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## WHAT IS PROBATE OF A WILL?

Applying for Probate of a Will and then Administration of an Estate is the legal process whereby the ACT Supreme Court supervises the passing of assets from a deceased person to beneficiaries identified in a Will or next of kin. It refers to the 'proving' of the Will and formal authorisation of an Executor to distribute the Will in accordance with the deceased's wishes, or alternatively if no Will has been left, according to the prescribed distribution of intestate estates on death (estates where no Will has been made). These rules are set out in legislation.

Generally speaking, the process is essentially uniform across the Commonwealth of Australia. The legislation was enacted to replace the historic process of distributing estates under ancient English law which included special provisions for the Lord of the land, and the convoluted development of the law of trusts.

The procedure normally applies to estates worth in excess of \$150,000.00. Below that amount, special provisions can be made for administration by the representative of the estate without the need to have legal representation. Over \$150,000.00 however, the procedure is laid down by the legislation and includes advertising the intention to make application for probate so that creditors of the estate have notice of the death of the testator and can lodge a claim, a formal Grant of Probate, and then a distribution in accordance with the law. The legislation also provides for final

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accounts to be filed at the conclusion of the administration. These provide a record of the debts paid, the assets realized, and the manner of distribution.

Normally estates will be fully administered within 9 – 12 months, however where assets have to be sold or tax liabilities ascertained, there can be a delay of some months.

For advice regarding estate administration, please call Tanya Herbertson on 6285 8000.