



## Probate and Estate Administration

*Some of the most commonly asked questions about Probate and Estate Administration are discussed on this page.*

### **1. How long does it take to get Probate?**

This depends on the complexity of the estate and what assets are involved in the estate. The first step is to identify all of the assets and liabilities of the estate, which will depend on the type of assets and liabilities of the deceased.

Many small estates can be completed within a few months. We will advise you of the estimated length of time involved at the beginning of the matter.

### **2. Are there any taxes or court fees?**

There are no death duties or taxes imposed on the estate itself at present. (In the future the deceased person's assets may be subject to capital gains tax in the hands of the beneficiaries).

The Supreme Court charges a filing fee for all estates with a gross value at or over \$100,000.00. These filing fees are scaled according to the value of the estate.

We will give you an estimate of the fees at the beginning of the matter based on the estimated value of the assets.

### **3. Can an Executor get paid?**

It may be possible for all beneficiaries to agree between themselves as to whether an executor should be paid for their pain and trouble in administering the estate.

If not, an executor can apply for a commission as payment for fulfilling the duties of being an executor. The Supreme Court will then decide whether the executor is entitled to a commission, and the amount of commission to be paid. There are certain restrictions on the right of an executor to be paid a commission, and usually the provisions of the Will determine this.

A commission does not have to be paid if an executor does not wish to make a claim. This is usually the case where the executor is a family member.

### **4. What if there is no Will?**

If the deceased did not leave a Will, then there will be no executor and an application for Probate cannot therefore be made.



A relative or other person approved by the Supreme Court can make an application for 'Letters of Administration'. This person is called the 'personal legal representative' (or 'administrator') and the personal legal representative will have similar responsibilities to an executor.

Similar to Probate, Letters of Administration is a Court order confirming the authority of the personal legal representative to 'step into the shoes' of the deceased person by administering the estate and distributing the assets to beneficiaries who are determined in accordance with an order imposed by legislation.

The process of applying for Letters of Administration is usually expensive, time-consuming and stressful. Furthermore, the beneficiaries and their entitlements will be determined by legislation.

As you can see, dealing with estates is far simpler if there is a valid Will. Please visit our Preparation of Wills page to find out more about how we can help you with preparing a Will.

## **5. What happens after Probate or Letters of Administration has been granted?**

After Probate or Letters of Administration have been granted, the executor/administrator has the job of collecting the assets, paying debts, lodging tax returns, keeping accurate accounts, and other duties depending on the nature of the estate. This process is called 'estate administration' and there are many rules that an executor/administrator must strictly follow throughout this process which are prescribed by legislation.

Any minor mistake could leave the executor open to legal action brought by a beneficiary, potential beneficiary or creditor of the estate. It is essential that an executor seek legal advice regarding their responsibilities and rights when it comes to carrying out their duties. We can advise you not only on your responsibilities, but also about your options for administering the estate so that the most tax effective and preferable way of distributing the estate can be achieved.

***If you would like further information, or require assistance, please contact us on (02) 4731 5899 or send us an email by clicking on the 'Contact Us' page on our website.***