



A Guide to Administering a Deceased Estate

After someone dies, there are a number of enquiries that family members or close friends should make in relation to the person's estate.

One of the first things that must be done is to locate the Will. If no Will is found, it is usually presumed that the person died without a Will (which is called dying 'intestate').

If there is a Will, there will usually be an Executor appointed in the Will, to oversee the distribution of assets and make sure that the conditions of the Will are met.

If the Will does not appoint an Executor, or if the sole Executor named in the Will has since passed away or is unable to act, then the Court will appoint an Administrator. Normally the beneficiary with the largest entitlement to the estate will be appointed. If there is no Will, the Court grants Letters of Administration and appoints an Administrator to deal with the estate, which is then distributed in accordance with government guidelines known as the rules of intestacy.

The Role of the Executor

Generally, it is the duty of the Executor or Administrator to take charge of the deceased's assets and property, see that the funeral and administration expenses as well as debts and taxes are paid and finally to distribute the assets to the beneficiaries in accordance with the Will.

The Executor is responsible for the following tasks:

- Identifying all of the assets and, if necessary, obtaining valuations for the assets
- Identifying any debts that are outstanding and then paying off the debts from the assets of the estate
- Applying for a Grant of Probate
- Distributing the assets of the estate to any beneficiaries named in the Will
- Arranging tax returns
- Defending any legal actions on behalf of the estate if a dispute arises.

The first step is to make a list of everything the deceased owned or was entitled to, including any real estate, cars, bank or building society accounts, furniture, household appliances, jewellery, shares or other investments, insurance policies and superannuation. The next step is to apply to the Supreme Court for a Grant of Probate.

What is Probate?

A Grant of Probate is the document issued by the Supreme Court to the Executor, once the Court is satisfied that the Will is valid. It authorises the Executor to deal with the deceased's property and attend to its distribution in accordance with the Will. In the case of small estates not involving the registration of the transfer of real estate, a formal Grant of Probate may not be necessary.

There are a number of documents that need to be prepared and lodged with the Court when applying for the Grant of Probate. These documents can be prepared by a Solicitor.

Once Probate has been granted, the Executor must collect the deceased's assets and take steps to pay the funeral and administration expenses and any debts or taxes the deceased owed. Once the debts have been paid, the assets are either distributed according to the terms in the Will or they are sold so that money can be divided among the beneficiaries.

Contesting a Will

The Equity Division of the Supreme Court interprets Wills made or contested in NSW and the rules surrounding estates are complex.

There are several ways of questioning a Will, however they are often difficult and always require professional legal advice.

It may be claimed that the Will presented for the Grant of Probate was not intended by the person to be their final Will, on the grounds that:

- It was not the last Will made by the person
- The person lacked the mental capacity to make it
- It was altered after it was signed
- The person was unduly influenced, or tricked
- It has been revoked.

In some instances, family members may feel that they have not received adequate provision from a Will.

There are strict conditions concerning who can make a claim against a Will. If you think you are eligible to make a claim, or if you are an Executor defending a claim against the estate by another person, expert legal advice is strongly recommended.

The Succession Act 2006 enables the following individuals to apply to the Court for an Order making adequate provision for their maintenance, education or advancement:

- The husband or wife of the deceased
- A child of the deceased
- The de-facto spouse with whom the deceased was living at the time of death
- A former spouse of the deceased
- A person who was at any time, wholly or partly dependant on the deceased and at some time during the lifetime of the deceased person was a member of the deceased's household, or a grandchild of the deceased who was wholly or partly dependent upon the deceased at some time during the lifetime of the deceased person.

It is important to note that the administration of an estate can be a complicated matter and may take anywhere from 12 weeks to 12 months to finalise. There are many steps along the way and you need to ensure that all of the procedures are followed correctly. At Karen L Haga & Associates we can assist you through the process and help to ensure that the estate is finalised as quickly and efficiently as possible.

For more information on the administration of a deceased estate contact Karen L Haga & Associates for friendly, professional advice – phone: 02 9894 9133.