



Information Sheet

Applying for Probate

What is Probate?

You may need a grant of representation to legally take control of the assets of a person who has died (the deceased).

A grant of representation is a legal document issued by the Supreme Court of the Northern Territory (the Supreme Court), which is proof that the person or persons named in the grant are entitled to collect and distribute the assets of the deceased in the Northern Territory.

One type of grant of representation is Probate. Where a person has died leaving a will that nominates a person or persons as executor(s) the Supreme Court may grant Probate to that person or persons to allow them to administer the deceased's estate in the Northern Territory. Probate is certification that a will is valid or 'proved'.

Who may apply for Probate?

To apply for Probate you must be named as an executor in the last valid will of the deceased and be over the age of 18 years.

If more than one executor is named in the will of the deceased you all may make the application. One executor (or more) may make the application for Probate where one (or more) executors have predeceased the deceased, renounced Probate, or reserved their right to apply at a later time.

You can apply for Probate yourself or can you instruct a legal practitioner to act on your behalf.

How do I apply for Probate?

To apply for Probate in the Northern Territory you must:

1. Advertise your intention to apply for Probate on the Supreme Court website by filing a Notice of Intended Application for Probate (Form 88B) by email to ProbateOfficer.NT@nt.gov.au
2. Conduct a search of the index of wills by sending an email to agd.publictrustee@nt.gov.au and asking the Office of the Public Trustee of the Northern Territory to undertake a search in the name of the deceased for the purpose of applying for Probate. You must do this

because you are required to attest to it in your Affidavit of Publication and Search (Form 88I).

3. Conduct a search of the records of the Supreme Court by sending an email to ProbateOfficer.NT@nt.gov.au and asking the Probate Officer to undertake a search in the name of the deceased for the purpose of applying for Probate. You must do this because you are required to attest to it in your Affidavit of Publication and Search (Form 88I).
4. Complete the affidavits and forms to apply for Probate and file those by email to ProbateOfficer.NT@nt.gov.au
5. Pay the filing and search fee for applying for Probate. Court fees are published on the Supreme Court website at:

<https://supremecourt.nt.gov.au/lawyers#Court-Fees>

To pay a Court fee complete the electronic payment form and email it to ProbateOfficer.NT@nt.gov.au

What affidavits and forms must I file to apply for Probate?

The *Supreme Court Rules 1987* (SCR) and Practice Direction 3 of 2020 prescribe the affidavits and forms that must be filed when applying for Probate, which include:

1. Notice of Intended Application for Probate – Form 88B (refer to SCR 88.09(1))

A Notice of Intended Application for Probate must refer to the deceased's legal name and any known aliases.

Practice Direction 3 of 2020 dispenses with the requirement for publishing a Notice of Intended Application for Probate in a daily newspaper, such as the NT News.

Instead, when a Notice of Intended Application for Probate is filed, it will be published on the Supreme Court's website as soon as practicable.

Please note: A Notice of Intended Application for Probate must be published on the Supreme Court website for 14 days before an application for Probate can be filed.

2. Affidavit of Publication and Search – Form 88I (refer to SCR 88.23(1)(c))

The Notice of Intended Application for Probate published on the Supreme Court website must be annexed to the Affidavit of Publication and Search.

As stated above, in the Affidavit of Publication and Search, you must attest to conducting a Probate search. You must therefore have undertaken that search prior to making the affidavit.

Also, as stated above, in the Affidavit of Publication and Search you must attest to conducting a search of the index of wills held by the Office of the Public Trustee of the Northern Territory. You must therefore have undertaken that search prior to making the affidavit.

3. Application for Probate – Form 88A (refer to SCR 88.07(1))

The Application for Probate must be signed by the executor(s) applying for Probate or the legal representative applying for Probate on behalf of the executor(s).

4. Affidavit of Death – Form 88G (refer to SCR 88.23(1)(a))

A true copy of the Death Certificate, including the front and back page, must be annexed to the Affidavit of Death.

5. Affidavit of Executor – Form 88H (refer to SCR 88.23(1)(b))

The Affidavit of Executor must state the gross value of the deceased's assets where indicated.

6. True (electronic) copy of the will and Affidavit of Legal Practitioner (refer to Practice Direction 3 of 2020, Part 7, Clause 37)

To 'identify' the will, as stated in paragraph 2 of the Affidavit of Executor, the executor and authorised witness to the Affidavit of Executor must sign in the margin of every page of the original will and any codicils. Do not, under any circumstance, mark the will in any other way.

A true copy of the identified will is to be filed with the Supreme Court along with an Affidavit of Legal Practitioner deposing that the legal practitioner has carefully examined the will and has not detected anything that might indicate any of the following:

- (i) tampering with the will;
- (ii) an attempt by a testator to vary the will;
- (iii) that the will has otherwise not been validly executed;
- (iv) that the will is not valid; and
- (v) any other matter which requires production of the original will.

Upon request, you may be required to file the original will with the Supreme Court.

You should never take an original will apart for any reason, for example, do not remove staples to photocopy the will. You should also not write the file number on the will.

If the will has any signs of tampering and/or damage, such as staple holes, you will need to file an Affidavit of Plight and Condition (see below).

7. Affidavit of Assets and Liabilities – Form 88T (refer to SCR 88.27(1))

The inventory of property in the Affidavit of Assets and Liabilities must disclose full details of the assets and liabilities of the deceased. For example:

- Full address of any real property, such as Unit 5, 11 Mitchell Street, Darwin, Northern Territory;
- Full details of any bank accounts, including the name of the bank, branch where the account is held, account name and account number;
- Full details of any life insurance policy, including the name of the insurer and policy number;
- Full details of any shares, including the name of the shares, the number of shares held, and the value of each share;
- Full details of any motor vehicles, including the make, model, and registration number.

