How Much Does Probate Cost?

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Why are probate costs payable?

After a loved one has passed away, the law requires that the deceased's

- private and business affairs be finalised,
- unpaid bills and expenses be paid, and
- assets be dealt with in accordance with the last binding will of the deceased.

This means that the executor of the deceased's will must appoint an informed and proficient estate lawyer and unsurprisingly, lawyers in private business will charge for their services.

As such the questions that many people ask are as follows:

- Who is liable to pay probate costs
- How much are probate costs, and
- When must probate costs be paid.

Who pays probate costs?

The deceased's estate is required to pay probate costs and not the executor personally. The executor incurs probate costs on behalf of the deceased estate and is entitled to be indemnified for those costs from the assets of the estate.

How much are probate costs?

It depends on the size of the estate (i.e. how many assets and liabilities are there) and the gross value of estate assets (before deducting liabilities such as mortgages, loans and other expenses). Simply

- A smaller the size and value of the estate, the lesser the amount of work required to obtain probate and to administer estate assets and the lesser the cost; and
- The larger the size and value of the estate, the larger amount of work required to obtain probate and to administer estate assets and the greater the cost.

What's included in probate costs?

Probate costs include

- Government scaled costs for obtaining a Grant of Probate from the Supreme Court (**Scaled Probate Costs**), and
- Negotiated legal costs for administering the assets and the liabilities of the estate (**Administration Costs**)

Work undertaken in respect of Scaled Probate Costs

The legal services covered by the scale rate include: ·

- Taking instructions on obtaining a grant of probate or letters of administration ·
- Verifying details of assets supplied by the executor (where required) ·
- Preparing and publishing a probate notice called "Notice of Intended application"
- preparing all Supreme Court documents required to support the application for probate including Summons for Probate, Probate, Inventory of Property, Affidavit of Executor and providing the will of the deceased (and any codicils (amendments) to the will) and death certificate
- attendance on executor to sign documents
- attendance on court to file the probate application and to pay a Supreme Court filing fee (can be substantial)
- lodging and uplifting documents ·
- answering requisitions from the Supreme Court·
- perusing Grant of Probate and advising executor/administrator.

Fixed legal fees payable to the Estate lawyer

Gross value of NSW assets BETWEEN	Sliding scale LEGAL fees BETWEEN
$0 and $30K	$560 and $959
$30K and $150K	$960 and $1,668
$150K and $1 million	$1,670 and $5,469
$1 million and $3 million	$5,470 and $8,790
$3 million and $5 million	$8,800 and $11,000
$5 million and $10 million	$11,000 and $15,500
$10 million and over	$15,500

Work undertaken for negotiated administration costs

Such Administration and other professional costs include but are not limited to: ·

- sorting through estate papers and items
- advising on taxation and meeting the requirements of the Australian Taxation Office, including preparation of returns
- obtaining valuations/appraisals of assets/debts and identifying estate and other assets (for example, superannuation, insurance, etc.)
- advising on the rights of other parties to challenge the will
- advising on complex questions of interpretation of the will
- overseeing transmission applications, all transfers and realisation of assets
- conducting enquiries and research to ascertain the existence of assets
- preparing and publishing a Notice of Intended Distribution and transmitting estate assets

Costs payable for administration work

Most law firms will charge at an hourly rate that reflects the expertise and competency of the firm and the lawyers undertaking the work. Estate lawyers are required by to make a detailed written costs disclosure and are required to enter into a detailed written cost agreement.