Estate Administration

LawXLink

Contents

Deceased estate administration	2
What is the difference between executors and trustees?	3
Trustees' duties	4
What if a will is challenged or is inappropriate?	5
What about mediation?	5
Who is entitled to make a claim against an estate?	6
Timing of distribution	6
Manner of distribution and tax provision	6
Notes to the beneficiaries of an estate	7
Role of the solicitor for the estate and fees	7
Helpful information for your solicitor	8

This booklet is printed on Neo Pro Digital Silk. Neo Pro is Certified FSC CO15443 from the Forest Stewardship Council, and comes from well managed forests (WMF). The manufacturing process operates under an environmental management system that is Certified by ISO 9002 & 14001. Neo Pro is Elemental Chlorine Free (EFC) and acid free (PH).

What steps have to be taken?

When somebody dies, the paperwork involved in proving the will and in sorting out the deceased's property can be daunting for the family.

Deceased estate administration

When someone dies the following steps have to be taken:

- If there is a will, the people named in the will as executors and trustees may need to apply to the High Court for a probate grant confirming the will and giving them authority to deal with the estate assets. If there is no will then someone (usually the next of kin to the deceased) applies to the High Court for a grant of letters of administration giving them authority to deal with the estate assets.
- The title to the family home and any other property held in the sole name of the deceased including bank accounts and investments, cannot be transferred to the beneficiaries without first obtaining either a grant of probate or a grant of administration.
- The application for probate or administration is drafted by the solicitor acting for the estate, signed by the named executors or nominated administrators and lodged in the High Court for processing. The Court process takes approximately 4 – 6 weeks.
- If the estate is small and there is no home or other land to deal with, it may be that probate or a letters of administration is not required.
- Joint assets can generally be transferred to a survivor without a grant of probate or letters of administration as soon as a death certificate is available.
- Service options: if you wish to reduce costs ask the solicitor acting for the estate if there are any aspects of estate administration which could be carried out by the Executors and Trustees or by the deceased's family.

What is the difference between executors and trustees?

A Will usually appoints one or more people as "executors and trustees". This involves the following two responsibilities:-

Executors – The role of an executor is to locate the will, arrange the funeral and ensure the instructions in the will for the distribution of the estate are carried out.

Trustees – The role of the trustee is to hold the estate assets on trust on behalf of the beneficiaries. In some cases the trustee's role can go on for a number of years i.e. when the deceased has left assets to young children and those assets have to be looked after until the children reach the age of 20 years (in some cases longer) or if the deceased has left someone a life interest in an estate asset.

Trustees' duties

- A trustee must be familiar with the will (if there is one), the estate's assets and the estate's business.
- A trustee must comply with the terms of the will and the law.
- A trustee must make sure the estate's assets are held in the name of the trustees.
- Generally the trustees must provide information about the estate to any beneficiary if asked to do so.
- The trustees must keep accurate records and proper accounts for the estate.
- If there is more than one trustee, their decisions must be unanimous.
- An executor or trustee must make reasonable inquiries to make sure all potential beneficiaries or claimants of an estate are known. Those inquiries may involve making a search of records at Births, Deaths and Marriages to check the deceased's marital status and/or to check for children of the deceased.
- Where appropriate, trustees should make sure the deceased has no outstanding debts by advertising for creditors (as provided for in the Trustee Act 1956) in an appropriate newspaper before the estate is distributed.

Six month rule – Trustees should also be aware that if they allow the estate assets (including personal items and household chattels) to be distributed to the beneficiaries within six months of the date of probate or letters of administration, they as trustees can be held personally liable for those assets if a successful claim is made against the estate later. For this reason we recommend that the trustees wait for the six month period to pass before any distribution is made. **N.B.** The period of personal liability is longer if probate or letters of administration are not obtained.

Early distributions are possible but in such cases the solicitor must advise the trustees to do so only on the basis that the beneficiaries indemnify the trustees against liability for any later claims. The beneficiaries will need to take their own legal advice before signing the indemnity.

