



Technical Terms an Executor Should Know

Testator: The person making the Will.

Testamentary Capacity: Refers to the mental capacity of the Testator to enter into a new Will. A Testator must be at least 18 years of age and of sound mind. Where a Testator is bedridden or there are circumstances which indicate a lack of testamentary capacity, such as advanced age, mental frailty, alcoholism, extra care must be taken to ensure the Testator is of sound mind.

Executor: The person appointed in a Will to manage the administration of the Testator's Estate. The Executor must be over 18 years of age.

Estate: All of the assets and liabilities of the Testator as at the date of the Testator's death. There are some assets which do not form part of the Testator's Estate. For example, superannuation and life insurance policies are determined by the beneficiaries nominated in the policy and only fall into the Estate, if the Deceased's Estate is so nominated. Any real property which is registered in joint names with another person as joint tenants, does not form part of the Testator's Estate, but rather passes to the surviving joint owner. Properties belonging to a Trust or a Company do not fall into an Estate, even where the Testator is a Trustee/Beneficiary/Appointor of the Trust or a director or shareholder of the Company. However, monies owed to the Deceased in the loan account of a Trust or company and the shares owned by the Deceased in a Company do form part of the Estate.

Administration of Estate: The task of the Executor or the Estate's solicitors in identifying assets and liabilities, collecting the assets and paying the liabilities and distributing the assets amongst the beneficiaries named in the Will.

Beneficiaries: The persons named in the Will who will receive a distribution from the Estate of the Testator.

Death Duties: Death duties are not currently payable in Queensland, but may be payable in other States. The law in relation to the payment of death duties may change in the future.

Intestacy: Occurs when a person dies without leaving a valid Will. In these circumstances, the Estate will be distributed to the surviving spouse and children in the first instance. If there is no surviving spouse or children, then the Estate is distributed as prescribed by Schedule 2 Succession Act (Qld) to the person's parents, brothers and sisters, nieces and nephews, grandparents, uncles and aunts, and second cousins respectively. Where there are no persons entitled to the Estate, the Public Trustee receives the Estate.

Family Provision: The Testator's spouse, child, step-child or dependant may make an Application to the Supreme Court for further provision to be made from the Testator's Estate. This usually happens where that person is of the view that the Testator has not made sufficient provision for them in their Will.

Spouse: Includes a husband, wife, de facto partner, or a former husband, wife or de facto partner.

Child: Includes any biological child, step child or adopted child of the Testator. A step-child ceases being a 'child' upon the divorce of the Testator and the child's parent.

Dependant: Any person who was being wholly or substantially maintained or supported by the Testator at the time of their death. This can include a parent of the Testator, the parent of a surviving child under the age of 18 years of the Testator, or a person under the age of 18 years.

Grant of Probate: The Supreme Court makes an Order that the Will is the last Will of the Testator.

Letters of Administration: Where a person has died without leaving a Will or if there is a Will but no Executor is nominated or able or willing to take up the appointment, an Application is made to the Supreme Court for Letters of Administration, which will allow the distribution of the Estate.

Waiting Periods: There are several waiting periods for the administration of an Estate, as follows:

~The Death Certificate is not released for 6 weeks from the date of death

~Any person who has not been named in the Will, but intends to make a claim on the Estate, must give a notice to the Executor within 6 months of the date of death

~Any persons who have given written notice of their intention to make a claim on the Estate, must commence proceedings in the Supreme Court within 9 months of the date of death

~It is recommended that an Estate not be distributed until 9 months has passed from the date of death to ensure that the Estate can meet payment of any claims.

~Where an Executor needs to apply for a Grant of Probate or Letters of Administration, notice of the intended application must be advertised at least 14 days before the Application is filed in the Supreme Court.

~A copy of the notice must be given to the Public Trustee of Queensland at least 7 days before filing the Application in the Supreme Court.

Transmission Application: Where real estate is registered in the name of the Testator, the real estate can be transferred by lodging a Transmission Application in the Titles Office. There are 3 types of Transmission Applications as follows:

~Transmission Application by Personal Representative – This is usually done where it is intended that the property be sold as part of the administration of the Estate to meet debts and to pay out the entitlements of the beneficiaries.

~Transmission Application for Registration as Devisee/Legatee – This is usually done when the property can be transferred to the beneficiary who has been named in the Will to receive that property.

~Request to Record Death – This is usually done when real estate which is held by the Deceased as joint tenant with another person is transferred to the surviving joint tenant.

WARNING

These articles reflected the state of the law at the time of publication. But the law is a living creation which is constantly changing and adapting. These articles should be treated as an information resource only and not as a substitute for specific legal advice in respect to your particular problems and circumstances.