

## ESTATE ADMINISTRATION

Usually a person is involved in only one or two estates in their lifetimes. Therefore, it is not surprising that if you are named as an executor in one of your parents' wills, for example, that you can be apprehensive as to your duties and how the estate will be administered and how a solicitor can help you.

### Frequently asked questions

#### 1. *What is the role of an executor?*

His/her/their responsibilities are to administer the estate. In simple terms it includes:-

1. identifying the assets and liabilities of a deceased person as at date of death;
2. preserving the assets whilst the estate is being administered;
3. paying all outstanding debts;
4. bringing in assets (e.g. closing bank accounts and/or selling property); and
5. distributing assets (e.g. furniture, jewellery and cash) that has been realised from the sale of assets and closure of bank accounts.

For modest estates, the role is relatively simple however there are many possible complexities, for example, holding monies on trust until a child has reached the age of 21 years or as nominated in the will.

As there are many different issues that arise even in a straightforward estate, we strongly suggest you make an appointment with one of our solicitors who can guide you as to how to administer the estate in a quick and cost-effective manner.

#### 2. *What is a grant of probate?*

A grant of probate is a term given to an order issued by the Supreme Court of South Australia to the executor(s) confirming his/her/their appointment as executor(s). Not all estates require a grant of probate, however, it is necessary for those estates:-

1. where there is a bank account of sufficient size (usually between \$50,000.00 and \$100,000.00, depending on the bank). In such cases the bank will not close the account until it has sighted the grant of probate as it gives the bank protection that they are paying the money to the rightful person(s), namely the executor(s); or
2. where there is real property - the Registrar-General of Lands will not transfer or alter a Certificate of Title until he/she has sighted the grant of probate. Once again, it confirms the chain of title from the deceased's name to the executor, then to the subsequent purchaser or beneficiary of the will.

#### 3. *Do you have to use a solicitor?*

All applications for grants must be in accordance with the Rules of Court. Those Rules govern who is entitled to claim the grant and the manner in which the application must be made. You do not have to use a solicitor but it will take an executor who wishes to apply by himself or herself without representation several months to obtain a grant of probate,

whilst it would take a solicitor who specialises in this jurisdiction only several weeks. In our busy, complex lives we use professionals all the time. For example, if you have a toothache you would make an appointment with a dentist and if your dishwasher breaks down you call a repairer, so it is no surprise that if you have legal issues that you use a solicitor who specialises in that particular area of law. It is important to note that solicitors charge a fee for service. In other words, their fee is directly related to the amount of work that they perform. Solicitors do not charge a percentage of the estate like Australian Executor Trustees or Public Trustee.

4. *Do you have to use a solicitor who prepared the will?*

No, you do not have to use the solicitor who prepared the will. You can choose any solicitor you wish from whom you want to obtain legal services. If there is a clause in the will that directs the executor to use a particular solicitor, this clause is of no legal effect.

5. *How much does it cost if I use a solicitor?*

Our fees are calculated on the amount of work performed. The work involved in the administration of the estate can be broken down into two main parts:

1. The application for Probate; and
2. The calling in of assets and distribution of the estate following the grant of Probate.

In relation to the first stage, it is very common to engage the services of a solicitor, because the application for Probate is very specialised and involves dealing directly with the court system.

For the vast majority of cases, we provide an estimate of fees of \$3,000.00 plus GST to complete the first stage. This is in addition to any disbursements, the most significant of which is the Probate filing fee, which must be paid upon submitting the application. We can confidently provide such an estimate because we undertake this work so regularly and consistently complete the tasks required to obtain Probate within the bounds of this estimate.

The Probate filing fee is determined by the Supreme Court and increases annually. As of 1/7/2023 the fees are:

- a) For estates of \$200,000 or less - \$929.00
- b) For estates between \$200,000 and \$500,000 - \$1,858.00
- c) For estates between \$500,000 and \$1million - \$2,475.00
- d) For estates of more than \$1million - \$3,715.00

Our estimate of costs may increase where there are unusual circumstances, for example:

- where the Will is homemade or hasn't been executed properly;
- where there are errors in the Will relating to important matters, such as the deceased's name;
- where there are a significant number of assets, or assets requiring detailed explanation, such as large share portfolios or overseas assets; or
- where the date of death is not certain.

The costs of completing the administration following the grant of Probate vary significantly depending on the nature of the assets and the number of beneficiaries to whom distributions are to be made. For this reason, individually tailored estimates will be provided. However, as an indication the following examples show the potential range of costs:

- To close one bank account, bring in an accommodation bond and distribute to three beneficiaries, our fees would be between approximately \$1,100.00 - \$1,320.00 (inclusive of GST), plus out of pocket expenses.
- To close a bank account, register the executor/s on the title and distribute funds to say three beneficiaries, our fees will be in the region of \$1,650 to \$1,980.00 (inclusive of GST), plus out-of-pocket expenses and the registration fee to issue a new title.
- To close bank accounts, sell shares, register the executor/s on the certificate of title for the property previously owned by the deceased and distribute to three beneficiaries, our fees would be between approximately \$2,200.00 - \$2,750.00 (inclusive of GST), plus out-of-pocket expenses, e.g. share transfer fees and PEXA fees.

6. *What are the implications for taxation?*

For most estates where the deceased was, say, a pensioner and he/she has not paid tax or filed a taxation return for many years, a notification of a deceased person (which can be obtained from the Australian Taxation Office's website) must be lodged with the ATO.

For more substantial estates a taxation return will need to be lodged. Taxation returns for where a trust has been created in a will have to be lodged every year.

A taxation "clearance" can take several months to be obtained but it doesn't prevent the vast majority of the estate being distributed beforehand.