



## A loved one has died and I'm the Executor – where do I start?

An Executor's role is to carry out the terms of a Will and administer the estate of the person who has died in accordance with the wishes set out in the Will. The basic duties of an Executor are to collect and call in assets of the deceased, pay any debts and expenses, and to distribute the remaining funds to the beneficiaries according to the terms of the Will. An Executor may seek legal assistance from a [Wills & Estate lawyer](#) to prepare legal documents and deal with assets.

If you are an Executor, some of your core roles and responsibilities are:

- Locate the original Will. Ensure that no staples are removed and that nothing is attached to the Will.
- Attend to funeral arrangements and arrange issue of the Death Certificate through the funeral director.
- Pay any debts as well as funeral and other expenses. This may require approval from the bank or sale of assets to cover costs. If you pay for any of the expenses yourself, you can be reimbursed from the estate when funds become available at a later date. Note that "estate" refers to all the assets and liabilities of the deceased person – it is not limited to land or real

estate.

- Confirm the assets and liabilities of the estate and determine if a Grant of Probate is required.

## What is a Grant of Probate?

A **Grant of Probate** is an electronic document issued by the Supreme Court of South Australia that confirms the Executor's authority to carry out the terms of a Will. To obtain a Grant of Probate, the Executor needs to provide the Court with a number of details surrounding the Will, the Death Certificate and the assets and liabilities of the estate. As part of this process, the Executor lodges the original Will with the Court.

A Grant of Probate is required to deal with assets from various organisations.

Some of the assets that may require a Grant of Probate are:

- Real Estate. If the deceased had property in their sole name or as a tenant-in-common with another person (which is a particular type of joint ownership) then a Grant of Probate must be produced to the Lands Titles Office before they allow the property to be sold or transferred.
- Bank Accounts. Each Bank or Credit Union will require a Grant of Probate where the amount held with that institution is over the threshold dictated by that institution – each institution determines their own limit. If the deceased only had a small bank account and no other assets, then you may be able to release the asset with a Certified Copy of Will and Death Certificate and some other forms, but without the need for Probate.
- Refundable Accommodation Deposit. If the deceased paid a bond to an Aged Care Facility, then a Grant of Probate will be required to release this asset.
- Superannuation. If no binding death benefit nomination had been lodged with the superannuation fund, to direct payment of funds directly to a dependant such as spouse or children, then a Grant of Probate may be required. If a binding nomination has been made to the estate, a Grant of Probate is usually required to release the superannuation to the estate.
- Life Insurance. Much like superannuation, if a beneficiary is not nominated on a life insurance policy, then that organisation may require a Grant of Probate to release the funds to the estate.
- Shares. If there are shares in the estate, then you will need to supply a Grant of Probate to the share registry to transfer the shares to a beneficiary or sell the shares to distribute funds.

## Once I have Probate, what do I do?

Once you have a Grant of Probate, you are able to call in funds from financial institutions, shares and any other assets in the estate and start the administration process. Any items that are to be given to a particular person under the Will, such as shares or property, can now be transferred. It is important to determine with an accountant if an estate tax return is required, and if there are any outstanding

tax returns for the previous year. This must be completed prior to an estate being finalised. Once this is completed and you have all of the assets and funds in the estate, you can do a final distribution to the beneficiaries.

Some Executors like to manage the administration process themselves, while others prefer to have lawyers handle most of it for them. Lawyer's fees for assisting the Executor to administer the estate are an expense of the estate.

## When is Probate not required?

A Grant of Probate is not required for every Will. It is best to speak with a lawyer to determine if you need Probate. If Probate isn't required, your lawyer can help you figure out what still needs to be done to finalise the estate. Some common assets where Probate is not granted include:

- **Motor Vehicle.** You need to take a Certified Copy of the Will and Death Certificate to Motor Registration in order to authorise the transfer of vehicle registration.
- **Real Estate.** If the deceased held property as a joint tenant with another person (a common type of joint ownership, especially for married couples), then you will need to do an Application to Register Death by Survivor with the Lands Titles Office. The Conveyancing department at Andersons Solicitors can assist you with this.
- **Superannuation.** If there is a binding death benefit nomination, then you can often liaise directly with the superannuation fund and complete the required forms with to release the funds. Similarly, if there is no binding nomination but the deceased had a dependant spouse or children, then the Executor and those dependants may be able to liaise directly with the superannuation fund to arrange the release of funds without requiring a Grant of Probate.
- **Bank Accounts.** If there are no other assets in the estate and the funds are below a bank's threshold, then you may be able to deal directly with the bank to release the money without getting Probate. You will first need to confirm with a lawyer or your bank whether the funds held are below the bank's threshold.

## What if I don't want to be Executor?

It can be a very difficult time when someone passes away, and being an Executor can take a lot of time. If you don't feel like you are able to fulfil the role of an Executor, you may be able to resign from that role, which is called renouncing. To renounce as Executor, you need to complete and sign a specific form and lodge this with the Supreme Court of South Australia, or provide it to the person who will act as the Executor, or their lawyer.

There are other options, such as declining to act as an Executor now, but keeping open the possibility of stepping back in at a future time. Your lawyer can help guide you through your options.

## How Andersons can help?

Andersons has a team of specialist [Probate and Estate Administration lawyers](#) working across our 6 metropolitan and regional offices, who can assist you in the process of obtaining a Grant of Probate and Administering an Estate. For assistance with your enquiry, please [contact us here](#).