

INFORMATION KIT

PROBATE

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INTRODUCTION

The Supreme Court of Tasmania

The Supreme Court of Tasmania has jurisdiction in Tasmania to make orders in relation to the validity of a Will of a deceased person, the appointment of an executor or an administrator, and the administration of deceased estates.

The Probate Registry

The Probate Registry deals with all applications for grants of Probate and Letters of Administration of deceased estates in Tasmania. It is responsible for determining, on application for a grant of Probate or Letters of Administration, what document or documents constitute the last Will of the deceased and/or who may be entitled to be the personal representative of the deceased, with power to deal with the estate of the deceased.

Deceased estates

When a person dies leaving assets in Tasmania, somebody (usually the executor of the person's Will) has to deal with the person's estate (e.g. manage and distribute).

If you are named as executor in someone's Will, and you accept this responsibility, then you must carry out the terms of their Will when they die. This is known as administering their estate. The first step is to apply for a grant of probate. This is the court's official recognition that the Will is legally valid and that you have the authority to deal with the estate.

Generally this will involve:

- Identifying and collecting in all assets of the deceased;
- Paying any outstanding debts and necessary expenditure such as funeral expenses;
and
- Distributing the estate to the persons entitled to it.

In order to perform these tasks a grant of Probate or Letters of Administration may be required.

Grants of Probate or Letters of Administration

A grant of Probate or Letters of Administration are legal documents issued under the Seal of the Court which enables the person(s) named as executor(s) or administrator(s) to deal with the assets held by the deceased in Tasmania. It allows money of the deceased held in banks or other financial institutions to be collected and property to be sold or transferred



and debts to be paid. The grant is proof that the person named in the grant is entitled to collect and distribute the estate of the deceased.

The most common grants issued by the Court

Probate

Probate is the process of officially proving the validity of a Will as being the last Will of the deceased. A grant of Probate is issued when the deceased's last Will and testament is proved by one or more executors named in the Will.

Letters of Administration (with the Will annexed)

This is generally granted when the deceased has left a valid Will but the person named as executor cannot or will not apply for a grant. The grant will generally be made in favour of the person who has priority to administer the estate, as set out in Probate Rule 18. For further information please refer to the Information Kit for Letters of Administration (with the Will annexed).

Letters of Administration

If a person dies without a Will or any Will made is not valid, the Court may issue a grant of Letters of Administration. In most instances the grant is made to the next of kin of the deceased, as set out in Probate Rule 19. For further information please refer to the Information Kit for Letters of Administration.



OVERVIEW OF PROCESS

This Information Kit can be used as a guide on how to apply for a grant. The Information Kit is not intended to be a substitute for legal advice but as a basic guide to the application process. It is recommended that when applying to obtain a grant of Probate that you contact the Law Society of Tasmania on 6234 4133 or by visiting their webpage at <http://lst.org.au/> if you wish to seek legal advice.

Applying for a grant

1. Read this Information Kit.
2. Visit our website: http://www.supremecourt.tas.gov.au/probate_and_administration.
3. Obtain the necessary supporting documents:
 - a. original Will (do not remove staples or bindings at any time – even when photocopying);
 - b. double-sided photocopy A4 of the Will (please do not staple this); and
 - c. original Record of Death (Death Certificate).

Note: other supporting documents may be required, for example: a certified copy of the deceased's divorce certificate or a Certificate of delay. Please refer to the Probate Rules and Probate Forms.

4. Download and complete the following Probate Forms:
 - a. Notice of intention to apply for a grant or reseal of a grant (Form 2);
 - b. Application for grant or reseal of a grant (Form 4);
 - c. Affidavit in support of an application for Probate (Form 5); and
 - d. Inventory of assets and liabilities (Form 10).

Visit http://www.supremecourt.tas.gov.au/probate_and_administration/procedure to download the Probate Forms in Word format which will allow you to modify the forms before printing them out.

The format (including font layout) of the forms must not be amended. The content should only be amended when directed, see the notes at the end of each form and the guidelines on page 7 onwards.

