

ESTATE ADMINISTRATION: Information Sheet

This fact sheet provides an overview of the steps to take once a person close to you has passed away. The law varies between different states and this information sheet is limited to the law in Tasmania. You should always obtain advice specific to your circumstance.

Frequently Asked Questions

1. **What is the difference between “Probate” and “Letters of Administration”?** – Probate is a Supreme Court Order given to an Executor named in a Will. Letters of Administration is a comparable *Supreme Court* order to Probate but is given to an Executor (called an “Administrator”) not named in a Will. This usually occurs in a circumstance where there is no Will, or the Executor named in the Will cannot act.
2. **Is there a Will?** – You should make all reasonable attempts to determine whether a legally valid Will exists. If a Will is located, then the named Executor must be notified so they can commence administering the deceased’s estate in accordance with the Will.
3. **What about Superannuation?** - Superannuation and life insurance policies do not automatically form part of an Estate. If a Will exists, you should check to see if it references superannuation and life insurance to bring any such sums payable into the Estate. If the Will is absent such a clause(s) then the Executor should contact the deceased’s superannuation fund and any relevant insurance company to ascertain the amounts of money payable, who the nominated beneficiaries are and whether they are binding or non-binding nominations.
4. **How do I obtain a Death Certificate?** – You can apply online through *Births, Deaths and Marriages* or in person at a *Service Tasmania* centre.
5. **What steps can be taken to assist a lawyer to apply for Probate or Letters of Administration?** – apply for a death certificate and gather all details of the assets and liabilities of the deceased. This should include copies of bank statements, share statements, superannuation statements, details of vehicles owned etc.
6. **How long do you have to make a claim against an Estate?** – Providing you are eligible to make a claim, a Testator’s Family Maintenance application must be made within 3 months of a grant of Probate or Letters of Administration issuing. If a claim is likely, seek legal advice.
7. **Should I notify banks and other businesses of the death?** – Yes. A helpful resource to notify service providers of a person’s death is the *Australian Death Notification Service* which is supported by all states and territories. That service is available here: <https://deathnotification.gov.au/>.

Is There a Will?

The process that you may need to follow will vary depending on whether a person has or does not have a Will and the size and complexity of their Estate.

An Executor is the person(s) intended to manage the deceased person's estate after death and to give effect to the Will (by following it and ensuring any Will is carried out for the benefit of the beneficiaries including the payment of debts). A Power of Attorney (dealing with financial / legal matters) / Enduring Guardianship appointment (dealing with health/lifestyle matters) ceases to have legal effect on the passing of the deceased.

An Executor has 12 months from the date of death to administer and distribute the Estate. The Court can extend this timeframe if required.

In circumstances where family members do not know whether the deceased had a Will and/or where it is located, ordinarily the next of kin of the deceased will need to undertake the necessary searches. While there is no formal process for this, it is recommended that the following occur:

1. If a person is terminally unwell, to ask them prior to their passing whether they have a Will and where it may be found (e.g. the name of the law firm holding the Will);
2. Enquire with close family members whether they have any knowledge as to the location of a Will;
3. If the person has passed away, search the deceased person's property to try and locate a Will;
4. Enquire with the usual lawyer used by the deceased as to whether they hold a Will of the deceased; and
5. Contact the *Law Society of Tasmania* and seek to place an enquiry with that service which will be provided to all lawyers in Tasmania in their weekly newsletter. Information about this process is available here: [Find a Will or Deed - Law Society of Tasmania \(lsw.org.au\)](http://www.law.org.au).

If a Will is found, an important first step is to determine if seeking Probate is required. Probate is typically required if the deceased person owned assets solely in their name, such as real estate or bank accounts. Jointly owned assets with rights of survivorship may not require Probate. If the deceased left only a bank account with a small amount, you should contact the individual bank involved to enquire as to whether they require Probate to be sought. Each bank's policy will vary as to this. If a property is owned as joint tenants, the survivor may only need to make an Application for Survivorship through the *Land Titles Office* to assume total ownership of the property.

