

Administering the Estate of the Deceased after a Grant of Letters of Administration has been Obtained - A Fact Sheet

I have obtained a grant of Letters of Administration. What does it mean?

It means that the Supreme Court has given you permission (as the administrator appointed by the Court) to deal with the assets of the deceased, that is, collect all the assets of the deceased, pay off all the debts and distribute the assets of the deceased as outlined in the *Administration Act 1903 (WA)*.

What has the Administration Act got to do with the distribution of the estate of the deceased?

If a person had died with a Will, that person would have appointed an executor and stated how the estate is to be distributed. If there is no Will, then the *Administration Act 1903 (WA)* sets out a hierarchy of entitled people who can apply for Letters of Administration, administer the estate and share in the assets of the deceased.

It is only the entitled people who can deal with the estate of the deceased who has died without a Will.

Does it mean that I, as one of the entitled people, do not have the power to deal with the assets of the deceased before obtaining a grant of Letters of Administration? I, as the spouse/child of the deceased should not distribute the assets of the deceased before obtaining a grant of Letters of Administration?

The answer is not straightforward.

If all the assets of the deceased are owned by the deceased as a joint tenant with someone else, an application for a grant of Letters of Administration is not required. The assets can be transferred to the surviving joint tenant without a grant.

If the deceased owned a small bank account, superannuation and a car, there are a few things that can be done. There can be negotiation with the bank for the release of funds to a dependant of the deceased or to the entitled people without a grant of Letters of Administration.

Just be aware that different banks have different policies about the release of deceased estate funds.

Note that if the fund in the bank account of the deceased is less than the prescribed amount it can be paid to the deceased person's spouse or next of kin - Section 139 of the *Administration Act 1903 (WA)*. The prescribed amount varies from time to time.

Each financial institution has different regulations. Check with the financial institution.

In relation to the car, you as one of the entitled people may approach the Department of Transport and apply to have the vehicle transferred to the name of one of the entitled people without a grant.

If there is a superannuation entitlement in the name of the deceased, a dependant of the deceased can apply to the superannuation fund to have the funds released without a grant of Letters of Administration.

In the event that a grant of Letters of Administration is required, although the assets of the deceased cannot be dealt with before a grant is obtained, there are certain things that the entitled people can attend to before a grant is obtained.

The entitled person needs to make sure that the assets of the deceased are kept insured. Where possible, you as one of the entitled people have a duty to make sure that the assets of the estate are maintained and preserved, for example ensuring bank interest is paid on term deposits prior to their withdrawal and so on.

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There are certain assets of the deceased that you, as one of the entitled people, can deal with before a grant of Letters of Administration is obtained. For example, there may be perishable items of the estate that have to be dealt with immediately or animals and farm products that need your immediate attention.

Once a grant of Letters of Administration is obtained, you will be reimbursed for any reasonable expenses incurred when administering the estate. Make sure you keep receipts for all expenses you have incurred on behalf of the estate.

If there are assets in the sole name of the deceased, then those assets, such as bank accounts, should be frozen. If the deceased has loans or mortgage payments due, the financial institutes should not try to get someone else (for example, a spouse or beneficiary) to pay those debts of the deceased.

It is advisable to send a certified copy of the death certificate to all the financial institutes, utility service providers, and shires notifying them that the person has passed away.

On receiving such notification, all the agencies which have received the notifications should then cease deducting payments from the account of the deceased person, such as taking out mortgage payments from the deceased's account or making a direct debit from the account of the deceased.

Are you saying that I, as the spouse or child of the deceased, am not personally liable for the debts of the deceased when the debt is in the sole name of the deceased?

If you were the guarantor or surety on a loan that the deceased had, then you may be liable — this depends on the agreement between parties.

If the debit is in the sole name of the deceased, the financial institutes cannot ask the spouse or children of the deceased to make payments or settle the loan of the deceased. Once the debtor is dead, the debt is a debt of the estate, not the debt of the surviving spouse or other beneficiaries of the estate.

As the administrator of the estate of the deceased am I entitled to be paid for the time I spend in administering the estate of the deceased?

You, as the administrator appointed by the Court, cannot invoice the estate for the time spent administering the estate unless you are a lawyer.

Note that you will be reimbursed for any expenses incurred, for example you will be reimbursed for paying the filing fees when filing the application for Letters of Administration, but you cannot invoice the estate for the time you spend administering the estate.

If all the entitled people agree that the administrator should be paid, then the administrator can be paid for their time and effort in administering the estate.

Note that you will be reimbursed for all reasonable expenses incurred in the administration of the estate.

As an administrator appointed by the Supreme Court of Western Australia can I distribute the estate as I think fit?

No, you do not have the power to do this. The estate, after all debts have been paid, must be distributed as set out in the *Administration Act 1903 (WA)*.

If the entitled people agree, then the distribution of the estate can be changed by the parties signing a Deed of Family Arrangement.

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If there is no agreement and a party wants to change the distribution of the estate as set out in the *Administration Act 1903 (WA)*, then Supreme Court action has to be commenced. You as the administrator will be joined as a party to such Court action and the estate funds will be used for you to defend/respond to the Court action. At CAB we draft Deeds of Family Arrangement.

How do I deal with the assets of the deceased once I have obtained a grant of Letters of Administration?

You as the administrator appointed by the Court should collect all the assets of the deceased and make a list of all the assets and liabilities (that you know) of the deceased.

