

Deceased Estates

The main objective in the administration of a deceased estate is to transfer ownership of assets from the name of the deceased person to the name(s) of the beneficiary(ies) mentioned in the will.

The following words are commonly used when dealing with deceased estates:-

- *estate* – the property owned by a person at the time of their death
- *Testator* – a man who makes a will
- *Testatrix* – a woman who makes a will
- *dying testate* – when a person dies leaving a will
- *dying intestate* – when a person dies without leaving a will
- *Executor* – a man who distributes the estate under a will
- *Executrix* – a woman who distributes the estate under a will
- *Administrator* – a man who distributes an estate when there is no will
- *Administratrix* – a woman who distributes an estate when there is no will
- *Personal Representative* – a collective term for executor, executrix, administrator, or administratrix
- *Beneficiaries* – people who receive certain assets under the will
- *Probate* – written authority from the court allowing the personal representative to become registered owner of the deceased's assets and then to finalise the estate in accordance with the will
- *Letters of Administration* – same as probate however there is no will

Executors

The first task is to locate the last will of the deceased. Wills are normally kept with solicitors, banks, or trusted friends who may have been nominated as the executor. A perusal of the will then establishes who is the executor.

Several problems can arise with regard to executors:-

- *no executor appointed*; the court will appoint an executor who will normally be the next-of-kin
- *executor does not wish to act*; a person cannot be forced to be an executor. If there is no other executor appointed under the will, the court will appoint a replacement executor
- *executor is dead*; the court will appoint a replacement executor. If the executor survived the testator but died before probate was granted, the person named as executor in the deceased executor's will then becomes the executor under the first will

Duties of personal representatives

The personal representative is required to collect in the assets of the deceased, pay any liabilities, and distribute the balance to the beneficiaries named under the will.

The payment of funeral expenses has the first priority under Queensland law.

This duty must be performed as quickly as possible otherwise beneficiaries may complain to the court.

To protect personal representatives from personal liability, a 'statutory notice to claimants' should be advertised in certain newspapers calling on possible creditors to notify the personal representative within six weeks of any claim they may have against the estate.

If a personal representative distributes the estate assets without first giving such a notice, they become personally liable to pay any estate debt which they may subsequently become aware of.

A personal representative is personally liable for any debts incurred in the course of finalising the estate but is entitled to an indemnity from the estate if the debts were properly incurred.

A personal representative may be entitled to payment for their services if expressly stipulated in the will or if approved by the court.

Trustees

A trustee under a will performs a different duty from that of the executor. The executor's duties conclude when the assets of the estate have been collected in and distributed to the beneficiaries. A trustee is responsible for long-term duties under the will such as supporting and maintaining children of the deceased or investing moneys in a bank account until a certain future event occurs e.g. the deceased's child reaches a certain age.

Contesting a Will

A person may consider applying to court to challenge the will for the following reasons:-

- the will made no provision for the deceased's spouse, child, or dependant. Such an application is called a 'testator's family maintenance (TFM)' application and is subject to time limits.
- the testator subsequently made another will.
- the testator did not have the mental capacity to make the will.
- parts of the will were later amended without the consent of the testator.

Costs

In most estates comprising a residence, car, superannuation / life insurance, and bank accounts, it is usually unnecessary to apply to the court for probate thereby reducing legal costs and time delays.

We offer a **free initial consultation** so we can advise the quickest and most cost-effective way of finalising your deceased estate thereby giving you peace of mind during your period of bereavement.

And remember - any legal costs incurred in finalising the estate are deducted from the estate funds before the estate is distributed to the beneficiaries.