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LawTalk Blog



When someone dies, what is probate?

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The death of a family member or friend is often a difficult time. Hopefully, a valid Will is left that specifies what is to happen to any assets upon that death and who the executors will be.

Although the responsibilities of executors can be shared, they can also be given to just one person (such as a family member, friend or your lawyer). Nevertheless, an executor is a person whose role it is to secure and distribute assets of the deceased and to ensure the terms of the Will are carried out lawfully.

What is the role of an executor?

An executor has many important duties when acting on behalf of the estate of a deceased person. These duties can include:

- notifying banks and other organisations of the death;
- identifying who the beneficiaries of the estate are;
- determining the entitlements of beneficiaries;
- paying the liabilities of the deceased and any estate claims (which may involve selling off assets held by the estate); and
- most importantly, obtaining a **Grant of Probate** from the Supreme Court of South Australia.

What is a Grant of Probate?

A Grant is the official recognition by the Supreme Court of the document which constitutes the last Will and then also acknowledges the right of those named in the Will as executors to administer the estate.

What are Letters of Administration?

In some circumstances the Court can give a Grant of Letters of Administration instead of a Grant of Probate.

A Grant of Letters of Administration is needed when there is no Will or where there is a Will however the appointed executor is not able to act for some reason or has died before the maker of the Will.

The Probate Rules of Court direct who is entitled to apply for a Grant and the manner in which an application must be made. This is something that can be done on your behalf by a solicitor.

When is a Grant required?

Whether a Grant is needed will usually depend on the assets of the estate.

For example, a bank holding money which belonged to the deceased will need to know who that money should be paid to – in this case, a Grant acts as proof that the person named (executor or administrator) is the person entitled to collect the money on behalf of the estate.

Similarly, if the deceased owned a substantial number of shares in a company, that company will usually insist on seeing a Grant before it will transfer the shares.

A Grant will always be required if the deceased person owned real estate in their own name or if they held an interest in a property with someone else. The Land Titles Office will not transfer land to another person without a Grant.

However, it is worth noting that any real estate owned by the deceased as a [joint tenant](#) with another person cannot form the subject of a Grant (or part of a deceased estate) as any surviving joint tenant is automatically entitled to the property.

Generally speaking, if the deceased had minimal assets it may not be necessary to apply for Probate. Instead, the assets can be administered by the executor provided he or she has the original Will and Death Certificate.

If a deceased person owned assets in more than one [State \(or country\)](#) it may be necessary to apply for a grant in each place where assets were located.

What does the process involve?

The process to apply to the Probate Registry seeking a Grant of Probate or Administration requires various legal documents to be prepared, signed and lodged. It is generally very difficult for many members of the public to handle successfully without assistance from a lawyer.

An application may prove to be particularly difficult if, for example:

- the validity of the last Will is in question;
- there is uncertainty as to what document actually constitutes the last Will; or,
- the Will has not been completed and/or been signed and witnessed correctly.

There are many other problems which may lead to significant delays in dealing with estate assets and finalising the role of the executor.

The Andersons Wills &Estate Planning team always recommend you speak to a solicitor concerning the Will of a deceased, particularly if you are named as an executor.

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