



# Estate Administration

by Josh Philo

A family member or friend passing away is a very stressful and emotional time and a time when family come together to remember their loved one. Nothing should take away from this as it is a very important part of the grieving process. However, we often find that people don't know how to take the next step of sorting out their loved one's affairs. Is there a 'reading' of the Will? Who administers the Will? And one that we very often hear: What is Probate?

It is very important and a legal requirement that the administration of the Will takes place as soon as possible after the death of the loved one and it can (with the right advice and taking the right steps) be a simple and stress-free process.

## Urgent matters

It is important that any urgent matters are attended to as soon as possible, such as paying for the funeral and care for any pets. Family members usually attend to these matters themselves as access to the deceased's personal bank account can sometimes be unavailable (though some banks will release funds in the deceased's account to pay for funeral expenses, up to a certain limit). If the family does pay for the cost of the funeral personally, then they may be entitled to a reimbursement out of the estate provided that they keep receipts. You can speak to us further about this.

## Who administers the estate?

This is usually done by the executor, who is the person appointed under the deceased's last Will. The executor's role is to collect in the assets and pay off the debts and then distribute the proceeds to the beneficiaries. There is no formal 'reading' of the Will and it is up to the executor to ensure that they distribute the estate in accordance with the Will to the beneficiaries named in the Will. While the process can be straightforward (depending on the affairs of the deceased), some organisations have strict requirements, including the need to obtain a Grant of Probate or Letters of Administration (see page 2). Further, there are various time limits that the law imposes that should be complied with by the executors before making any distribution of the estate to avoid any possible personal liability. It would be prudent for the executor to get legal advice at the outset. They may also want a lawyer to assist them with some (or all) of the administration of the estate. Any legal fees that are incurred in this way are payable out of the estate – so that the executor is not out of pocket.



### **What happens if there is no Will?**

While everyone should ensure that they have a Will and that their family knows of its location, it is often the case that this does not happen and it adds another step to the administration of the estate. If the family believes that there is a Will but can't locate an original or a copy, then they can ask a lawyer to undertake the relevant advertising to call for anybody (other lawyers, the Public Trustee etc.) that might be holding an original Will for the deceased. If there is no Will, then the law specifies that certain family members can apply to the Supreme Court to be appointed an administrator (similar to an executor) of the estate. This process is referred to as applying for Letters of Administration (see below). The administrator has the same rights as the executor, except that they have to be appointed by a legal process through the Courts. We would suggest that you always see a lawyer whenever Court documents have to be prepared.

### **Can the executor or beneficiaries be liable for the deceased's debts or liable for any other claims against the estate?**

We often get asked this question. The short answer is that executors and beneficiaries are not liable for the deceased's debts (and debts generally cannot be inherited by beneficiaries). That being said however, there are certain instances where an executor can be liable to creditors of an estate or to a disappointed applicant (for instance in a Family Provision Application – see *Family Provision Applications Fact Sheet*). This could happen where the executor distributes the estate prematurely (as the law sets out certain waiting periods on when estates can be distributed) or in certain circumstances where the executor fails to pay out a creditor. It is important that the executor obtain legal advice on these issues. While we understand that the executor, beneficiaries and family usually want to finalise the estate as soon as possible, the law does specify certain time limits and not following those time limits can leave the executor exposed to liability.

### **What is Probate and Letters of Administration?**

Seeking a Grant of Probate of the Will is a legal process whereby the Supreme Court authorises the executor to act as such in the administration of the estate in accordance with the Will submitted. It is often referred to as 'proving' the Will and is an acknowledgement by the Court that the executor is dealing with the last and valid Will. In some estates, certain organisations will require Probate before they release funds, and in other estates, Probate will be recommended irrespective of the size of the estate. You do not always have to obtain Probate, but we believe that it is often a good idea as it provides the executor with certain legal protection (that they are distributing in accordance with the last and valid Will) and because it avoids the lengthy paperwork that banks and other institutions require if you cannot provide them with the Probate document. We can assess your particular situation and advise you as to whether you should seek Probate or not.

Another similar process is applying for Letters of Administration. This is basically the same, except that this process is used where there is no Will and the Supreme Court appoints the administrator to act on the estate. Where there is no Will, the estate will be distributed in accordance with the intestacy rules set out in legislation. If your loved one has died without a Will, you should seek legal advice to discuss.

**How are the beneficiaries paid out and when is the estate finalised?**

The executor's role is to ensure that the estate is distributed in accordance with the deceased's wishes (or where there is no Will, then in accordance with the intestacy rules). This process can be difficult where there are different types of assets (such as cars, houses, shares, etc.) all having different values. The executor has to make the decision as to whether such assets are sold or whether a share of those assets is distributed to the beneficiaries. It is always advisable that you obtain legal and accounting advice in deciding whether to keep or sell certain assets as there can be legal and tax advantages and disadvantages depending on which option you choose.

Once the estate is administered then the estate is distributed to the beneficiaries. How this takes place depends on the terms of the Will of the deceased (such as whether the deceased left certain assets to certain people), creditors that need to be paid out, and the share that each of the beneficiaries are entitled to. Distributions are subject to any claims made by disappointed beneficiaries or other eligible parties, such as the deceased's dependants.

We can give you straightforward advice on all of these issues and talk to you about what needs to be done. Ask us about our fixed fee consultation. We will work with you to make the process as smooth and efficient as possible. You might also like to administer some of the affairs yourself with us providing you with direction beforehand or we can undertake the administration of the estate on your behalf – the first step is making an appointment to meet with us.

This information is general in nature and should not be acted upon without first obtaining legal advice on your particular situation. To find out more or to make an appointment, phone us on 1300 132 567 or email us [info@estatefirst.com.au](mailto:info@estatefirst.com.au)



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