THE LAW CONNECTION

Lawyers & Notary Public

Estate Administration

Important Note:

If you are reading this and do not have a current Will yourself we have one simple thing to say – GET ONE!

This pamphlet outlines the steps to be taken in administering an Estate.

When a person dies, the paperwork involved in sorting out the deceased's property and affairs can be daunting for the family.

What Happens to my Estate when I die?

The following steps may need to be taken:

- Make an appointment for the Executors or a representative for the executors (and other family members as appropriate) to see your lawyer;
- The Executors or representative should collect as much information as they can regarding the Deceased's assets and liabilities. Use the Schedule at the end of this brochure to help you;
- Read the Will and make sure you understand it. You may need some assistance for this. Your lawyer will advise you of the full implications.

If the Estate exceeds certain limits the people named in the Will as executors or trustees apply to the High Court for a probate order confirming the Will and giving them authority to deal with estate assets. This is done by us.

If there is no Will then someone has to apply to the High Court for a grant of letters of administration giving them authority to deal with estate assets. (If you do not have a Will and are reading this – get one – see our FAQ at the end of this).

The executors or the administrators then, using the probate document or the letters of administration document, have to decide how to deal with the Estate and to transfer the assets in accordance with the Will.

Occasionally probate or letters of administration are not required – usually if the estate is small. However, the period for which the trustees could be personally liable for estate assets is much longer than if the applicable orders are obtained, so the trustees may choose to get the order anyway.

These are the legal steps to be taken. But you first need to check the Will to determine if there are any funeral directions. Everything else can wait until after the funeral.

Administration steps

This is a brief summary of what we do for you when we look after an estate.

- Hold a preliminary meeting. This will involve the executors or a representative for the executors and will often include other family members.
- Endeavour to obtain as full a picture of the estate from that meeting.
- Further research or information may be required. We may ask you to get this or we may need to make enquiries ourselves.
- Notify all relevant organisations holding assets of the deceased and request details of how that institution requires the assets administered.
- Apply for and obtain a grant of probate (if there is a Will) or letters of administration (if no Will). Generally this process can take two months or maybe longer. This is made to the High Court and there are significant formalities.
- Report to you at regular intervals on the course of administration.
- Deal with the estate's assets and attend to distribution to the Beneficiaries and ensure that all legal requirements are met.
- Prepare estate accounts and have them approved by the executors.
- Comply with any taxation requirements and liaise with the accountant if necessary.

The above is a very brief overview. Every individual's financial position is quite different and their estate's are different. Some are very simple and some complex. We can help you navigate through this difficult time in a compassionate and effective way.

Can a Will be changed?

Sometimes, the terms of a Will may not be appropriate because of changes in circumstances after it was made or because of something the Will maker may have overlooked. The beneficiaries may just believe that the terms of the Will are not appropriate. They can agree to alter the terms of the Will. Their agreement is recorded in writing. Anyone who is a possible beneficiary under the Will must sign the agreement and must have independent legal advice.

What if a Will is challenged?

New Zealand Law currently allows a Will to be challenged. If this happens, the person challenging the Will cannot take legal advice from anyone in the firm acting for the trustees. We continue to act for the executors and trustees who must remain neutral. The beneficiaries must take their own legal advice independently of this firm.

When a Will is challenged or when it is being changed by agreement, any beneficiaries who are under 20 are represented by their legal guardian, and in some cases the approval of the court may need to be obtained on their behalf.

Who can make a claim against an estate?

The Family Protection Act provides that a deceased person's spouse, partner, and/or children can make a claim if they believe they have not been provided for adequately. If any of the deceased's children have died leaving children of their own then the grandchildren can also claim.

The Property (Relationships) Act provides that a deceased person's spouse or partner may elect to make an application under that Act for a division of the relationship property if they believe they have not been adequately provided for in the Will. The law allows for the deceased person's spouse or partner to either take whatever has been provided for them by the Will OR take whatever they would be entitled to under the Act. That choice MUST be made within six months from the date that probate is granted.

Also in some circumstances, others can make claims under various other laws.

An executor or trustee must make reasonable inquiries to make sure all potential claimants are known. This may involve a search of records at Births, Deaths and Marriages to check the deceased's marital status and/or to check for children of the deceased.

Creditors

Trustees should also make sure that the deceased has no outstanding debts. This can be done by advertising for creditors (as provided for in the Trustee Act 1956) in an appropriate newspaper before the estate is distributed.