Probate

Probate is a *Supreme Court* Order given to an Executor named in a Will. Probate is governed by the *Administration and Probate Act 1935* (Tas). A Grant of Probate by the *Supreme Court* declares that a Will is the deceased's last legally valid Will which may then be acted upon by the Executor to distribute the deceased's Estate in accordance with the deceased's wishes.

In order to obtain Probate, the following essential information/documents need to be collated:

- Original Will of the deceased (if one exists). **Note-** do not tamper with the original Will by removing staples or binding etc;
- Death certificate of the deceased;
- Details of the deceased's assets and liabilities; and
- Information about the deceased's beneficiaries.

Once the above is collated, the next step is to lodge an application for Probate with the *Supreme Court of Tasmania* including filing the relevant notice. The application must include several forms and you should have regard to the Information Kit produced by the *Supreme Court* available here which includes a detailed overview of the process:-

<https://www.supremecourt.tas.gov.au/wp-content/uploads/2020/11/Probate-Information-Kit-24.11.20.pdf>

Read the above guide very carefully and ensure you comply with all requirements contained within it. There is a fee applicable when applying for Probate which can be found on the *Supreme Court* website.

If you are the named Executor and on reading the above are confused, uncertain, or overwhelmed, it may be appropriate to engage with a lawyer who can seek the grant on your behalf. While this is at a modest cost that is ordinarily borne from the Estate, using a lawyer ensures that the process occurs swiftly, avoids significant stress and best assures the Executor is legally compliant with their obligations to all parties.

Letters of Administration

Letters of Administration is a comparable *Supreme Court* order to Probate but is given to an Executor not named in a Will, usually in a circumstance where there is no Will or the Executor named in the Will cannot act. The legislation governing this process is the *Intestacy Act 2010* (Tas):

In this scenario, the deceased's estate is distributed in accordance with the *Intestacy Act 2010*. That can be summarised as follows:

- If there remains a spouse and no children, the entire estate goes to the spouse;

- If there remains a spouse and children and the children are also children of the spouse, the spouse is entitled to the entire estate;
- If there remains a spouse and any children who are not children of the spouse, the spouse is entitled to the deceased's personal effects, a statutory legacy (adjusted by CPI) and one-half of the remaining intestate estate;
- If the deceased leaves more than one spouse, but no children, the spouses are entitled to shares of the Estate divided in line with the *Intestacy Act 2010* (Tas);
- If there remains more than one spouse and children who are children of (one or more of) the surviving spouses, the remaining spouses are entitled to shares of the Estate divided in line with the *Intestacy Act 2010* (Tas);
- if the deceased leaves more than one spouse and any children who are not children of the surviving spouse, the spouses are entitled to share the deceased's personal effects, a statutory legacy (adjusted for CPI), and a share of one-half of the remaining intestate estate;
- If there remain children only, the estate is divided equally between them (or grandchildren if a child has predeceased);
- If there is no spouse or children, the entire estate is divided between the deceased's living parent or parents;
- If the deceased has no spouse, children or parents, the estate goes to (in order and in equal shares if applicable):
 - (a) brothers and sisters, or children of a deceased brother or sister;
 - (b) grandparent/s;
 - (c) uncles and aunts (or their children if the uncle or aunt has died before the deceased). If there is more than one person in the category, they will take in equal shares;
- if the deceased has no remaining relatives entitled to the estate, the estate goes to the State Government with the Government to have regard to paying money to any dependants (if any are established).

The above is provided as a guide, but there are several technicalities to the above. You should always seek legal advice before embarking upon a distribution in accordance with the *Intestacy Act 2010* to ensure no mistakes are made.

