



Deceased Estates

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Administering a Deceased Estate

Probate, Letters of Administration with the Will Annexed and Letters of Administration are documents issued by the Court which are the official evidence of the executor's or administrator's authority to deal with the deceased person's property. Banks and other financial institutions, Lands Titles Office, and share registries may refuse to allow any dealings in relation to a deceased person's property until the Court has made a grant.

An application must be made to the Court to obtain a grant. The type of application required will depend on whether the deceased left a valid will and if so, the terms of the will, or whether the deceased died without leaving a valid will. This can be a complex area of the law and applicants will often require the assistance of a lawyer.

What is an Executor?

The Executor is a person in a Will who is given the responsibility of distributing the Estate in accordance with a deceased person's wishes.

If the Executor does not accept the appointment, they must decline before doing anything in relation to the Estate.

An Executor can also be a beneficiary of the Will and more than one Executor can be appointed to work together in their role.

If necessary, an Executor can engage the services of a lawyer or an accountant to help with any legal or accounting duties required in relation to the Estate. Any fees are paid from the Estate.

Duties of an Executor

- Locate the original Will and verify that it is the latest; the Executor must be named in the latest Will;
- You are not legally bound to have a formal reading of the Will, it is up to the Executor;
- The Will gives the Executor authority to act, but you may need a **Grant of Probate** to deal with certain assets of the Estate;
- Check any special instructions in the Will or otherwise, regarding organ donation or medical research;
- Make the funeral arrangements, either burial or cremation, as specified in the Will. Although, the Executor can make decisions about funeral arrangements or may consult with the family;
- Establish what assets there are and if there are any liabilities;
- Depending on the value and type of assets, you may have to obtain a Grant of Probate from the Supreme Court. Generally, where there is any real estate, bank or other financial institution accounts over a certain value or shares, life insurance proceeds directed to the Estate, a Grant of Probate will be required before the Executor will be able to deal with those assets;
- Advertise for any claims to be made against the Estate;
- Pay funeral expenses, all debts and Will expenses out of the Estate;
- Some Estate funds may be required to be held in trust until a beneficiary attains a certain age. Your duty is to invest those funds as authorised in the Will or by law;

- Insure any assets that require insuring pending distribution. This is important with respect to the home of the deceased;
- Finalise taxation issues;
- Distribute assets to the entitled beneficiaries. Partial distributions can be made with a final distribution when all liabilities have been paid;
- Take accounting and legal advice where required. As an Executor, you are personally responsible for the Estate.

Where there is no Will or no Executor?

Where a person dies “intestate” it means that the person died without making a Will (or the Will they had is invalid). Any adults entitled to share in the Estate can apply to administer the Estate. This is called **Letters of Administration**. The Estate is distributed in accordance with statutory law. The entitlements depend on which family members survive the deceased, and the value of the Estate.

Where is a Will, but no executor, adult beneficiaries are entitled to apply to administer the Estate subject to the Will. This is called Letters of Administration with Will Annexed. The Estate is distributed by the court appointed Administrator in accordance with the Will.

In both cases, applications must be made to the Supreme Court and the person approved to administer the Estate is called an Administrator.

The Administrator has similar duties to an Executor.

Services We Provide

Torney Legal can advise and act on behalf of an Executor or an Administrator in relation to a Deceased Estate.

We can assist with:

- Obtaining a Grant of Probate, Letters of Administration or Letters of Administration with Will Annexed;
- Administering the Estate or any part of it, on behalf of the Executor;
- Obtaining a re-seal of a Grant in a foreign jurisdiction.

For standard applications for Probate, Letters of Administration and Letters of Administration with Will annexed, we charge a fixed fee.

For more complicated matters and administration of estates, we charge our standard hourly rates or other agreed fixed fee.

Disbursements and Office Costs are charged as they arise.