline the procedure required to ensure a successful and speedy Grant of Probate.

Any enquiries should be directed to Byron Cannon, Director.