



Factsheet - Distributing The Estate

Grants Of Probate

When a person dies leaving a will, certain procedures must be followed before the estate can be distributed. In most cases, the executor will need to apply for a grant of probate from the Probate Division of the Supreme Court. Probate is the authority given by the Court to the executor to deal with the assets and liabilities of the estate. The grant of probate is usually a formality but cannot be issued until 7 days after the death of the testator.

To obtain a grant of probate, the executor will need to file a number of documents with the Court. If the documents are in order, the grant of probate will usually take between 7 - 10 days to be issued.

Intestate Estates - Letters Of Administration

Where a person dies without having a valid will (i.e. dying intestate), the next of kin will need to apply to the Court for Letters of Administration. This is an order of the Court that allows the estate to be administered. In these circumstances the Court will usually appoint the next of kin who applied as administrator to distribute the estate.

Next of kin who wish to apply for Letters of Administration must go through similar steps as those required for obtaining a grant of probate.

If you die without having a valid will, your assets will be distributed in a certain order, as set out in the Administration and Probate Act 1935. The statutory order for distribution is as follows:

- if the deceased person leaves a spouse (married or de facto of at least 2 years) and no children, the whole estate goes to the spouse;
- if the deceased person leaves a spouse and children, the first \$50,000 and one-third of the remaining estate goes to the spouse. The other two-thirds of the remaining estate goes to the children;
- if the deceased leaves children only, the estate goes to the children equally (or grandchildren if the child or children are deceased);
- if the deceased has no spouse or children, the estate goes to their living parent or parents;
- if the deceased has no spouse, children or parents, the estate goes to other relatives in the following order: first, brothers and sisters; second, grandparent/s; third, uncles and aunts; lastly, next of kin;
- if the deceased has no living relatives, the estate goes to the State Government; however, the Government may pay some money to dependants if it is established that the deceased had any.

Duties Of An Executor

Basically the duty of an executor or administrator is to collect the assets of the deceased and distribute them to the beneficiaries. How this is done depends on the will and the nature of the estate. A beneficiary does not own the property until the executor distributes the estate. Before distribution, the executor is the owner of the property. An executor has 12 months from the death to distribute an estate.

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If an executor acts improperly or is not administering the estate carefully, the beneficiaries may complain to the Supreme Court. This is the only right a beneficiary has before the distribution of the estate. An executor who obtains an estate by fraud or who retains an estate is liable to account for the assets of the estate.

RELEVANT LEGISLATION

Administration and Probate Act 1935

CONTACTS

Supreme Court of Tasmania

The Public Trustee

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