

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

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

It means that the Supreme Court has given you permission and legal authority (as the executor appointed in the Will of the deceased) 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 Will.

What are my duties and obligations as executor of the estate?

Refer to our fact sheet on [Duties of an Executor](#) for further information about this.

As an executor can I distribute the estate as I think fit?

No, you do not have the power to do this. Your duty as executor is to distribute the assets of the estate as outlined in the Will.

However, if all the beneficiaries agree, then the distribution of the estate can be changed by the parties signing a Deed of Family Arrangement.

If there is no agreement and a party wants to change the terms of the Will, then they will need to commence Supreme Court action. You as the executor will be joined as a party to such court action and the estate funds can be used for you to defend/respond to the court action.

How do I deal with the assets of the deceased once I have obtained a Grant of Probate?

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 - keep the assets of the deceased in good repair and pay any insurance due (you can be reimbursed from the estate account). You, as the executor, are required to maximise the returns of the estate, but without taking risks. You should keep copies of all receipts for payments you make, especially

if you make any payments yourself and will be obtaining a reimbursement from the estate.

What should I do first?

The first task would be to get a few certified copies of the original Grant of Probate (a yellow parchment with a red wax seal and a photocopy of the Will). This will include a copy of the Will attached at the back of the Grant.

Take or send the certified copies of the Grant of Probate (make sure you keep the original Grant) to the financial institutions where the deceased had accounts. They may also need you to comply with any other processes they have for the deceased's accounts to be unfrozen. You can then open a new estate account and transfer the funds into the estate account.

Other institutions may also need to see a copy of the Grant of Probate before allowing dealings with certain assets eg share registries. If so, send them a certified copy of the Grant, not the original.

What is an estate account?

An estate account is a bank 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 "John Smith" or the executor's name.

All receipts and payments relating to the estate should be made into and from the estate account so that the estate accounting is transparent and there is a clear written record of all transactions.

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

No. You can open an estate account in the same bank as the deceased's account, or open an estate account with another bank. Once an estate account has been opened, you can transfer the funds from the frozen account into the newly opened estate account.

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What is the next thing to do?

Write to all agencies that are holding assets of the deceased. Include a certified copy of the Grant of Probate and request that the funds to be transferred to the estate account.

For example: If in the Will the deceased has stated that an asset — such as shares — has to be transferred to an individual beneficiary, then this needs to be attended to. If the deceased has not gifted the shares to anyone, then the shares have to be sold and the funds deposited into the estate account.

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

What if the deceased had not specified which of his three beneficiaries gets the deceased's home, but a beneficiary wants to buy the house. Is there any option for this to take place?

Normally in that scenario, the deceased's house would have to be transferred to all 3 beneficiaries equally or sold and then the proceeds distributed to them equally.

However, if all the beneficiaries agree, then the beneficiaries and you as the executor (having obtained a Grant of Probate) can enter into a Deed of Family Arrangement to change the terms of the Will so that the house goes to just one beneficiary. The same can be applied to other assets of the estate.

Note that a Deed of Family Arrangement should only be entered into after a Grant of Probate has been obtained.

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

If the will-maker has gifted the property to a specific beneficiary, when finalising the estate, the asset can be transferred to that beneficiary. You as the executor can organise this yourself or you can have this task attended to by a settlement agent. The fee for the service of the

settlement agent comes out of the estate account.

If the property is not gifted to anyone, then the property has to be sold. This is a task you can do yourself or have a real estate agent deal with this. The selling fees would be paid for from 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. However, do not attend to this immediately after the Grant of Probate is obtained.

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

It is advisable to place a Section 63 Notice before making any distribution of the estate — see below.

What is a Section 63 Notice to Creditors?

This is a notice under section 63 of the *Trustees Act 1962 (WA)* that the executor can place in the Death Notice section of *The West Australian* newspaper and in the *Government Gazette*.

The Notice should state that you have obtained a Grant of Probate and that you are now the executor of the estate. If the deceased owed anyone a debt, the creditor must come forward within one month of the Section 63 Notice being placed to put forward their claim. If a creditor does not come forward within that timeframe, then the executor will distribute the assets in accordance with the terms of the Will.

There is a standard format for the Notice, which follows the Second Schedule to the Trustees Act.

Is there any other thing I have to attend to eg taxation?

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 deceased or the

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estate has to submit a final income tax return or has any other tax liability.

If the deceased needed to lodge tax returns when they were alive, then the Australian Tax Office (ATO) should be notified of their death, and all their tax requirements brought up to date.

The estate may be liable for income tax (on income generated from estate assets), capital gains tax or other taxes. If there is a need to submit a final income tax return, get this done and pay any estate tax liability due before distributing the estate. If the tax agent or the accountant advises that there is no need to do a final income tax return, get this information in writing from the tax agent or accountant.

If you as the executor 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. Therefore, make sure you seek appropriate professional advice and consider all potential tax liabilities before making a final distribution of the estate.

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 first.

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.

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's finances are. It is advisable to wait for 6 months after obtaining a Grant of Probate before distributing the estate of the deceased.

What is the reason for the 6 month wait before finalising the estate?

If anyone wants to challenge the Will, the timeframe for doing this is 6 months from the Grant of Probate.

Note that a challenge to the Will can be commenced after the 6 month 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, the Supreme Court can give permission for an application to be made out of time.

How do I make the final distribution?

The estate must be distributed as set out in the Will (unless there is a Deed of Family Arrangement or a Court order to the contrary).

You should account for your administration of the estate as executor before making the final distribution. 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 Will.

State that statements or invoices are available evidencing the expenses incurred. If a beneficiary is satisfied with the statement, ask that they sign the statement and return it to you with their bank details.

Note that under the *Non-Contentious Probate Rules 1967* (WA), every executor and administrator of a deceased estate (excluding the Public Trustee of Western Australia) has a duty to file their accounts relating to the deceased estate in the Supreme Court of Western Australia. This is known as 'passing of accounts'. In practice, an executor usually only needs to pass the accounts if a beneficiary or the Court requires them to. However, an executor may want to complete the process to protect themselves as once passed, the accounts are considered correct on the face

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of things and the administrator is released from further responsibility in relation to the accounts after the expiration of 3 years. If the estate has been contentious, then having the executor's accounts passed may be a prudent step to take.

The accounts to be filed by the executor must be in the form required by the Court and the executor must swear an affidavit verifying that the accounts are correct. The accounts must contain full particulars of receipts, disbursements, assets and liabilities and provide evidence to the Court of how the estate has been distributed, to ensure it has been distributed in accordance with the terms of the Will. The executor will usually have to provide supporting documents such as receipts, invoices, bank statements etc.

Once you have received signed statements from all beneficiaries or had the accounts passed, a final distribution of funds can be made into the bank account of each beneficiary under the Will.

As the executor of the estate, am I 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 the loan that the deceased had, then you may be liable — this depends on the agreement between parties.

If the debt is in the sole name of the deceased, the financial institutions cannot ask the spouse or beneficiaries of the deceased or the executor to make payments or settle the loan of the deceased. Once the debtor dies, the debt is a debt of the estate, not the debt of the surviving spouse, beneficiaries or the executor of the estate.

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

Unless the will-maker has stated in the Will that the executor is to be paid, the executor — unless the executor is a lawyer — cannot invoice the

estate for the time spent administering the estate. Note that you can be reimbursed for any reasonable expenses you have incurred.

For example, you can be reimbursed the filing fees you pay when filing the application for a Grant of Probate.

If the will-maker has not made any provision for the executor to be paid, but all the beneficiaries of the estate agree, the executor can be paid for their time and effort in administering the estate.

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