Trustees need to be aware of the **"Executor's year"** within which trustees should endeavour to complete administration and distribution to beneficiaries. Beneficiaries may be entitled to receive "interest" on their entitlement if administration is not completed within twelve months of probate or grant of administration for no good reason.

What if a will is challenged or is inappropriate?

Sometimes a will is challenged. When this happens, the person challenging the will cannot take legal advice from anyone in the firm acting for the trustees. The solicitor acting for the estate continues to act for the executors and trustees who must remain neutral. Where this occurs, the beneficiaries must take their own legal advice independently of the firm acting for the Estate.

What about mediation?

If all parties agree, a mediator may be able to act if there is a dispute about a will. Mediation is less expensive and quicker than court action. A successful mediation will result in agreement which is recorded in writing. Again, in some instances the approval of the court may be required on behalf of beneficiaries who are under 20 years of age.

Who is entitled to make a claim against an estate?

The Family Protection Act 1955 provides that a deceased person's spouse, partner, and/or children are entitled to make a claim if they believe they have not been provided for adequately. If any of the deceased's children have died leaving children of their own then those grandchildren are also entitled to make a claim under this act. Court proceedings for additional provision must be filed within twelve months from grant of probate in the Estate.

The Property (Relationships) Act 1976 provides that a deceased persons' spouse or partner may choose to elect to make an application under that Act for a division of the relationship property if they believe they have not been adequately provided for in the will. The law allows for the deceased person's spouse or partner to either take whatever has been provided for them by the will OR take whatever they would be entitled to under the Act. It is important to note that the choice MUST be made within six months from the date that probate is granted.

A person who has been promised some provision out of the estate by a deceased in return for services may claim against the estate under the **Law Reform Testamentary Promises Act 1949** if the deceased has failed to fulfil the promise by will.

Timing of distribution

As long as the estate assets are readily available, most estates can be distributed to the beneficiaries approximately 7-8 months from date of death (or earlier if the indemnities referred to above are in place).

Manner of distribution and tax provision

Payments to beneficiaries will normally be made direct to bank accounts rather than by cheque.

If there is a delay with filing a final tax return for the estate an appropriate sum may be held back to cover payment of tax due and professional fees.

Note to the beneficiaries of an estate

If you are in a relationship, then the Property (Relationships) Act 1976 may apply to you. You may wish to keep the funds or property you are inheriting from the estate **separate** from your relationship property.

Generally, and except for property which falls into categories like the home, furniture, or family car,

- property owned before the relationship began,
- **inherited property**, and;
- Gifts

are **not shared** – but there are exceptions to this. If you really wish to be sure your relationship partner has no claim on this property, you need an agreement, or you need to make sure that the property never becomes available for the purposes of the relationship. This is a complex area of the law. If you are inheriting property or looking at becoming the owner of something that is either important or expensive – **see your solicitor first.**

Because of the above your inheritance money should be deposited into an account held in your **sole name.**

If you decide to deposit funds into a jointly held account, or any other account that is not in your name we will require a signed written instruction from you.

Please do not hesitate to contact your solicitor if you have any questions.

Role of the solicitor for the estate and fees

The solicitor's role is to act on behalf of the deceased person. The solicitor therefore takes instructions only from the estate executors and trustees. If there is no cash available in the Estate, the executors are responsible for payment of the solicitor's fees.

The basis on which the solicitor's fees are charged are set out in the terms of engagement, a copy of which will be given to the executors and trustees before the administration commences.

Helpful information for your solicitor

It is helpful to give the following information (where relevant) to your solicitor to assist with administering the estate

1. Work and Income New Zealand benefit number or recent correspondence from the department.
2. A copy of the latest rates notice for any estate property.
3. Any bank passbooks, cheque books and credit cards held in the **sole name** of the deceased.
4. Insurance policies on the house, contents and vehicles or the insurance company details.
5. Details of any investment portfolio and/or Bonus Bond certificates.
6. Original Life Insurance policy document(s).
7. Birth certificate
8. Marriage or civil union certificate.
9. Death certificate.
10. Funeral account and any other outstanding debts of the deceased.
11. Driver's licence or passport.
12. Kiwisaver account details.
13. Any household accounts to be changed such as power, telephone, SKY TV etc.
14. Any income tax records and IRD number for the deceased.
15. Contact information for the beneficiaries of the estate and birth certificates for any beneficiaries under the age of 20 years.
16. Details of any digital assets owned solely by the deceased e.g. Website/Domain Name/Emails/Social Media/Trade Me accounts.

