



# Estate Administration

What happens to my assets when I die?



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## Glossary of Terms

**Administrator** - the person(s) appointed by way of Letters of Administration.

**Beneficiaries** - The Beneficiaries are the people you have named in your will to receive specific items that you have detailed in your will. It also includes Residuary Beneficiaries.

**Bequests** - refers to 'gifts' you might wish to make in your will, ie, certain personal items such as jewellery, or family heirlooms, or a sum of money.

**Estate** - Your Estate is the total of everything you own, and everything you owe.

**Executors** - The Executors are the people you have named in your will to deal with and administer your Estate, as you have detailed in your Will.

**Intestate** - dying without a Will.

**Letters of Administration** - are applied for when a person dies without leaving a Will (and their assets are more than \$40,000.00) or when the deceased left a Will which in some way is invalid.

**Letters of Administration with Will annexed** - are applied for when a person dies with a Will (and their assets are more than \$40,000.00) which in some way is invalid.

**Probate** - Probate is the legal authority for the Executors to administer the Estate.

**Residuary Beneficiaries** - Residuary Beneficiaries are the people you have named in your Will to share in the balance of your Estate after all debts and liabilities have been paid and any specific bequests made.



# WILLS

## What is a Will?

Your Will is the document that sets out your wishes on your death and how you wish your property to be dealt with when you die.

In order for your Will to be acceptable to the Court so that Probate can be granted to your Executors it must be drafted, signed and witnessed in a manner that is acceptable to the Court, and in accordance with the High Court Rules. Not all 'do-it-yourself' Will kits cover all aspects necessary and if your Will is not acceptable to the Court it could be found to be invalid. In this case your Estate would be dealt with in the same manner as if you did not have a Will.

Once the court has granted Probate, a Will becomes a public record, and you can request a copy of it from the Court.

## Why have a Will?

A Will enables you to leave clear instructions to the person(s) you have named in your Will as your Executors as to how you wish your Estate to be distributed. In other words, a Will gives you the control over who will benefit from the property and wealth you have accumulated during your lifetime.

Your Will can give you peace of mind that the things that matter to you, such as the care of your children, and the distribution of your assets, are dealt with according to your wishes.

If you die without a Will (dying Intestate), or if your Will is invalid, how your Estate is dealt with is determined by the Administration Act 1969. The Administration Act also specifies who is entitled to your Estate and in what shares and order - you do not have any control over this, nor do family members. This may result in people you had wished would inherit from your Estate missing out.



# ESTATE ADMINISTRATION

## PROBATE

## LETTERS OF ADMINISTRATION WITH WILL ANNEXED

Key Steps to administer an Estate when the deceased died leaving a Will



## What is Probate?

Probate is the legal authority for the Executors to administer your Estate in accordance with the provisions of your Will.

## What are Letters of Administration with Will Annexed?

In circumstances where: -

- The deceased has left a Will, but the Executor named in the Will has died before the person who made the Will; or
- The Executor named in the Will dies after the person who made the Will but before obtaining Probate; or
- The Executor named in the Will is unwilling or unable to act; or
- The Will does not appoint an Executor.

application is made for Letters of Administration with Will Annexed by another person, generally a family member.

Once Letters of Administration with Will annexed have been granted the Estate is dealt with in the same manner as an Estate where Probate is granted.

## When is Probate or Letters of Administration with Will Annexed Required?

Probate/Letters of Administration with Will Annexed is required when: -

- The deceased's assets (which are held in their sole name and not jointly), including Kiwisaver, investments or bank accounts total more than \$40,000.00; or
- If the total of any motor vehicles or shares and bonds they own are worth more than \$15,000.00; or
- If they own property (real estate) in their sole name; or
- In circumstances where there were any disputes between Beneficiaries or questions over the validity of the Will.

Once the Court has granted Probate/Letters of Administration with Will Annexed, a Will becomes a public record, and you can request a copy of it from the Court.



# When is Probate or Letters of Administration with Will Annexed Not Required?

Probate/Letters of Administration is NOT required, where:

- The deceased leaves assets (bank accounts, Kiwisaver, investments etc), totalling less than \$40,000.00 in their sole name, and they do not own any property (real estate) in their sole name.

Banks and other financial institutions (including Kiwisaver) can release funds under \$40,000.00 without the need to obtain Probate.

Each institution will have their own requirements as to what would need to be supplied; however, a death certificate, identification and proof of relationship would always be required.