Note: Do not sign your forms at this stage.



5. Email your completed and proofed Notice of intention (Form 2):
 - a. in PDF format with the file name containing the full name of the deceased in the following format:

“BLOGGS James Steven.pdf – Notice of Intention to Apply”
 - b. to probate.notices@supremecourt.tas.gov.au;
 - c. with the full name of the deceased in the subject line in the following format:

“BLOGGS James Steven”

Your notice will be published on the Supreme Court of Tasmania website (in accordance with Probate Rule 33(3)).

Note 1: If notices are not sent to the Probate Registry in the above format they may not be published.

Note 2: Notices are not proofed by Registry staff before publication.

Note 3: when one business day has elapsed please visit our website to confirm your notice has been published. If your notice has not been published please contact the Probate Registry.

Note 4: Once your notice has been published on the Supreme Court of Tasmania website for 14 days you may proceed to complete the date of publication in paragraph 13 of Form 5.

6. Sign your Probate Forms (see the guidelines on page 12).
7. File your Probate Forms and supporting documents at the Probate Registry of the Supreme Court of Tasmania (see page 14 for more information).



COMPLETING AND SIGNING APPLICATION DOCUMENTS

Guidelines for completing your Probate Forms:

A. General:

1. The Probate Forms must be typed, not handwritten.
2. The format (including font and layout) of the forms must not be amended. The content should only be amended when directed e.g. blue text.
3. It is recommended that you complete the forms in the following order:
 - a. Notice of intention to apply for a grant or reseal of a grant (Form 2);
 - b. Application for grant (Form 4)
 - c. Affidavit in support of an application for Probate (Form 5); and
 - d. Inventory of assets and liabilities (Form 10).

B. Notice of intention to apply for a grant or reseal of a grant (Form 2)

4. The true legal name of the deceased should be consistent across all documents filed. If it is not, the discrepancy must be explained in the application documents (see the header of all Probate Forms)
5. The date of death should be consistent across the documents. If it is not, the discrepancy must be explained in the application documents. The exact date of death, where it is known, must be stated in the application documents. If the date of death is uncertain the application documents should recite two dates. For example: "...died between 14 January 2015 and 16 January 2015".
6. If there is no address stated in the Will for the deceased please state "not stated" in the relevant field.
7. When stating the date of the Will (the date the Will was signed) please include the date of any codicil or other testamentary disposition (list etc.) e.g. "01/01/1975 (Will) and 02/05/2014 (Codicil)".
8. The true legal name of the applicant should be consistent across all documents filed. If it is not, the discrepancy must be explained in the application documents (see the header of all Probate Forms).
9. The full residential address of the applicant should be provided.



10. Please ensure that the applicants relationship to the deceased is stated e.g. “wife”, “father”, “cousin”, “stranger in blood” (if the deceased is not a blood relation e.g. friend, in-law, client etc.) etc.
11. If you are self-represented and an Australian Legal Practitioner is not filing the application on your behalf please state “N/A” in the relevant field.
12. An address for service must be provided. The address must be a residential or business address. A post box is not acceptable.
13. Please ensure that the notice states the correct application type and the date of any relevant documents are supplied if required.
14. Please complete the required fields of information in the document footer. You do not need to supply a DX number or practitioner name if you are self-represented.

C. Application for grant (Form 4)

15. The precedent affidavit commences with the wording for affirmations used in Tasmania. Please amend it to the appropriate wording if the affidavit is being affirmed in another jurisdiction. No change is required to the wording if the affidavit will be sworn.
16. The true legal name of the deceased should be consistent across all documents filed. If it is not, the discrepancy must be explained in the application documents (see the header of all Probate Forms).
17. The date of death should be consistent across the documents. If it is not, the discrepancy must be explained in the application documents. The exact date of death, where it is known, must be stated in the application documents. If the date of death is uncertain the application documents should recite two dates. For example: “...died between 14 January 2015 and 16 January 2015”.
18. The gross value of the Tasmanian estate must match the gross value of the Tasmanian estate stated in the Inventory of assets and liabilities. Use Form 10 to calculate the gross value of the estate.
19. The true legal name of the applicant should be consistent across all documents filed. If it is not, the discrepancy must be explained in the application documents (see the header of all Probate Forms).
20. The full residential address of the applicant should be provided.
21. Please ensure that the application states the correct application type and the date of any relevant documents are supplied if required.
22. Please complete the required fields of information in the document footer. You do not



need to supply a DX number or practitioner name if you are self-represented.

