

How do I obtain a grant of Letters of Administration in Victoria?

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When a person dies without leaving a Will (known as dying “intestate”), there is no executor to manage their estate and distribute their assets, as an executor is appointed in a Will. In these circumstances, a grant of Letters of Administration made by the Supreme Court of Victoria is required for a person to begin dealing with the deceased’s estate.

What is a grant of Letters of Administration?

A grant of Letters of Administration differs from applying for a grant of Probate, which can generally only be applied for when the deceased has left a Will.

The grant of Letters of Administration gives the Administrator the authority to deal with the deceased’s assets, pay any outstanding debts, and distribute the remaining sum between beneficiaries of the estate in accordance with the formula set out in the *Administration and Probate Act 1958* (Vic).

Who can apply for a grant of Letters of Administration?

The most appropriate person to apply for a grant of Letters of Administration is generally the person entitled to the largest share in the estate. This could be:

- the deceased’s spouse or domestic partner;
- children who are over 18;
- parents of the deceased; or

Where there are several people equally entitled to apply for a grant of Letters of Administration, the court will usually make the grant to the person who applies first.

When should I apply for a grant of Letters of Administration and not probate?

Whether a person needs to apply for a grant of Probate or Letters of Administration (collectively known as a grant of representation) is generally dependent on:

- whether the deceased left a Will; and
- whether the Will adequately appoints an executor; and
- that the executor is willing and able to take on the executorship.

A person can apply for a grant of Probate if the deceased has left a valid Will. A person can also apply for probate of an informal Will. An invalid or informal Will is a document that does not meet the requirements stipulated in the *Wills Act 1997* (Vic), and may include a Will that was not witnessed or signed. In circumstances where the deceased has left an informal Will, the person applying for a grant of Probate must show that the document was intended to be a Will.

If the deceased has not left a Will, and there is no document that appears to record their testamentary intentions, generally, the person with the largest entitlement in the estate will need to apply for a grant of Letters of Administration. The court filing fee associated with applying for a grant of Letters of Administration depends on the size of the estate and is set out by the Probate Office here.

There are some instances where a different type of grant, known as a grant of Letters of Administration with the Will Annexed, is required. This grant will be required when the Will is valid but the nominated executor cannot or does not wish to apply for a grant of Probate (for instance, they have not survived the deceased or do not have full capacity to act).

When this occurs, a different person will need to apply for a grant of Letters of Administration **with the Will annexed** in order to manage and distribute the estate. This type of grant can also be applied for when there is a valid Will, but the Will does not nominate an executor.

Requirements for applying for a grant of Letters of Administration in Victoria?

To apply for a grant of Letters of Administration, you will need the following:

- The death certificate;
- A list of the deceased's assets and liabilities and their values at the date of death;
- Details of the beneficiaries of the estate; and

- Details of the proposed Administrator.

Before the Court will accept the application, the person making the application is required to advertise their intention at least 15 days before applying. This allows anyone who may have a claim to the estate to come forward, and puts creditors on notice that the deceased has died.

How long does it take to get a grant of Letters of Administration?

Once the application has been submitted to the Supreme Court of Victoria, a grant can take between 4 to 6 weeks, depending on the complexity of the estate. If additional documents are required or the probate office issues a requisition, this process may be even longer.

Further reading

- A guide to probate requisitions and how to deal with them
- How long does probate take in Victoria?

I have obtained a grant of Letters of Administration, what now?

The next steps, once the grant of Letters of Administration has been obtained, will differ between estates.

On a general basis, the Administrator can begin discharging any outstanding debts of the estate, collect the assets, update the beneficiaries, and once the six-month period after the grant of Letters of Administration has expired, distribute the assets in accordance with the formula set out in the *Administration and Probate Act 1958* (Vic).

Get help from a deceased estates lawyer

Dealing with the estate of a person who has died without a Will can be challenging. Understanding what sort of grant of representation is required, who can apply, what the process involves and what responsibilities follow is essential for anyone managing a deceased estate. Contact us to discuss your specific circumstances.

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