- When assets such as bank accounts, investments, shares and property (real estate) are all held jointly. These will be transferred into the name of the surviving owner by virtue of the law of survivorship, regardless of the terms of the deceased's Will.

For more information on property ownership and how it may affect your Estate please see our booklet on "[Estate Planning](#)" on our website.

## If there is no Will – Dying Intestate

If the deceased died without leaving a Will leaving assets (bank accounts, Kiwisaver, investments etc), totalling more than \$40,000.00, or real estate, in their sole name, the closest member of the deceased's family would need to apply to the High Court for Letters of Administration.

Letters of Administration is a court order from the High Court which grants an individual the legal authority to administer the Estate of a deceased person who died without a valid Will.

The Administration Act 1969 governs this process by outlining the rights of interested parties and the Court's power to appoint an Administrator.

See section on '[Dying Intestate](#)'.



## When are Beneficiaries Notified?

Residuary Beneficiaries are notified of their inheritance after the death and provided with a copy of the Will. In most situations the Residuary Beneficiaries would be notified within a few weeks, in other situations Residuary Beneficiaries might not be notified until after Probate or Letters of Administration are granted.

Beneficiaries (those receiving specific gifts) are also advised after the death. They may be given a redacted copy of the Will with clauses not relevant to their bequest removed.

## How do I get Probate?

When it has been established that Probate is required to administer the deceased's Estate, and the deceased dies leaving a Will, the executor named in the Will applies for a grant of Probate which, when granted by the High Court, gives the Executor(s) authority to administer the Estate.

The Original Will, together with Affidavits sworn or affirmed by the Executors, are among the documents filed with the High Court to support the Application for grant of Probate.

Once filed with the High Court the application process can take around 4-6 weeks.

## How do I get Letters of Administration with Will Annexed?

When it has been established that Letters of Administration with Will Annexed is required, the person with the highest priority as set out in the High Court Rules applies for Letters of Administration with Will Annexed be granted to them. The order of priority as set out in the Administration Act 1969 is: -

- Spouse or de facto partner.
- Children: if there is no surviving spouse or partner, the children are next in line.
- Parents: If there are no children, the deceased's parents have the next priority.
- Siblings: If there are no parents, the brothers and sisters are next.
- Grandparents: If there are no siblings, the grandparents are next.
- Uncles and aunts: If none of the above are available, the uncles and aunts have priority.

Letters of Administration is the legal authority for the appointed Administrators to administer your Estate in accordance with the provisions in your Will.

The copy of the Will is attached to the Letters of Administration, and the Administrators will administer the Estate as set out in the Will.

The Original Will, and Affidavits sworn or affirmed by the Administrator, are among the documents filed with the High Court to support the Application for grant of Letters of Administration.

Once filed with the High Court the application process can take around 4-6 weeks.



## Gathering Assets

Details of the deceased's assets need to be identified. These would usually include bank accounts, investments, KiwiSaver, shares, and real estate.

Once the assets have been identified, the values can be determined (ie closing balance of bank accounts, valuation of cars, real estate etc). Banks, insurance companies and government agencies are advised of the death of the deceased and request is made for information required to close accounts.

Steps need to be taken to protect property until it is sold or transferred to beneficiaries. The Executor or Administrator should ensure that insurance cover on real estate and other property is current.

On receipt of Probate/Letters of Administration with Will Annexed from the Court, bank accounts, investments etc can be closed and the funds paid to the Estate's solicitors trust account for eventual distribution to the Beneficiaries.

Any real estate can be transferred to the Executors to be held on behalf of the Estate, for the benefit of the Beneficiaries, until it is sold to a third party or transferred to the Beneficiaries.

## Paying debts and taxes

Once funds have been received from bank accounts and investments, all outstanding bills, loans, and taxes, including any final income tax returns for the deceased, can be made.

Consideration should be given to advertising for creditors in a local newspaper to ensure all liabilities are identified.

At this stage, some thought may need to be given to addressing any potential claims against the Estate, such as a family member challenging the Will.

## Bequests

Once all debts and taxes are paid, any specific bequests can be made.

If a bequest is to an organisation a receipt should be obtained from the secretary, treasurer or other officer of that organisation to discharge of the obligations of the Executors/Administrators.



## Distribute the Estate

Once all debts and taxes are paid, and any specific bequests have been made, the remaining assets can be distributed to the Residuary Beneficiaries in accordance with the Will.

