



Probate / Letter of Administration requirement for Will

Lots of people have confusion as to whether it is necessary to obtain Probate of the Will / Letters of Administration, so as to transfer the property acquired by a legatee.

The Will takes effect on the death of the testator and that the right as an Executor or as Legatee can be established in any Court only if Probate or LOA is obtained.

1. What is a Probate?

Probate is the grant by the Court that recognises a Will as authentic, and authorises the appointment of the executor to act and administer the deceased's Estate.

In this process, the copy of the will is given to the executor together with a certificate granted under the seal of the court and signed, by one of the registrars, certifying that the will has been proved

2. Why probate is essential?

The Executors of the Will will need to obtain Probate from the court for the following reason:

1. It gives them the authority to deal with the deceased person's assets and liabilities, and to enable distribution of the Estate in accordance with the Will.
2. This establishes that it was in fact the maker of the Will who died, that the Will was properly signed and attested, and that Executor(s) have been appointed.
3. It may also be necessary when the deceased leaves behind securities with various nominees and there is a dispute on their division. The nominee can only hold the assets in trust till these are divided as indicated in the will after a probate has been obtained.
4. It is conclusive evidence of the validity and due execution of the will and of the testamentary capacity of the testator.
5. Probate is a must when the will is for immovable assets

To do this, the Executors fill out a Probate application form to be approved by a Registrar of the Competent Court of jurisdiction.

A probate is obtained to authenticate the validity of the will and is the only proper evidence of the executor's appointment.

An administrator or executor appointed under the will may not be able to administer its provisions without a probate.

Letter of Administration

If a person dies and either doesn't have a Will or has left a Will that cannot be proven (for example, if the Will's Executor has died), an application for Letters of Administration may need to be made.

If a person dies leaving property, there must be some legal representative of the deceased who can legally dispose of the property left behind. Where the deceased person has left a Will and named a person to deal with his property, such person is an Executor. Where the deceased person has not left a Will, ie he has died intestate, then an Administrator is the legal representative.

The Administrator is appointed by a competent court and the Letters of Administration document states that they have authority to oversee the disposal of the estate (properties) of the deceased person where he has not made a Will or where a Will is made but no Executor has been appointed in the Will or where the Executor is legally incapable or refuses to act as an Executor.

Therefore obtaining a probate / letters of administration is the only way by which you would be able to establish your right under a will.