

## GRANTS OF PROBATE

### What is a grant of probate?

Basically, a grant of probate is a certificate from the Supreme Court of Queensland that a particular will of a deceased person is the one that is legally valid. It is an order that no other will made by that person is to be applied in the administration of the estate and is proof that the person(s) named in the will as executor(s) is/are legally entitled to deal with the property and other assets of the deceased.

### Why obtain a grant of probate?

Usually the reason a grant of probate is required is that a bank, insurance company or superannuation fund will not release moneys held on behalf of the deceased except to a person who has obtained it. This is typically the case where the amount involved is substantial (e.g. over \$10,000.00) but the exact rules as to when probate is required are set by each bank or other financial institution and there is some variation between them.

### How is a grant of probate obtained?

There are three steps involved in obtaining a grant of probate, namely:

1. A notice must be advertised in the Queensland Law Reporter and a newspaper circulating daily in the area of the last address of the deceased person. The purpose of this notice is to allow anyone claiming to have another will giving them the right to administer the estate to come forward and lodge an objection before probate is granted.
2. The same notice must also be served on the Public Trustee (in case it holds a more recent will made by the person who has passed away or thinks it should administer the estate for some other reason).
3. Once 14 days have passed after the notices are published an application is lodged in the Supreme Court Registry together with the will and death certificate and an affidavit by the executor that he/she is the person named in the will. The Court will usually grant probate a couple of weeks after the application is made.

### Is it always necessary to obtain a grant of probate?

No. In some cases probate is not required. This would usually be where the value of the estate is small or where the only major asset involved is a house or land. As there are significant costs involved in obtaining probate (approximately \$3,000 including advertising costs, court filing charges and lawyer's fees) it is generally better to avoid it where possible. However, if there is any concern over a possible alternative claim to the right to administer the estate then a grant of probate most definitely should be obtained.

**Mackay Office**  
Level 1, 78 Victoria Street  
Mackay Qld 4740  
PO Box 1035 Mackay Qld 4740

**P** 07 4911 0500 **F** 07 4911 0599

**Kelly Legal Pty Ltd**  
**ABN 15 125 481 361**



**E** [mail@kellylegal.com.au](mailto:mail@kellylegal.com.au)

**Brisbane Office**  
Bank of NSW Chambers, Level 4,  
33 Queen Street Brisbane Qld 4000  
PO Box 13531 George Street Qld 4003

**P** 07 3182 1211 **F** 07 3012 9790

[www.kellylegal.com.au](http://www.kellylegal.com.au)

Disclaimer: The contents of this article are not intended as professional legal advice. You should obtain independent legal advice before relying or acting on any statements, recommendations or opinions contained in this article. Kelly Legal Pty Ltd cannot accept any liability or loss occurring as a result of anyone acting in reliance on any material contained in this article.