



## **The Executor's Role & Responsibilities Part 2**

Once an Estate of a Deceased has been properly identified and calculated, the Executor or the Solicitors acting in the administration of the Estate may need to take a number of formal steps before they are in a position to distribute the Estate to the Beneficiaries.

Here is a checklist of the tasks which may need to be undertaken in the administration of the Estate.

### **Payment of Debts**

All of the debts of the Deceased must be paid before the Estate is finally distributed.

Such liabilities may include expenses such as the following:

- The funeral expenses
- The mortgage or mortgages
- Credit cards
- Utility Accounts e.g. electricity, telephone & gas
- Income Tax Liabilities including GST and CGT
- Reimbursement of employment or Centrelink payments
- Executor's Commission
- Legal fees and outlays re administration of the Estate
- Interest on pecuniary gifts to Beneficiaries (i.e. money not distributed to the Beneficiary within 12 months of the Deceased's date of death, attracts interest payable by the Estate).

### **Obtaining Probate or Letters of Administration**

Sometimes it is necessary to request the Court to make an Order that the Will is the last Will of the Deceased. This is called a Grant of Probate. 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, similar to a Grant of Probate, can be made to the Supreme Court. This application is called "Letters of Administration".

- Have you discussed the need to apply for Probate/Letters of Administration with a Solicitor?

There are strict timelines and procedures which apply when seeking Probate/Letters of Administration as follows:

- Has notice of the intended application been advertised in the Queensland Law Reporter and in a newspaper local to the Deceased's last address at least 14 days before the application is filed?
- Has a copy of the notice been given to the Public Trustee of Queensland at least 7 days before filing the Application in the Supreme Court?
- Have you prepared an Affidavit of the Executor attaching the original Will, if applicable, and the Death Certificate?
- Have you prepared an Affidavit of Publication which attaches a copy of the advertised notice?
- Has the Supreme Court issued a Grant of Probate/Letters of Administration?
- Have you provided certified copies of the Grant of Probate/Letters of Administration to the organisations which required such a Grant before releasing the assets of the Deceased?

### **Family Provision Applications**

Sometimes a Deceased's spouse, child or dependant may make an Application to the Supreme Court for further provision to be made from the Deceased's Estate. This usually happens where that person is of the view that the Deceased has not made sufficient provision for them in their Will. Factors which must be considered are as follows:

- Is the person making the claim a "spouse" of the Deceased? Spouse includes a husband, wife, de facto partner or a former spouse or partner.
- Is the person making the claim a "child" of the Deceased? This will include any biological child, step-child or adopted child of that person. A step-child ceases being a 'child' upon the divorce of the Deceased and the child's parent.
- Is the person making the claim a "dependant" of the Deceased? This means any person who was being wholly or substantially maintained or supported by the Deceased at the time of their death. This can include a parent of the Deceased, the parent of a surviving child under the age of 18 years of the Deceased, or a person under the age of 18.

There are also quite strict time limits which must be followed when making a Family Provision Application, as follows:

- Has the Executor been notified within 6 months of the date of the death of a person's intention to make a claim for Family Provision?
- Has an Application for Family Provision been filed in the Supreme Court within 9 months of the date of death?
- If you as the Executor are served with either a Notice or an Application, you should seek legal advice immediately. Such an Application could mean a need to delay distribution of the Estate pending a Court decision.

### **Transmission Applications**

Real Estate which is held by the Deceased as at the date of death can be transferred by lodging a Transmission Application in the Titles Office.

- Does the property need to be transferred to the Executor? This is usually done where it is intended that the property be sold as part of the Estate Administration to meet debts and to pay out the entitlements of multiple Beneficiaries. If yes, complete the Transmission Application by Personal Representative.

- Can the property be transferred to the Beneficiary who has been named in the Will to receive that property? If yes, complete the Transmission Application for Registration as Devisee/Legatee.

### **Requests to record Death**

Real Estate which is held by the Deceased as joint tenant with another person will need to be transferred to the surviving joint tenant by lodging a Request to Record Death in the Titles Office.

### **Self Managed Superannuation Funds (SMSF)**

If the Deceased has an SMSF, the Executor will need to ascertain whether a Death Benefit is payable to the Estate. If the Deceased is the only member or the last surviving member of the Fund, the Executor may need to wind up the SMSF as part of the Estate administration.

### **Conclusion**

Estate administration can be involved, time consuming, technical and have significant tax consequences. You should obtain advice from professional advisers before attempting to undertake any of these steps.

### **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.