Similar to Probate, the application for Letters of Administration must include several forms and you should have regard to the Information Kit produced by the Supreme Court available here: <https://www.supremecourt.tas.gov.au/wp-content/uploads/2020/01/Letters-of-Administration-Information-Kit-21.1.20.pdf>

If an Executor under a Will cannot or will not apply for a grant of Probate, Letters of Administration (with the Will Annexed) must be sought. The application must include several forms and you

should have regard to the Information Kit produced by the Supreme Court available here: <https://www.supremecourt.tas.gov.au/wp-content/uploads/2020/01/Letters-of-Administration-CTA-Information-Kit-21.1.20.pdf>

If upon reading the above you are confused, uncertain, or overwhelmed, it may be appropriate to engage with a lawyer who can seek the grant on your behalf. While this is at a modest cost that is ordinarily borne from the Estate, using a lawyer ensures that the process occurs swiftly, avoids significant stress and best assures legal compliance.

What happens once Probate or Letters of Administration are obtained?

Once Probate or Letters of Administration issue, the following will generally occur.

Probate

1. **Notification to beneficiaries:** The Executor is responsible for notifying all beneficiaries named in the Will that Probate has been granted. This notification usually includes details about the deceased's assets and liabilities, as well as information about how the estate will be distributed.
2. **Collection of assets:** The Executor identifies, collects, and takes control of all assets owned by the deceased. This may include real estate, bank accounts, investments, personal belongings, and other valuables.
3. **Payment of debts and taxes:** Before distributing assets to beneficiaries, the Executor must settle any outstanding debts owed by the deceased as well as any taxes owed.
4. **Distribution of assets:** Subject to any claims against the Estate, once all debts and taxes have been paid, the Executor distributes the remaining assets to the beneficiaries according to the instructions outlined in the Will. If there are any specific bequests or conditions specified in the Will, the Executor must ensure these are fulfilled.
5. **Final accounting and reporting:** After all assets have been distributed, the Executor is required to prepare a final account of the estate's administration. This account includes details of all transactions, expenses, distributions, and any other relevant information. The Executor may need to provide this account to the beneficiaries and possibly to the court for approval.
6. **Closure of the estate:** Once the final accounting is completed, and any required approvals obtained, the Executor can finalise the estate administration process and close the estate. This involves filing any necessary paperwork with the *Supreme Court* to formally conclude the Probate process.

Letters of Administration

1. **Notification to heirs:** The administrator must notify the heirs of the deceased person's estate that Letters of Administration have been granted. This includes informing them of the assets of the estate and the administrator's role in managing them.
2. **Payment of debts and taxes:** Similar to the Probate process, the administrator is responsible for settling any outstanding debts owed by the deceased and paying any taxes owed.
3. **Distribution of assets according to intestacy laws:** In the absence of a Will, the distribution of the estate's assets is governed by the *Intestacy Act 2010*. This Act outlines the order of priority for distributing assets among the deceased person's heirs as set out earlier in this information sheet. Subject to any claims against the Estate, the administrator must distribute the assets according to these laws and if unsure, seek legal advice prior to distributing the estate.
4. **Final accounting and reporting:** After all debts have been paid and assets distributed, the administrator is required to prepare a final account of the estate's administration. This account includes details of all transactions, expenses, distributions, and any other relevant information. The administrator may need to provide this account to the heirs and possibly to the court for approval.
5. **Closure of the estate:** Once the final accounting is completed and any required approvals obtained, the administrator can finalize the estate administration process and close the estate. This involves filing any necessary paperwork with the *Supreme Court* to formally conclude the administration.

Advice

If you require initial advice in relation to estate administration, you may contact *North West Community Legal Centre Inc.* on (03) 6424 8720 or email office@nwclc.org.au to seek our assistance.

In the event that further assistance is required, we can provide you with our referral lists which include lawyers that handle estate administration in the local area.

Other Helpful Resources:

Supreme Court website: <https://www.supremecourt.tas.gov.au/Probate/>

Tasmania Legal Aid Fact Sheet- Following a Will After Someone Has Died:
<https://www.legalaid.tas.gov.au/factsheets/following-a-will-after-someone-has-died/>

Hobart Community Legal Service Inc.- Tasmanian Legal Handbook:
<https://www.hobartlegal.org.au/handbook/wills-estates-and-funerals/wills-estates-and-funerals/>

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