Maintain the assets of the deceased, that is, keep the assets of the deceased in good repair and pay any insurance due (you will be reimbursed later). You as the administrator must maximise the returns of the estate.

What is the first task I have to attend to?

The first task would be to get a few certified copies of the Letters of Administration parchment.

Take or send the certified copies of the parchment to the financial institutes where the deceased had accounts. The accounts can then be unfrozen. You can then open a new estate account and transfer the funds into the estate account.

What is an estate account?

An estate account is an account opened in the name of the deceased, for example the account name would be noted as "the Estate of John Smith", not an account under the name of John Smith.

Must the estate account be opened in the same bank where the deceased had an account?

No, that is not the case.

You can open an estate account in the same bank where the account currently exists or open an estate account in another bank. Once an estate account has been opened you can transfer the funds in the frozen account into the newly opened estate account.

What is the next thing to do?

You must write to all agencies which are holding assets of the deceased.

Include a certified copy of the Letters of Administration parchment and request that the funds to be transferred to the estate account.

Let us take this example: If according to the *Administration Act (1903) WA* all the assets are to be distributed to the three children of the deceased but there are shares and the three beneficiaries want the shares to be sold and the funds distributed to the three beneficiaries, then this needs to be attended to. The shares have to be sold and the funds deposited into the estate account to be distributed when the final distribution is made.

It is important to keep a record of all the transactions you carry out on behalf of the estate of the deceased.

Let us assume that according to the Administration Act (1903) WA there are three beneficiaries who are entitled to the estate equally and the deceased had a house. All of the beneficiaries agree that one of the beneficiaries is to get the house absolutely. Is there an option for this to take place?

If the entitled people agree, then the entitled people, and you as the administrator (having obtained a grant of Letters of Administration) can enter into a Deed of Family Arrangement to change the manner in which the assets of the estate will be distributed.

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You can only enter into a Deed of Family Arrangement after a grant of Letters of Administration has been obtained. At CAB we do draft Deeds of Family Arrangement.

How do I deal with a property registered in the sole name of the deceased?

The property has to be sold and the net proceeds transferred into the estate account. If a beneficiary wants to purchase the property then the parties can enter into a Deed of Family Arrangement.

You as the administrator can personally sell the property or you can have this task attended to by a real estate agent. The fees for the service of the real estate agent and settlement agent should come out of the estate account.

How do I deal with the debts of the deceased?

All debts of the deceased should be paid first before the estate is distributed, but do not attend to this immediately after the grant of Letters of Administration has been obtained.

Paying off all the debts of the estate and distributing the assets of the deceased should be the last task you attend to as the administrator.

It is advisable to place a Section 63 Notice first.

What is a Section 63 Notice?

A section 63 Notice is a notice that the administrator can place in the Death Notice section of the West Australian newspaper and the Government Gazette. The Notice would state that you have obtained a grant of Letters of Administration and that you are now the administrator of the estate. If the deceased owes anyone a debt, the creditor must come forward within one month of the Section 63 Notice to put forward their claim.

If a creditor does not do this within that timeframe, then the administrator can distribute the assets in accordance with the terms of the grant of Letters of Administration.

Is there any other thing I have to attend to?

There is no death tax in Australia but the estate may be liable for income tax or capital gains tax.

It is advisable to contact a tax agent or an accountant to find out if the estate has to submit a final income tax return. Get advice if there are any other tax liabilities of the estate.

If there is a need to submit a final income tax return, get this done and pay any estate tax liability due. If the tax agent or the accountant advises that there is no need to submit a final income tax return, get this information in writing from the tax agent or accountant.

If you as the administrator have finalised the estate, and a tax debt has to be paid, the tax debt has to be settled using your personal funds if the beneficiaries refuse to pay the tax debt.

The estate may be liable for capital gains tax or other taxes. Note that there may be tax liabilities for assets sold two years after the death of the deceased.

Can an interim distribution be made to the beneficiaries?

You can make an interim distribution but you need to be satisfied that funds will be available to pay the debts of the estate as all debts of the estate have to be paid first, before the estate is distributed.

What if there are more debts than assets in the estate?

The estate is a bankrupt estate. Get legal advice on how to administer a bankrupt estate.

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Is there a timeframe for finalising the estate?

There is no timeframe for finalising an estate. The timeframe depends on how simple or complex the estate is.

It is advisable to wait for six months after obtaining a grant of Letters of Administration before distributing the estate of the deceased.

What is the reason for the six months' timeframe?

If anyone wants to challenge the distribution as set out in the *Administration Act 1903 (WA)*, the timeframe for doing this is six months from the date of the grant of Letters of Administration. Note that a challenge to the distribution can be commenced after the six months' timeframe if the challenger can demonstrate a reasonable excuse for not commencing action within the timeframe. If the Supreme Court is satisfied with the reason/s it can grant leave to make an application out of time.

How do I make the final distribution?

The estate must be distributed as set out in the *Administration Act 1903 (WA)*.

Once all the debts of the estate have been paid, prepare a final statement for each beneficiary. Outline the assets of the deceased and all the expenses incurred. Then itemise the entitlements of each beneficiary as outlined in the *Administration Act 1903 (WA)*.

Advise the beneficiaries that statements or invoices are available in relation to the expenses incurred. If a beneficiary is satisfied with the statements, ask that they sign the statements and return the same to you with their bank details.

Once you have received the signed statements, a final distribution can be made into the bank account of each beneficiary.

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