

Probate: A Fact Sheet

What is probate?

Probate is the process of proving that a will maker is deceased, their will is valid, and the person making the application is the executor. If all that is proven, the Court will grant that person permission to deal with the deceased's estate.

Who makes the application?

The executor named in the will makes the application.

When can the application be made?

An application for probate can be made from 14 days after the will maker's death.

Where does the executor make an application for probate?

They apply to the Probate Office of the Supreme Court of Western Australia, located on the 11th Floor of 28 Barrack Street, Perth.

I live in a remote area of WA. How do I lodge a probate application?

You can post your application to the Probate Office. We recommend that you send the documents by registered post.

Are there any circumstances when probate isn't required?

The executor doesn't have to make an application for probate if the deceased:

- only owned property as a joint tenant with another person
- only owned assets jointly with another person (for example bank accounts or shares)
- had very few personal possessions or
- had a vehicle as their only personal property – if this applies, contact the Department of Transport to find out if you can transfer the vehicle licence without applying for probate.

There are some situations where a probate application isn't required even though the deceased has bank accounts, shares, or superannuation funds solely in their name. In these cases it's advisable for you to get legal advice to find out if probate is needed.

Do I need to apply for probate if the deceased had assets in another state but none in Western Australia?

In this case you need to apply for probate in the other state, not in WA. The deceased must have at least one asset in WA for you to apply for probate here. If the deceased had assets in WA **as well as** in another Australian state, you can make the application in WA and include the assets located in the other state in that application.

Can I get a grant for probate in my name if the will maker has appointed another person and me as executors, but the other person doesn't want to apply for a grant?

Yes, you can. The Court might grant probate in favour of the executor who's applied, and order that the other executor who hasn't can apply in future. In some circumstances, the executor who's applied must file a letter of consent from the executor not applying or evidence that they've given the other executor notice of the application.

Which documents do I need to prepare for an application for probate?

The documents to prepare for your application for probate are:

- a motion for probate
- an affidavit (a written and sworn statement that can be used as evidence in court) from you, the applicant and
- a statement of the deceased's assets and liabilities (what they owned and owed).

You may need other documents as well and it's a good idea to get legal advice about what those might be.

Disclaimer: This document is provided by Citizens Advice Bureau and is intended as a guide only. This information may not be appropriate to your specific situation and you should seek independent legal advice for your individual situation. **Published August 2015.**



If I want a lawyer's assistance with my application for probate, which documents and information do I need to show them?

The documents to show your lawyer about an application for probate are:

- the original will
- the deceased's death certificate
- a statement of the deceased's assets and liabilities at the date of their death and
- the full names and current residential addresses of the will's witnesses.

If the first executor is dead and you're applying for probate as the substitute executor, you also need the date of the first executor's death and a copy of their death certificate. You should also inform your lawyer if the deceased married, had an annulment, or divorced after making their will, because any of these actions may have revoked the will.

What should I do if I can't find the current address of a witness to the will?

You must provide the current residential addresses of the witnesses to the will. If you can't find a witness' current address, you should explain in your affidavit the attempts you made to find it. These could include searching the phone book and state electoral roll and contacting solicitors' offices or other institutions where the deceased signed the will. If the witness was a lawyer then their current legal practice address can be given as their current address, but this is the only exception.

I've completed my application for probate. What do I do now?

You have to swear that all the information in your affidavit is true and correct, and you and your witness must sign the documents to be filed before either a Justice of the Peace **or** an experienced lawyer who has held a practice certificate for at least two years. You and your witness must sign at the bottom of each page of the affidavit and the final page where indicated. Both of you must also sign on the cover of the will or, if that's not possible, somewhere on the will that doesn't interfere with its content. This called "marking" the will.

Important note: You have to be very careful in how you deal with the original will. Please **do not:**

- remove any staples or bindings in the original will, even if you need to photocopy it
- staple, pin, or paperclip anything to the original when preparing your application
- write on or make any marking in the original
- fold the original

Which documents do I need to file with the Court?

The documents to file with your standard application for probate are:

- a motion for probate
- an affidavit from you, the applicant
- a statement of the deceased's assets and liabilities
- the original will
- the deceased's death certificate – the original and a copy; and
- the filing fee.

Once I've been granted probate, what do I do?

Dealing with a deceased estate is a complicated process and we recommend getting legal advice on what you have to do next.

Need Legal Advice?

Contact Citizens Advice Bureau to make a low-cost appointment at our Perth office, or for details of how to make an appointment at your nearest branch or by telephone.

(08) 9221 5711 (Lines open Mon-Fri 9:30am-4:00pm)

Level 1, 25 Barrack Street, Perth WA 6000