D. Affidavit in support of application for Probate (Form 5)

23. The precedent affidavit commences with the wording for affirmations used in Tasmania. Please amend it to the appropriate wording if the affidavit is being affirmed in another jurisdiction. No change is required to the wording if the affidavit will be sworn.
24. The true legal name of the deceased should be consistent across all documents filed. If it is not, the discrepancy must be explained in the application documents (see the header of all Probate Forms).
25. The date of death should be consistent across the documents. If it is not, the discrepancy must be explained in the application documents. The exact date of death, where it is known, must be stated in the application documents. If the date of death is uncertain the application documents should recite two dates. For example: "...died between 14 January 2015 and 16 January 2015".
26. The true legal name of the applicant should be consistent across all documents filed. If it is not, the discrepancy must be explained in the application documents (see the header of all Probate Forms).
27. The full residential address of the applicant should be provided.
28. You must choose to either "make oath" or "solemnly and sincerely declare and affirm" and amend the form accordingly (note: you cannot do both). You will also have to amend the jurat (signature section) to match the body of the affidavit by selecting either "sworn" if you are making oath or "affirmed" if you are solemnly and sincerely declaring and affirming.
29. If you are in a state other than Tasmania when you sign the documents you must comply with the laws of that state relating to signing of documents. The laws in each Australian state and territory are the same for the taking of an oath. So if you are taking an oath the documents will not require amendments. If you are affirming the documents the words at the beginning of Form 5 "do solemnly and sincerely declare and affirm" may need to be amended. The legal practitioner or justice of the peace witnessing your signature should be able to guide you. If the documents will be signed by executors in different states, the relevant wording for each state should be included at the beginning of Form 5.
30. When stating the date of the Will (the date the Will was signed) please include the date of any codicil or other testamentary disposition (list etc.) e.g. "01/01/1975 (Will) and 02/05/2014 (Codicil)" (**paragraph 4**).
31. If the details of the witness to the Will are either not stated on the Will or are illegible



please state “not stated” or “illegible” in the relevant field (**paragraph 5**). If other information relevant to the witness is legible, please include that information e.g. “law clerk” “retired”.

32. The relationship history of the deceased must be set out in full (**paragraph 9**) and should be consistent across the documents. This means that ALL marriages, divorces and “widowing” must be listed including the date of each occurrence. The relationship status of the deceased, as at date of death, is significant as divorce, marriage and deeds of relationship can have consequences on the validity of the deceased’s Will depending on the date they occurred:

a. Divorce:

If the deceased was divorced before 1 March 2009, and the Will was made prior to the divorce, then the Will is totally revoked (unless the Will states that it is made in contemplation of that divorce).

If the deceased was divorced after 1 March 2009, then any Will in existence at the time of the divorce will be affected by that divorce (unless the Will states that it is made in contemplation of divorce). For example:

- any bequest (gift) to the deceased’s ex-spouse will be revoked;
- the appointment of the ex-spouse to a position as executor, trustee or guardian or any other position of power will be revoked (unless the position is exclusively in favour of the children of the relationship).

b. Marriage:

If the deceased was married before 1 March 2009, and the deceased’s Will was made prior to the marriage, then the Will is totally revoked (unless the Will states that it is made in contemplation of that marriage).

If the deceased was married after 1 March 2009, then any Will in existence at the time of the marriage will be affected by that marriage (unless the Will states that it is being made in contemplation of that marriage). The Will will be revoked except for:

- any bequest to the spouse to whom the deceased was married at the time of death;
- the appointment of the spouse as an executor, trustee or guardian.

c. Deed of Relationship:

The above rules concerning divorce and marriage apply in the same manner to



any personal relationship which was registered under the Relationships Act 2003, or which was later revoked.

