
DECEASED ESTATES
Guide for Executors/Administrators
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Introduction

Nevetts Lawyers have prepared this guide to assist executors (or administrators) as to their responsibilities when acting in the estate of a deceased person.

Whilst the guide is general in nature Nevetts Lawyers will provide specific advice and assistance to an executor/administrator.

Executor/Administrator

An executor is a person(s) appointed pursuant to the terms of a Will.

Whilst nominated as an executor in the will an executor can refuse to act.

Where there is no Will a person (next of kin) will obtain "Letters of Administration".

An administrator exercises the same powers and responsibilities as an executor.

Where there is more than one executor named at least one must make the application for a Grant of Probate but all named executors may make such application.

Where there are multiple executors they must act together and in agreement on all necessary actions.

The Estate

A deceased's estate consists of all of the assets including real property, investments, bank accounts etc. and includes personal property which may have real or sentimental value.

Some assets do not form part of a deceased estate. They include:

- Jointly owned property which will pass by operation of law to the survivor;
- Superannuation, which will be paid to the nominated beneficiary (if a nomination has been made by the deceased) or paid at the discretion of the trustee of the super fund.

An executor will still have the responsibility of dealing with jointly owned property and superannuation but may not require a Grant of Probate or Letters of Administration to do so.

Executor/Administrator Responsibilities

Essentially to carry out the terms of the will and, in so doing, acting in

the best interests of the estate and the beneficiaries.

An executor/administrator is obliged to protect the assets. This would include securing assets and insuring assets (where relevant).

At times dealing with the assets may include gifting to charity items of no real value, or disposing of assets to a second-hand dealer. Prior to disposing of assets the executor/administrator ought consult with beneficiaries.

An executor will usually engage others, particularly a lawyer, accountant or real estate agent to assist in carrying out their duties.

An executor may decline to accept the position, particularly if they intend to make a claim on the estate of the deceased for provision for themselves out of the estate.

Responsibilities also include making funeral arrangements, ensuring that any directions given by the deceased whether formally or in discussion with family, should be followed.

Who can see the Will

Generally there is not a formal reading of the Will with beneficiaries

being notified of their gift by the executors or their lawyers.

Legislation in Victoria provides that various other persons are entitled to a copy of the Will, even if not named as a beneficiary.

This includes a spouse or domestic partner; parent; children, or guardians of children etc.

When instructed to do so Nevetts Lawyers would write to nominated beneficiaries to advise them of the gift made to them.

Probate

Probate, when required, is a process whereby the Will is submitted to the Supreme Court of Victoria for confirmation as to its validity. The word "Probate" comes from a Latin word "Probatus", which means "to prove".

The process involves:

- advertising the intention to apply for Probate on the Supreme Court website;
- preparation of the application and the filing of various documents including an Inventory of Assets and Liabilities; a copy of the death certificate; the original Will, and an Affidavit

of the executors setting out relevant information.

Once the Court grants Probate, the document issued by the Court gives the executor the legal right to deal with the assets.

In some cases the institution holding assets, (for example a bank), may waive the requirements for Probate where the asset is limited in value.

Probate or Letters of Administration will always be required where assets are significant in value or where real estate is owned by the deceased.

Intestacy

A person is said to die "intestate" when they do not leave a Will. In such circumstances, and where the assets require it, the nearest next of kin will usually be the person applying to the Supreme Court of Victoria for Letters of Administration.

Taxation

Where the deceased has been lodging tax returns it may be necessary for a final tax return to be prepared from the last lodgement to the date of death.

It may also be necessary for the estate to obtain a new tax file

number and lodge a tax return where the estate earns income during the course of administration. (For example interest on investments).

It is important to note that there are no death duties or taxes in Victoria.

In the case of real property gifted to a beneficiary in accordance with the Will there is unlikely to be any capital gains payable however the beneficiary may incur capital gains tax when they dispose of the property at a later date. In the event that assets are sold by the executor there may be capital gains tax payable by the estate. There is no stamp duty payable for a transfer to a beneficiary.

Finalising the Estate

The time taken to fully administer an estate varies depending upon the complexity of the estate and the nature of the assets.

In straightforward matters a Grant issues from the Supreme Court within a few weeks of an application being made.

Once the executor has redeemed investments and dealt with the various assets in the estate the question arises as to when a

distribution can be made to beneficiaries.

Nevetts Lawyers will discuss this with the executor and seek instructions as to whether a distribution can occur within 6 months of the date of Grant of Probate or Letters of Administration. This period is relevant in that it is the period within which a person seeking to challenge the Will or intestate estate must do so.

In some circumstances it will be clear that there is no eligible person able to challenge and by agreement an estate may be distributed earlier than the 6 month period.

Challenges to a Will

It is often thought that a Will is the "final" position in respect of the beneficiaries entitlements.

In Victoria, (and in other states), it is possible for an eligible person (as defined in the legislation) to make a claim upon the estate for a share of the assets or, where they receive a benefit, for a great share than that provided for in the Will or on an intestacy.

Where a Court concludes that an eligible person has satisfied the Court that the deceased had a responsibility to provide for their

maintenance and support then the Will may be varied by a Court order.

It is often the case that the executor and the beneficiaries will reach agreement with an eligible person seeking to challenge and vary the terms of the Will.

In Victoria an eligible person includes a spouse, domestic partner, child (biological or adopted), a member of the household etc.

Nevetts Lawyers will advise in respect of any potential claimant as to their eligibility to challenge and whether such a challenge would, in all the circumstances, be successful.

For further information contact us:

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