

Video: What is the role of an Executor?

In this video, Senior Associate Brad Harvey explains the important role of an Executor of a Will. Brad also explains what a Grant of Probate is and when it's required.

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TRANSCRIPT:

An executor's role is to carry out the terms of the Will and administer the estate in accordance with what the wishes were set out in the Will by the person who has passed away.

What are the duties of an Executor?

The basic duties of an Executor are to first locate the original Will, and in doing this ensure that no staples are removed from the Will, and nothing is attached to the Will.
Then you can attend to funeral arrangements with the funeral director and also apply for the death certificate, through the director, which is done with the department of births, deaths and marriages.

If any funeral and testamentary expenses are incurred during this time you can seek authority from a bank or asset holder of the person who has passed away or alternatively if you pay for any of these

yourself, you can seek reimbursement later on once assets have become available and payment can be made.

After you've done all of these you can work out what assets and liabilities are held in the estate and determine whether a Grant of Probate is required.

What is a Grant of Probate?

A Grant of Probate is required to deal with assets from various organisations. Some of these organisations that may need a Grant of Probate include real estate, bank accounts, refundable accommodation deposits, superannuation, life insurance and shares.

Let's look at these individually.

Real estate:
If the deceased held property in their sole name, or as tenants in common with another person, which is a common form of joint ownership, then a Grant of Probate and certificate of disclosure will need to be produced to the Land Titles office in order to deal with this asset.

Bank accounts:
Each bank or credit union will require a grant of probate and certificate of disclosure for that asset whenever the amount held in the bank account is over a particular limit as determined by that financial institution.

Each financial institution determines their own limit when they require a Grant of Probate. If they don't require a Grant of Probate it may be that they require a certified copy of death certificate and Will together with the relevant indemnity forms signed. This will only be if the amount is deemed small enough by that institution.

Refundable accommodation deposit:
If the deceased paid a bond into a retirement village or another accommodation provider then a Grant of Probate will be required to release that asset.

Superannuation:
If the deceased didn't have a binding nomination direct to a beneficiary such as a spouse or children then a Grant of Probate may be required to release the Superannuation asset to the estate and likewise if the deceased held a binding nomination directly to their estate or legal personal representative then a grant of Probate may be required.

Life Insurance:
Much like Superannuation, if there is no beneficiary nominated on the life insurance policy then a Grant of Probate may be required to release the asset to the estate.

Shares:
If there are shares in the estate then a Grant of Probate may be required to transfer the shares to a particular beneficiary or to sell the shares and release the funds to the estate.

Once I have Probate what do I do?

Once you have Grant of Probate you can start calling in funds from the financial institutions, shares

and any other assets in the estate, likewise if there are any particular gifts or items to be given to a beneficiary you can now start transferring it to them.

Pending of course if you think there is a challenge made to the estate then you would need to speak to your lawyer about this before doing any administration.

Part of the administration process to the estate is to organise and finalise any tax returns if the deceased was paying tax during their lifetime and also if an estate return needs to be finalised as part of this.

When is Probate not required?

A Grant of Probate isn't required for every Will and its best to speak to a lawyer to determine if a Grant of Probate will or won't be required. If it's not required, a lawyer will be able to help you determine what still needs to be done to finalise the estate.

Some of the common assets where a Grant of Probate isn't required are motor vehicles, property, bank accounts, superannuation or life insurance.

Motor Vehicles:
You will need to take a certified copy of the Will and certified copy of the death certificate to motor registration to authorise the transfer of the vehicle.

Real Estate:
If the deceased held property as a joint tenant with another person then you won't need a Grant of Probate for this, you'll need to lodge what's called an application to register death on the title to transfer the asset solely. A conveyancer at Andersons will be able to help you with this.

Superannuation:
If there is a binding death nomination held with the super fund then that beneficiary will be able to liaise directly with the Superannuation provider to wrap up the asset.
Likewise, if there isn't a nomination but there is a dependent such as a spouse or children then they may also be able to deal with the Super fund directly.
Life Insurance policies and beneficiaries of those policies act in a very similar way.

Bank Accounts:
If there are no other assets in the estate, and the amounts held in the bank accounts is below a particular threshold then you may not need Probate in the estate and you may be able to finalise the asset with the bank directly. You will be able to determine with your lawyer and the bank direct as to what this threshold is.

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

It can be a difficult time when someone passes away and being an executor can take a lot of work. If you don't feel like you'll be able to fulfil your role as an Executor at the time, you can renounce which is where you complete a renunciation form and provide this to the court at the time a Grant of Probate is applied for.

There are other options too such as not applying for an executor but keeping the option open to apply at a future time and your lawyer can speak to you about these possibilities.

How can Andersons help?

I hope this information has been helpful. If you would like to speak to someone further about the role of an executor and applying for a Grant of Probate, please contact **Brad Harvey** or call 8238 6666.

The information in this article is general in nature and was accurate at the time of publication. Laws and circumstances can change. For advice specific to your situation, please seek professional legal advice.