33. The applicant must be aged 18 years or over (**paragraph 10**).
34. It is common for more than one person to be nominated as an executor in a Will. In these circumstances, all named executors, who wish to accept the role, must apply for the grant. However, a maximum of 4 people can apply for a grant. If there are more than 4 people who are eligible to apply the additional people must be cleared off (**paragraph 12**). For example: If an executor is deceased they must be “cleared off” or an executor who does not wish to apply, or is unable to apply, must also be “cleared off”, by the executors who are applying.

If an executor does not wish to apply they must complete and sign a document stating that:

- a. they renounce their right to be an executor (**Form 11** at http://www.supremecourt.tas.gov.au/practice_and_procedure/forms/forms_a-z/r); or
 - b. they reserve leave to apply for probate at a later date (**Form 13** at http://www.supremecourt.tas.gov.au/practice_and_procedure/forms/non_prescribed).
35. A copy of the Notice of intention (Form 2) published on the Supreme Court of Tasmania website must also be annexed to Form 5.
 36. Please complete the required fields of information in the document footer. You do not need to supply a DX number or practitioner name if you are self-represented.

E. Inventory of assets and liabilities (Form 10)

37. The true legal name of the deceased should be consistent across all documents filed. If it is not, the discrepancy must be explained in the application documents (see the header of all Probate Forms).
38. The Inventory must be completed in three sections:
 - a. Tasmanian assets;
 - b. assets outside of Tasmania; and
 - c. liabilities (include liabilities both in and outside Tasmania).

Note 1: The total value of each section must be calculated and the gross value of the Tasmanian assets section should be inserted in the relevant field in Form 4.



Note 2: an application for Probate to administer estate assets in another State or Territory or overseas may require a Probate application in that place or a reseal of the Tasmanian Grant in that place.

39. The assets and liabilities listed should either be:

- a. solely owned by the deceased; or
- b. held as tenants in common.

Note: If assets are listed that are owned by the deceased as a tenant in common, the deceased's share in the property should be specified e.g. "1/2 share in property at 1 Smith Street, Smithfield, Tasmania as tenant in common in equal shares".

40. The inventory should include sufficient detail of the assets for proper identification e.g. bank names and account numbers should be provided.

41. Superannuation or life insurance should only be listed in the inventory if the funds are to be paid to the estate. If Superannuation or life insurance is to be paid to a beneficiary under a binding nomination, or at the trustee of the superfunds discretion, such funds should not be listed in the Inventory.

Note: If you are not sure if the funds are to be paid to the estate, please contact the relevant superannuation fund or life insurance company for clarification.

42. Funeral expenses must be recorded in the inventory. Form 10 lists "funeral account with name of funeral home" in the liabilities section. If the funeral was prepaid or has been paid for you may state "(prepaid)" in the description column.

43. Please complete the required fields of information in the document footer. You do not need to supply a DX number or practitioner name if you are self-represented.

F. Signing your Probate Forms

44. Before you arrange to sign the Probate Forms the following exhibit clause must be handwritten on the back of the original Will:

<i>This is the paper writing referred to in the Affidavit of [insert name of Applicant] sworn/affirmed before me this day of20.....</i>	
..... <i>Justice of the Peace/Solicitor</i> <i>Applicant</i>



Please ensure that you select either “sworn” or ‘affirmed” as appropriate and delete the reference which is not appropriate. The documents must be consistent so if you choose to swear the affidavit, all annexures and exhibits must state that the affidavit was sworn. Alternatively if you choose to affirm the affidavit, all annexures and exhibits must state that the affidavit was affirmed.

DO NOT make any other alterations to the Will, this includes:

- stapling documents to the Will; or
- removing staples from the Will.

If the Registrar believes that the Will has been altered in any way (including removing pages from it) you may be required to file additional affidavits (e.g. Affidavit of Plight Condition and Finding) to prove that it has not been tampered with or the Registrar may refuse to issue a Grant and an application to a judge may be required.

