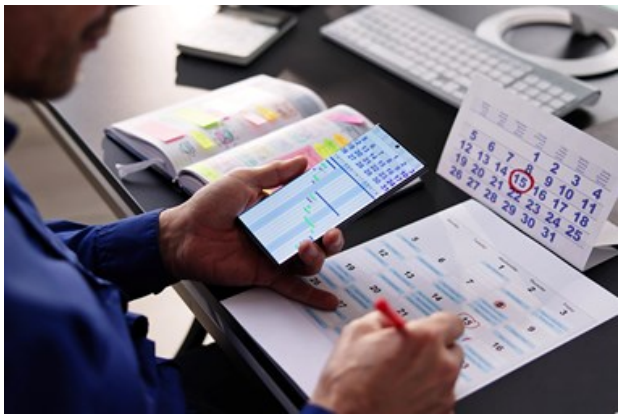


How long does probate take in Victoria?

Date: Sunday April 28, 2024

The timeframe for probate in Victoria can vary, depending on a number of factors; for example, the size and complexity of the deceased estate. Generally, the official Court process of granting an application for a Grant of Probate, assuming the application is complete and accurate, will be 1-4 weeks. However, there are other matters that can delay probate.

In this blog, we step you through the process of applying for a Grant of Probate and provide some information on the types of issues that may delay probate and the distribution of a deceased estate.

What is probate?

When a person dies, and they have a Will, the executor will need to apply for a Grant of Probate. Probate is the process by which a Will is “proved” by the Court. It establishes that the Will is valid as the last Will of the deceased.

Once a Grant of Probate has been made, the executor has the authority to distribute the deceased estate in accordance with the terms of the deceased’s Will. Obtaining a Grant of Probate in Victoria is usually a fairly straightforward process, but complexities can sometimes cause the process to be delayed.

You can read more detailed information about probate in our earlier blog, “A guide to probate in Victoria”.

Timelines and tasks when applying probate

14 days of advertising with the Supreme Court required in the first instance

Before the executor can apply for a Grant of Probate, they must advertise their intention to apply for a Grant of Probate on the Supreme Court of Victoria Probate Online Advertising System. This

advertisement must be published for at least 14 days before the executor can lodge their probate application with the Court.

The appropriate type of grant must be identified in the advertisement placed on the Supreme Court website. An incorrect advertisement will result in the grant not being made and will likely delay and increase the time taken to obtain probate.

After 14 days of advertising, the executor may lodge the application for a Grant of Probate if they have all the relevant documentation. The required documents will differ depending on the estate, but as a general rule, will include:

- providing a certified copy of the death certificate;
- completing and filing a comprehensive affidavit of the executor, which includes a list of assets and liabilities of the estate and their corresponding values, and
- the original Will. If the original Will cannot be found, this can cause delays, and a more comprehensive affidavit may be required, including affidavits from the witnesses to the Will.

1-4 weeks for the Court to process the probate application

Once the application for a Grant of Probate has been filed with the Supreme Court, it usually takes around 1 to 4 weeks for the Court to process the application. Probate is usually a relatively short process but may take months to be granted after the deceased's death due to the delay in obtaining the necessary documents (mentioned above).

Delays if further documents or information are required by the Court

If the Supreme Court of Victoria requires any further documents or information, they will send an email to the executor (if self-represented) of their lawyer (if they have legal representation), which details the further steps required. This is known as "requisitions".

This can range from there being some anomaly with the Will, such as where the Will does not clearly name the executors or beneficiaries or where the death certificate indicates a medical issue that requires evidence from a doctor as to the capacity of the deceased to make a Will.

If requisitions are made, this will add further time to the application as further affidavits or inquiries may need to be made by the executor.

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Urgent applications to obtain a Grant of Probate

In limited circumstances, an urgent grant can be applied for in the Supreme Court. This is known as Letters of Administration *ad colligendum bona.* It allows the executor to deal with a specific part of the estate and where, for some reason, the assets of the estate need to be administered but where a normal grant would not be quick enough.

The most common situation would be where a deceased person has entered into a contract which requires completion after their death.

Here's an example:

- The deceased dies following the sale of their property but prior to settlement of the sale;
- Settlement is expected to take place before a formal Grant of Probate has been made;
- The Court may make an urgent grant to allow the executor to collect the sale proceeds and place the funds into a trust account.

This type of grant permits steps to be taken in the estate (i.e. dealing with certain assets) however it does not permit distribution from the estate to be made to beneficiaries.

Executor should wait six months after a Grant of Probate before distributing assets of the estate

An executor should make their application for a Grant or Probate within a reasonable time frame. Once probate is granted, the executor then has the authority to deal with and distribute the estate in accordance with the terms of the Will.

An executor should wait six months from the date of the Grant of Probate before distributing the estate, to allow for any claims to be made against the estate, such as a Family Provision Claim where a person or persons may challenge the Will.

Executors taking too long

If a beneficiary believes the executor is taking too long to apply for a Grant of Probate, they can bring an application in the Supreme Court under Section 15 of the *Administration and Probate Act* ('the Act'), which gives the Court the power to summon the executor to show cause as to why they have not or should not apply for a Grant of Probate.

Alternatively, if a beneficiary of a Will believes the executor is taking too long to distribute the estate once probate has been granted, and there is no reasonable justification for the delay, the beneficiary can apply to the Supreme Court to have the executor removed from their role, or given deadlines to perform certain aspects of their role.

Under section 34 of the Act, an executor can be removed if any of the following apply:

1. They have remained out of Victoria for more than two years;
2. They consent to being removed from the role as executor;

3. They refuse to act as executor after the Grant of Probate has been made;
4. They are incapable of acting as executor (for example, if they do not have the necessary capacity to act); or
5. They are unfit to act as the executor.

However, if the above situations do arise, the executor is not *automatically* removed. The removal of the executor from their role is required to be authorised by the Court.

How long is ‘too long’ to administer a deceased estate?

The Act does not specify how long is ‘too long’ to administer a deceased estate. This is because it will differ depending on the size and nature of the estate.

In the 2016 decision of *Parsons v Davison NSWSC 1491*, it was found that the executor, who had taken four years to distribute the estate, was not a “fit and proper” person to carry out the duties of an executor and was removed from the role.

However, it should be noted that under Section 49 of the Act, an executor is not required to administer the estate until at least 12 months after the date of death of the deceased, and a beneficiary cannot compel distribution of the estate until this time has elapsed. This is referred to as the Executor’s Year.

As mentioned above, it is recommended that executors wait six months after the date of the Grant of Probate before distributing the estate, to give family members or other loved ones of the deceased a chance to contest the Will.

If a beneficiary believes that the executor is taking too long to distribute the estate, but it is less than 12 months since the date of death of the deceased, it is unlikely the Court will remove the executor on the grounds that they are taking ‘too long’. After twelve months, if an estate has not been distributed, the executor must show good reason for failing to do so.

If you are an executor and have delayed in obtaining a Grant of Probate or distributing the estate, and it has been more than 12 months from the date of death of the deceased, it is important to seek legal advice as soon as possible on how best to proceed.

Get help from a probate lawyer

Obtaining a Grant of Probate and dealing with the administration of an estate can be daunting, whether you are a beneficiary or an executor. If you are an executor, we can help you understand the process and ensure you are effectively fulfilling your role and meeting your obligations.

If you wish to obtain advice on your role as an executor of a Will, we can arrange an obligation-free meeting to inform you of the steps that need to be taken, and we can apply for a grant of probate on your behalf.

Contacting Smith Family Law

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.