Lawlink members

Whangarei
Webb Ross McNab Kilpatrick
Ph: 09 470 2400
Also at Dargaville
www.wrmk.co.nz

Warkworth
Webster Malcolm Law
Ph: 09 425 8037
www.webstermalcolm.co.nz

Auckland
Hesketh Henry
Ph: 09 375 8700
www.heskethhenry.co.nz

Tauranga
Sharp Tudhope Lawyers
Ph: 07 578 2149
www.sharptudhope.co.nz

Hamilton
Harkness Henry
Ph: 07 838 2399
Also at Paeroa
www.harkness.co.nz

Gisborne
Burnard Bull & Co
Ph: 06 867 1339
www.burnardbull.co.nz

New Plymouth
Auld Brewer Mazengarb & McEwen
Ph: 06 757 5183
www.abmm.co.nz

Napier
Langley Twigg
Ph: 06 835 8939
www.langleytwigg.co.nz

Hastings
Langley Twigg
Ph: 06 873 8770
www.langleytwigg.co.nz

Whanganui
Treadwell Gordon
Ph: 06 349 0555
www.treadwellgordon.co.nz

Palmerston North
Fitzherbert Rowe
Ph: 06 356 2621
www.fitzrowe.co.nz

Masterton
Gibson Sheat
Ph: 06 370 6480
www.gibsonsheat.com

Lower Hutt
Gibson Sheat
Ph: 04 569 4873
www.gibsonsheat.com

Wellington
Gibson Sheat
Ph: 04 496 9990
www.gibsonsheat.com

Nelson
Pitt & Moore
Ph: 03 548 8349
www.pittandmoore.co.nz

Richmond
Pitt & Moore
Ph: 03 543 9090
www.pittandmoore.co.nz

Blenheim
Gascoigne Wicks
Ph: 03 578 4229
Also at Kaikoura
www.gascoignewicks.co.nz

Christchurch
Wynn Williams
Ph: 03 379 7622
www.wynnwilliams.co.nz

Timaru
Timpany Walton
Ph: 03 687 7126
www.timpanywalton.co.nz

Alexandra
AWS Legal
Ph: 03 440 0026
www.awslegal.com

Queenstown
Anderson Lloyd
Ph: 03 450 0700
www.andersonlloyd.co.nz

Dunedin
Anderson Lloyd
Ph: 03 477 3973
www.andersonlloyd.co.nz

Invercargill
AWS Legal
Ph: 03 211 1370
Also at Gore and Te Anau
www.awslegal.com

Disclaimer: The information contained here is of a general nature and should be used as a guide only. Any reference to law and legislation is to New Zealand law and legislation. We recommend that before acting on it, you consult your Lawlink firm.

Copyright: "Estate Administration" is published by The Lawlink Group Ltd. Level 11, DLA Piper Tower, 205 Queen Street, Auckland 1010, New Zealand. Telephone: 09 300 5470, Fax: 09 309 5113, Website: www.lawlink.co.nz, Email: info@lawlink.co.nz.
Copyright © 2015 by The Lawlink Group Ltd. All rights reserved. No part of this work may be reproduced or copied in any form or by any means without the written permission of the publisher, and without proper accreditation to Lawlink and "Estate Administration" as the source of information.

Lawlink is a network of 17 independent law firms, located throughout New Zealand, who compete in different marketplaces.

As independent firms, members see the value in sharing ideas, resources and business processes. They benefit from enhanced buying power, as well as access to best practice and a broader network of experts. Each firm is proud to maintain its individual brand identity while enjoying the advantages of Lawlink membership.

Check out our website **www.lawlink.co.nz**

LawXLink™