45. Each annexure must have an annexure clause written or typed on the original document. The annexure clause states:

This is the annexure marked to in the Affidavit of [insert name of Applicant] sworn/affirmed before me this day of20.....
.....
Justice of the Peace/Solicitor

Please ensure that you select either “sworn” or ‘affirmed” as appropriate and delete the reference which is not appropriate. The documents must be consistent so if you choose to swear the affidavit, all annexures and exhibits must state that the affidavit was sworn. Alternatively if you choose to affirm the affidavit, all annexures and exhibits must state that the affidavit was affirmed.

46. The Application (Form 4) must be signed and dated by each applicant.
47. The Affidavit (Form 5) must be sworn or affirmed by each applicant in the presence of a Justice of the Peace or Legal Practitioner. Each applicant must sign the exhibit clause on the Will and that signature must be witnessed by the same justice of the peace or legal practitioner who witnessed the signing of Form 5. That same justice of the peace or legal practitioner must sign each annexure to Form 5. Please ensure:
- a. the jurat (signature section) of the Affidavit is completed with the place and date of signing;
 - b. the exhibit clause on the Will is dated the same date as the jurat (signature section) and signed by both the applicant and the witness; and



the annexure clauses on the annexures (e.g. Record of Death, Inventory) are dated the same day as the jurat (signature section) and signed by the witness (the applicant does not need to sign the annexures).

G. Finding a Justice of the Peace

48. You can locate a Justice of the Peace by contacting the Legal Aid Commission on 1300 366 611 or by visiting <http://www.tsjpi.asn.au/find.html>.
49. Note: a Justice of the Peace will often be available at the Probate Registry or at other Supreme Court Registries around the state.

FILING YOUR APPLICATION DOCUMENTS

Application checklist

DOCUMENT	✓
1. Application for grant (Form 4)	
2. Affidavit in support of application (Form 5)	
3. original Record of Death (Death Certificate)	
4. original Will	
5. double-sided photocopy of the Will	
6. Renunciation/Notice to reserve leave (if applicable)	
7. Notice of intention (Form 2)	
8. Inventory of assets and liabilities (Form 10)	

You can file your application in person, by attending at the Probate Registry at the Supreme Court of Tasmania in Hobart. Alternatively your application may be posted to:

Probate Registry
Supreme Court of Tasmania



GPO Box 167
HOBART TAS 7001

It is recommended that you send your application via registered post to increase the chance of secure delivery.

Certified copies

Please note that once filed the original Will and Record of Death will be retained by the Probate Registry as part of its official records.

You may wish to arrange for certified copies of both documents to be made before filing.

Requisitions

Please note that if your application contains any errors or is incomplete or unsatisfactory the Registrar may issue a requisition identifying the errors or deficiencies and asking you to amend your application or file a supplementary affidavit (Form 28).

Some of the most common errors are:

- Failure to sign and date documents correctly;
- Typographical errors e.g. name or address spelt incorrectly;
- Failure to include the funeral expenses in Form 10.

We recommend that you proof read your application carefully.

A requisition fee is payable upon the filing of your response to the requisition. The fee is available on our website at:

http://www.supremecourt.tas.gov.au/probate_and_administration/probate_fees

Provisional assessments

You may request a provisional assessment of your application prior to filing with your application with the Probate Registry (see Probate Rule 11).

A provisional assessment is an assessment of your draft application documents prior to you signing or filing them with the Probate Registry.

If you request a provisional assessment the Probate Registry staff will check your application documents for compliance with the Probate Rules.

A provisional assessment fee is payable upon filing your request for a provisional assessment. The fee is available on our website at:

http://www.supremecourt.tas.gov.au/probate_and_administration/probate_fees



A provisional assessment is not a substitute for legal advice. The Registrar may decide not to accept your request for a provisional assessment for any reason.



FEES

The fees are available on our website at:

http://www.supremecourt.tas.gov.au/probate_and_administration/probate_fees

The filing fee may be paid:

1. at the time of making the application; or
2. once the grant has been signed by the Registrar (a letter will be sent to the applicant requesting payment).