The value of each asset and liability must be provided, either an exact amount, or estimate.

The distribution of the deceased's estate under 'Persons Entitled' should reflect the deceased's will. If there are reasons to explain why an asset stated in the will, is not listed in the Inventory of Property, those reasons should be deposed in the Affidavit of Executor. For example, a deceased may give assets, like jewellery, to a beneficiary stated in their will prior to their death. Even if a distribution does not have a monetary value, such as a life interest in real property, this should be stated under 'Persons Entitled'.

8. Oath of Office – Form 88J (refer to SCR 88.23(7))

As an executor, you are responsible for making sure all the deceased's assets are accounted for, all the deceased's debts are paid and all beneficiaries receive their inheritance as outlined in the deceased's will.

You are required to file an Oath of Office that attests you will well and truly collect and administer, according to law, the estate of the deceased.

The role of executor is important and you should be aware of what is required of you, according to law, before you apply for a grant of representation. You are not legally obligated to take up the appointment of executor even if you agreed to do it while the deceased was alive.

9. Proposed Grant of Probate

A true copy of the will is to be attached to the proposed Grant of Probate. It does not need to be a certified copy of the will.

The proposed Grant of Probate must state the gross value of the deceased's assets where indicated.

10. If applicable: Affidavit of Identity – not a prescribed form (refer to SCR 88.12 and Practice Direction 3 of 2020, Part 7, Clause 40)

An Affidavit of Identity must be filed if you are self-represented; that is applying for Probate yourself and not by way of a legal practitioner acting on your behalf.

11. If applicable: Renunciation of Probate – Form 88E (refer to SCR 88.13(2))

If an executor named in the will of the deceased is unwilling or unable to act as executor, they should file a Renunciation of Probate.

If an executor pre-deceased the deceased, this should be stated in the Affidavit of Executor and, where possible, their death certificate should be annexed to that Affidavit.

12. If applicable: Affidavit of Delay – not a prescribed form (refer to SCR 88.10)

An Affidavit of Delay must be filed if you are applying for Probate more than six months after the date the deceased died.

13. If applicable: Affidavit of Plight and Condition – not a prescribed form (refer to SCR 88.20).

An Affidavit of Plight and Condition must be filed if the will has signs of tampering and/or damage, such as staple holes. The Affidavit must explain, to the best of your knowledge, why the will has signs of tampering and/or damage.

How should documents be filed with the Supreme Court?

The affidavits and forms that you will need to file to apply for Probate are available on the Supreme Court website at:

<https://supremecourt.nt.gov.au/about/registry/wills-and-Probate>

You should download the affidavits and forms and then edit them to include information specific to your application where indicated by brackets []. You

should delete any instructions or inapplicable words but do not change the formatting.

Once you have completed the affidavits and forms they should be printed single sided on A4 paper and signed before an authorised witness.

Thereafter, the signed affidavits and forms should be saved as separate documents in PDF format and named as they appear above, for example 'Affidavit of Assets and Liabilities – Form 88T'. Do not combine the affidavits and forms into one PDF document because they will not be accepted for filing.

To file the application for Probate, include all the affidavits and forms, attached as separate documents in PDF format, by email to ProbateOfficer.NT@nt.gov.au and pay the Court fee (filing and search fee).

Your application for Probate will not be taken as filed until you pay the Court fee.

Is there anything else I should consider when applying for Probate?

- The particulars of the deceased stated in their death certificate should be consistent with the will and reflected in the affidavits and forms. For example, if in the will, the deceased is stated as “Margaret Mary Smith of 7 Cavenagh Street, Darwin, Clerical Assistant” and the death certificate states “Maggie Smith of 10 Mitchell Street, Darwin, Home Duties” the heading in each affidavit and form should reflect those differences as follows:

THE ESTATE of the late **Margaret Mary Smith** (also known as **MAGGIE SMITH**) late of 10 Mitchell Street, Darwin in the Northern Territory of Australia but formerly of 7 Cavenagh Street, Darwin in the Northern Territory of Australia, Home Duties but formerly Clerical Assistant, deceased.

The substantive content of affidavits and forms should also refer to the deceased's legal name and any known aliases. For example, “Margaret Mary Smith also known as Maggie Smith”.

- Likewise, if your particulars (as executor(s)) as stated in the will have changed at the time of applying for Probate this needs to be reflected in the affidavits and forms. For example, if your legal name changed from Mary Citizen to Mary Best and you moved address, you should write the following where indicated for executor(s)/applicant(s):

“MARY CITIZEN referred to in the will as MARY BEST of 1 Brown Street, Darwin in the Northern Territory of Australia but formerly of 10 Little Street, Campbelltown in the State of New South Wales”.

- Ensure the dates in affidavits and forms correspond to any annexed documents, such as the Death Certificate, and the will.

- Affidavits must be signed in front of an authorised witness as defined in section 15 of the *Oaths, Affidavits and Declarations Act 2010*, such as a Justice of the Peace or a Commissioner for Oaths. All pages of your affidavit must be signed by you and witnessed by the authorised witness. The authorised witness must also attest and sign each annexure clause to an affidavit.

This information sheet is provided as a general guide only to assist in applying for Probate in standard matters that do not involve complex legal issues.

The Probate Officer can provide procedural advice to assist you apply for Probate but they cannot provide legal advice. They cannot help you to complete affidavits and forms nor examine documents prior to filing.

The Probate Officer can be contacted by phone in Darwin: 08 8999 6574 or Alice Springs: 08 8951 5727 or email: ProbateOfficer.NT@nt.gov.au

You are encouraged to obtain independent legal advice in relation to the specific circumstances of any application for Probate.