However, the Administration Act provides for a period of six (6) months from the date of grant of Probate or Letters of Administration within which an Estate should not be distributed. This is to protect the Executor(s) or Administrator from any claims that could be made against the Estate.

If an Estate is distributed within this period and a successful claim is made, then the Executor(s) or Administrator can be held personally liable.

## Keep Records

The Executors must maintain detailed records of all Estate administration activities, including the assets, liabilities, and all transactions.



# ESTATE ADMINISTRATION – DYING INTESTATE

Key Steps to administer an Estate when the deceased died without leaving a Will



## Dying Intestate

If the deceased died without leaving a Will the closest member of the deceased's family would need to apply to the Court for Letters of Administration.

Letters of Administration is a court order from the High Court which grants an individual the legal authority to administer the Estate of a deceased person who died without a Will.

The Administration Act 1969 governs this process by outlining the rights of interested parties and the Court's power to appoint an administrator.

## Letters of Administration on Intestacy

Letters of Administration is the legal authority for the appointed Administrators to administer your Estate in accordance with the provisions of the Administration Act 1969.

If: -

- the deceased's assets total more than \$40,000 as described above; or
- the total of any motor vehicles or shares and bonds they own value more than \$15,000.00; or
- they own property in their sole name.

and the deceased did not leave a Will the closest member of the deceased's family would need to apply to the Court for Letters of Administration.

The person with the highest priority as set out in the High Court Rules, applies for letters of administration to be granted to them. The order of priority as set out in the Administration Act is:

- Spouse or de facto partner.
- Children: if there is no surviving spouse or partner, the children are next in line.
- Parents: If there are no children, the deceased's parents have the next priority.
- Siblings: If there are no parents, the brothers and sisters are next.
- Grandparents: If there are no siblings, the grandparents are next.
- Uncles and aunts: If none of the above are available, the uncles and aunts have priority.



## Gathering assets

The Administrator's role is to manage the Estate's assets by gathering the assets of the Estate and paying any debts or tax, in a similar manner as set out under the section on Probate.

Details of the deceased's assets need to be identified. These would usually include bank accounts, investments, KiwiSaver, shares, and real estate.

Once the assets have been identified, the values can be determined (ie closing balance of bank accounts, valuation of cars, real Estate etc.). Banks, insurance companies and government agencies are advised of the death of the deceased and request is made for information required to close accounts.

Steps need to be taken to protect property until it is sold or transferred to beneficiaries. The Administrator should ensure that insurance cover on real estate and other property is current.

On receipt of Letters of Administration from the Court, bank accounts, investments etc can be closed and the funds paid to the Estate's solicitors trust account for eventual distribution to the Beneficiaries.

Any real estate can be transferred to the Administrators to be held on behalf of the Estate, for the benefit of the Beneficiaries, until it is sold to a third party or transferred to the Beneficiaries.

## Paying debts and taxes

The Administrator is also responsible for payment of all outstanding bills, loans, and taxes, including any final income tax returns for the deceased, in a similar manner as set out under the probate section.

## Distribute the Estate

Once all debts and taxes are paid, and any specific bequests have been made, the remaining assets can be distributed in accordance with the Administration Act 1969. In basic terms the Estate is left to:

- Firstly, the surviving spouse or de facto partner (if no children).
- Secondly, to surviving spouse or de facto partner as to a sum prescribed in the Act (currently \$155,000) with the remainder divided between the surviving spouse or de facto partner as to a 1/3 share and the children of the deceased as to a 2/3 share.
- Thirdly, if there is no surviving spouse, then to the children of the deceased, in equal shares.
- Fourthly, if no partner/spouse and no children then in equal shares for the parents, but if the intestate leaves only one parent, for that parent.
- Fifthly, if no partner/spouse, children or parent then in equal shares for the brothers and sisters (whether full or half-blood).

Please note this is very basic explanation of section 77 of the Administration Act. For more precise information relating to the distribution of an intestate Estate, please contact our office.



## Keep Records

The Administrators must maintain detailed records of all Estate administration activities, including the assets, liabilities, and all transactions.



## Contact Us

Please do not hesitate to contact us on 03 379 3880 to discuss how our Estates team may be able to help.

### **Disclaimer**

The information in this booklet is current as at the date of publication and is only intended to provide general comments about the law. Young Hunter accepts no responsibility for reliance by any person or organisation on the content of this booklet. For further information or specific advice please contact our commercial and property team who will be happy to assist.