



BRIESE LAWYERS FACTSHEET ESTATE ADMINISTRATION



The death of a loved one is very traumatic and the administration of their affairs, having to deal with financial institutions, selling property and administering the Estate can be stressful for grieving family and relatives.

One of the first things loved ones should do is determine who the deceased appointed to be Executor of their Estate. If the deceased person has left a Will, an Executor will be appointed to be the deceased's personal representative in administering their Estate. An Executor will ensure that the wishes set out in the deceased person's Will are carried out upon their death.

The first duty of the Executor is to arrange the funeral. It is important that the arrangements for the funeral are appropriate bearing in mind the wishes of the deceased, as expressed in the Will or in the absence of the Will, as expressed personally to family or friends. Whoever arranges the funeral is entitled to reimbursement of the expenses out the Estate in priority to all other claims against the Estate.

The duties of an Executor may include:

- Immediately:
 - Attending to funeral arrangements;
 - Locating and examining the Will. The deceased's Will may be with their personal papers at home, or held in the safe custody of their Solicitor, or left with a friend or relative;
 - If the deceased has appointed guardians for orphaned children, arrangements will need to be made for their care and welfare;
 - Arrangements may also need to be made for pets of the deceased;
 - Securing the assets of the Estate.

- Administration of the Estate cannot commence until a Death Certificate has been issued, of which the funeral home will make the necessary arrangements. It generally takes approximately 4 - 6 weeks for the Certificate to be issued, at which time the Executor can commence the process to finalise the Estate, which may include:
 - Obtaining a Grant of Probate from the Supreme Court of Queensland if required. Specific legal advice should be sought in relation to the appropriate application that should be made and as to whether a grant of probate or grant of representation is required.
 - Verifying, valuing and collecting assets of the deceased. There may need to be consultation with the deceased's accountant, legal representatives and financial advisors to fully ascertain the extent of the deceased's Estate;
 - Identifying and verifying the deceased's debts;
 - Locating and advising beneficiaries of their entitlements as set out in the Will;
 - Paying debts and tax liabilities of the deceased person from funds in their Estate;
 - Investing surplus funds for the benefit of beneficiaries;
 - Seeking instructions from beneficiaries;
 - Dealing with disputes over the provisions of the Will;
 - Obtaining income and land tax clearances;
 - Transferring real property;
 - Preparing final income tax returns for the deceased and the Estate;
 - Making a final distribution of assets in the Estate to beneficiaries.



**BRIESE
LAWYERS**

**303 Margaret St
(PO Box 1945)
TOOWOOMBA QLD 4350
Ph: 0746384833
Fax: 0746381833**

Email: admin@brieselawyers.com.au
Website: www.brieselawyers.com.au



BRIESE LAWYERS FACTSHEET ESTATE ADMINISTRATION



In the process of identifying the assets of the Estate, the Executor should ensure that all assets are appropriately secured and insured, which will preserve them while waiting for finalisation of the Estate.

PROBATE

A Grant of Probate is recognition by the Supreme Court of Queensland that a Will is the last legally valid Will of a deceased person. The recognition of the Court allows the Executor to take control of the Estate assets and gives that person the authority to deal with the world at large in relation to the distribution of the deceased's property.

In recent years the need for a Grant by the Courts has been relaxed although need for Probate in any Estate is largely governed by the attitude of financial institutions (such as banks), Insurance companies and the like. An application for a Court Grant is still however necessary in a large number of cases.

Without a Grant by the Court, the Executor can be personally liable to disappointed beneficiaries. It is not a course that should be taken lightly. To determine whether a Grant of Probate is needed, the Executor must contact the organisations with which the deceased held assets to determine the organisations' requirements for transfer of those assets to the Executor or the beneficiaries.

An application to the Court incurs costs in advertising of the application in a newspaper, Court lodgment fees and legal costs. The steps involved are as follows:

1. Advertise the intention to apply for Grant of Probate in a local newspaper and Queensland Law Reporter;
2. Serve notice of the Intention to apply for Grant of Probate upon the Public Trustee;
3. Prepare affidavits for signing by the Executor and any person renouncing any right; and
4. After expiry of the 14 day notification to the Public Trustee, file application documents with the Supreme Court of Queensland.

After obtaining the Grant of Probate by the Court, the terms of the deceased's Will can be applied and the Executor can attend to the finalisation of the Estate by closing banks accounts, transferring shares and real estate, motor vehicle ownership, lodging tax returns etcetera and distribution of the assets.

WHAT IF THERE IS NO WILL?

If the deceased did not have a Will, then their family should seek legal advice as soon as possible. An application should be filed in the Court for Letters of Administration, which will appoint an Executor with the authority to deal with the Estate and will allow the Estate to be finalised and assets distributed in accordance with State laws of intestacy.

Here at Briese Lawyers we can provide assistance and support during the finalisation of a loved one's Estate, with sensitivity and respect.

Liability limited by a scheme approved under professional standards legislation



**BRIESE
LAWYERS**

**303 Margaret St
(PO Box 1945)
TOOWOOMBA QLD 4350
Ph: 0746384833
Fax: 0746381833
Email: admin@brieselawyers.com.au
Website: www.brieselawyers.com.au**