Note: It is only once payment has been received by the Registry that the grant will be released to you.

Payment can be made by:

1. Cash

Please ensure that cash is hand delivered.

2. Money order, bank or firm cheque (made payable to the Supreme Court of Tasmania)

Please ensure that money orders or cheques are either hand delivered or posted to:

Probate Registry
Supreme Court of Tasmania
GPO Box 167
HOBART TAS 7001

Please note that personal cheques are not accepted.

3. Credit card

Please attend at the Probate Registry to pay by credit card or alternatively call us on (03) 6165 7456 or (03) 6165 7434 or email us at probate@supremecourt.tas.gov.au

4. Electronic funds transfer (EFT)

Please ensure that, if paying by EFT, remittance advice is emailed to: probate@supremecourt.tas.gov.au

Our details are:

Bank:	Westpac
Account Name:	Department of Justice Operating Account
BSB:	037-001
Account Number:	267793
Reference:	the deceased's name

The grant cannot be released until after you have sent this email to the



Probate Registry so that payment can be confirmed with the Finance Department.

LEGAL RESOURCES

Further information about probate applications is available on our website: http://www.supremecourt.tas.gov.au/probate_and_administration. The following are links to relevant legislation, rules and court forms:

- [Administration and Probate Act 1935](#)
- [Intestacy Act 2010](#)
- [Probate Forms](#)
- [Probate Rules](#)
- [Supreme Court Rules 2000, Part 32, Division 6](#)
- [Testators Family Maintenance Act 1912](#)
- [Wills Act 2008](#)
- [Will Act 1992](#)

Please note that the Probate Registry cannot give legal advice. If you are having difficulties with your application then you should seek legal advice from a legal practitioner.



CONTACTING THE PROBATE REGISTRY

Before contacting the Probate Registry we recommend that you read this Information Kit.

Applicants are responsible for ensuring that all paperwork is complete and accurate before lodging it with the Court.

If you are having difficulties with your application then you should seek legal advice from a legal practitioner.

Staff:

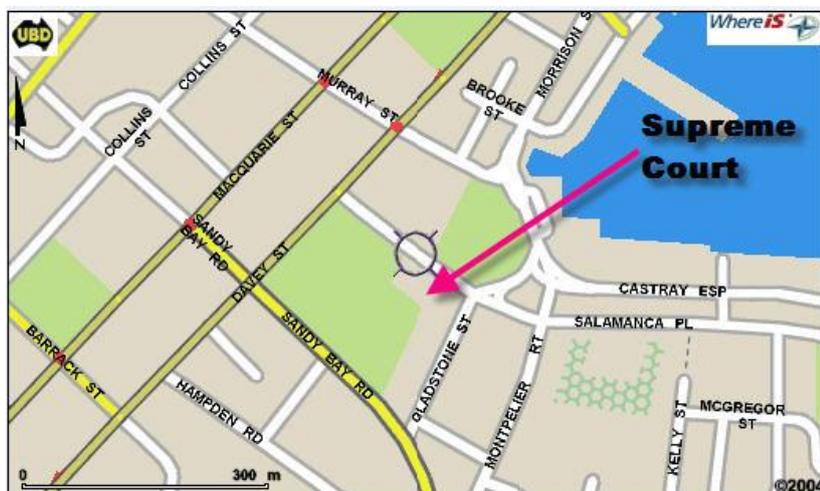
Deputy Registrar
Probate Supervisor
Probate Registry Administration Officer

Opening hours:

9 am – 5 pm
Monday – Friday

Location:

Probate Registry
Supreme Court of Tasmania
5 Salamanca Place
Hobart Tasmania



Telephone number:

General Enquiries 1300 664608
International telephone calls: + 61 3 followed by the last eight digits of the number.



Postal Address:

Probate Registry
Supreme Court of Tasmania
GPO Box 167
HOBART TAS 7001

Email Address:

probate@supremecourt.tas.gov.au