



Delivering Solutions Since 1974



Q&S WILLS & ESTATES UPDATE

ISSUE 6, 24 AUGUST 2010

WHAT IS "PROBATE" ?

Most people hear the word "Probate" and wonder what it means.

Let's clear up some misconceptions.

"Probate" does not have anything to do with taxes. "Probate Duties" were abolished in Queensland many years ago.

Nowadays, the usual expenses associated with Probate are the court filing fee, advertising costs and legal fees. No taxes as such.

There is a difference between Probate and administering an estate. Every estate must be administered, but not every estate requires Probate.

"Administering" an estate generally means collecting the assets, paying the debts and distributing the estate in accordance with the will.

To put it simply, Probate is a document issued by the Supreme Court. It contains the court's official seal, so that it is accepted as your authority to deal with the estate.

To obtain Probate, you must prove to the court that:

- The person named in the will is deceased;
- The will is in fact the last and valid will of the deceased person; and
- You are in fact the executor named in the will.

This is proven by affidavits (sworn statements) verifying these details. If there are any conditions attached to your appointment as executor, the fulfillment of those conditions must also be proven to the court.

As stated above, it is not always necessary to obtain Probate. However, if you administer an estate in accordance with a will, and that will is later found to be not valid or not the last will of the deceased, then you will be personally liable to the true beneficiaries for the value wrongly distributed. You will **not** be liable in this way if you have obtained Probate of the will.

You will need to get Probate if an asset-holder (such as a bank) insists on it. They will usually do this if the estate asset they hold is very substantial (e.g. a bank account over the Probate threshold set by the particular bank – usually about \$50,000).

It usually takes about 3 months to get Probate. This includes placing advertisements (you will see them in the Public Notices section of a newspaper), waiting for the 14-day public notice period to expire, preparing the necessary documents and filing them in the Supreme Court, and then waiting for the court to assess the documents and issue the Probate document.

Our partner, Russell Leneham, is an **Accredited Specialist in Wills & Estates**. Russell and his team can assist with all your estate needs, including estate planning, estate administration, and estate disputes.

Offices at:

Brisbane
Level 28 Central Plaza One
345 Queen Street
Brisbane

Beenleigh
99 George Street
Beenleigh

Caboolture
25 King Street
Corner Morayfield Road
Caboolture

Cleveland
141 Shore Street West
Cleveland

Gold Coast
64 Marine Parade
Southport

Mermaid Beach
2406 Gold Coast Hwy
Mermaid Beach

Ipswich
45 Elensborough Street
Ipswich

Telephone
Freecall 1800 652 969

mail@quinnscattini.com.au

Liability limited by a scheme approved under professional standards legislation