When do I get my entitlement/bequest?

Claims can be made against an estate up to one year (and in some cases even longer) after the date of grant of probate or letters of administration. If trustees distribute assets within the six-month period after that date of the grant, they may be personally liable for those assets if a successful claim is made. We normally recommend waiting for the six-month period to expire. If a claim is a real possibility we will suggest waiting twelve months, before the estate is distributed.

Early distributions are possible but we advise the trustees to do so only if the beneficiaries indemnify them against liability for any later claims. Beneficiaries must take their own legal advice about the indemnities.

How much does an estate cost to administer?

Every estate is as unique as the person who has died. Estate administration is complex, lengthy and time consuming but it has to be done correctly.

The basis on which our fees are charged is set out in our terms of engagement which outlines our client service. The trustees will receive this. A copy of these terms of engagement can be given to the beneficiaries on request. If you require further information as to our costs, please let us know.

Helpful information for us before we meet

It is helpful to give the following information to your lawyer to assist with administering the estate:

- Work and Income New Zealand benefit number or recent correspondence from the department
- Any bank passbooks, statements, cheque books, and credit cards held in the sole name of the deceased
- Insurance policies on house, contents and vehicles or insurance company details
- Bonus Bond Certificates
- Original life insurance policy document(s)
- Birth Certificate
- Marriage Certificate or Civil Union certificate
- Death Certificate
- Driver's Licence
- Passport
- KiwiSaver account details
- Funeral account
- Any household accounts which need to be dealt with (SKY TV, telephone, electricity, etc)
- Recent rates notice for the house
- Details of any other assets, heirlooms, taonga etc

Important note to potential beneficiaries of an estate:

If you are in a relationship, then the Property (Relationships) Act 1976 is likely to apply to you. You may wish to keep funds or property you are inheriting from the estate separate from your relationship property.

Generally, and except for property which falls into categories like the home, furniture, or family car,

- property owned before the relationship began,
- inherited property, and,
- gifts

are not shared – but there are significant exceptions to this. If you really want to be sure your relationship partner has no claim on your property, you need an agreement, or you need to make sure that the property never becomes available for the purposes of the relationship. You can easily be caught out in this. So if you are inheriting property or looking at becoming the owner of something that is either important or expensive – **see your lawyer first.**

Your inheritance money should be deposited into an account held in your **sole name.**

If you decide to deposit funds into a jointly held account, or any other account that is not in your name we will require a signed written instruction from you.

Please do not hesitate to contact us if you have any questions.

Frequently asked questions

What is the difference between executors and trustees?

Being an executor and trustee involves two responsibilities. As executors those people must locate the Will, arrange the funeral and ensure the instructions in the Will for the distribution of the estate are carried out. Any estate assets are to be held in trust, then the second responsibility is as trustees. This could arise ie. a person has left assets to young children or a life interest to someone. The assets must be looked after until the children reach 20 years of age (or for longer), and in the case of life interests, sometimes for many years.

What are Trustees' duties?

Trustees of an estate must know their duties. These arise from the Will (if there is one) and from the Trustee Act, the Family Protection Act and the Administration Act and other laws. In brief, trustees' duties include:

- A trustee must understand the Will of the terms of their appointment, the estate's assets and the estate's business.
- Trustees must comply with the terms of the Will and the law.
- Trustees must ensure that the estate's assets are held in the name of the trustees.
- Trustees must provide information about the estate to any beneficiary if asked to do so.
- Trustees must keep accurate records and accounts for the estate.
- If there is more than one trustee decisions must be unanimous.

Trustees need to know that if they allow estate assets (including personal items and household chattels) to be distributed within six months of the date of probate or letters of administration, they may be held personally liable for those assets, if a successful claim against the estate is made later. Normally we recommend waiting for the six-month period to pass before any distribution is made although there is a process available for earlier distribution in some cases. The period of personal liability is longer if probate or letters of administration are not obtained.

The executors and trustees are our clients for the purpose of administration of the estate, and we therefore have to act on their instructions not those of the Beneficiaries.

What about mediation?

If all parties agree, a mediator may be able to act if there is a dispute about a Will. Mediation is less expensive and quicker than court action. A successful mediation will result in agreement which is recorded in writing. Again, in some instances the approval of the court may be required on behalf of beneficiaries who are under 20.