



Being an Executor of an Estate

Information for clients of
Baldock Stacy & Niven

What is an executor?

If you have been named as executor in someone's Will, it means the deceased wanted you to manage his or her estate, perhaps together with another person. There can be any number of executors named in a Will, though one or two is usually considered sufficient.

What are an executor's responsibilities?

In general terms, an executor's duty is to take charge of the deceased's assets and property, see that the funeral and administration expenses as well as debts and taxes are paid and finally to distribute the assets to the beneficiaries in accordance with the Will.

What is Probate?

A Grant of Probate is an order of the Supreme Court saying that the Will is valid and that the executor has the right to administer the estate. Most assets cannot be transferred to the beneficiaries without a Probate. For example, you cannot transfer land without a Probate and banks usually require a Probate to close a bank account in the name of the deceased.

What if the estate is small?

Banks and building societies have different rules, which allow access to the deceased's funds without a grant of probate if the estate is very small. Where the estate is small, that is less than \$50,000, no court fees are payable if an application for probate is necessary.

How do I apply for a Grant of Probate?

Baldock Stacy & Niven will assist you in applying for a Grant of Probate. We will:

- advertise the application in a prescribed form in a local newspaper.
- lodge a formal application with the Court with an affidavit containing
 - proof that you have advertised the application
 - some details about the Will
 - some details about the deceased
 - a death certificate
 - details of the assets and liabilities of the deceased
 - details of the beneficiaries

What do I do after probate is granted?

Once probate has been granted, the executor collects the deceased's assets and take steps to pay the funeral and administration expenses and any debts which the deceased owed. **Baldock Stacy & Niven** will do this on your behalf.

When we have identified all of the assets, and if necessary, sold them to raise cash, and we have paid all the debts, we can distribute the remainder of the estate to the beneficiaries after the executor has published a second notice requiring anybody with a claim against the estate to provide particulars of the claim within one month.

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How long does the whole process take?

Because of the requirements for two advertisements and the notice periods required, a Grant of Probate usually takes about 12 weeks and we usually distribute the whole estate within 4 to 6 months. Sometimes where there are complicated estates they may take up to one year.

What if there is no Will?

If there is no Will, there will be no executor. If you are a relative entitled to the whole or part of the estate of the deceased, we can apply to the Supreme Court for Letters of Administration; once granted, these make you a personal representative of the deceased and you then proceed in much the same way as an executor.

There are rules laid down by law about how assets are to be distributed when there is no Will. Briefly, a surviving spouse receives the whole estate if there are no children. If there are children and a spouse there is a formula for dividing the estate.

How will Baldock Stacy & Niven help me?

Baldock Stacy & Niven can:

- Inform you in detail about the rights and responsibilities of an executor;
- Prepare and help you to complete the forms needed to apply for probate;
- Assist you to identify and collect the deceased's assets;
- Advise you on the possibility of tax liability;
- Advise you about the legal order in which debts must be paid and the remaining assets distributed;
- Help you draw up a statement of assets for collection and distribution to the beneficiaries

How much does a Grant of Probate cost?

The Supreme Court regulates the costs of the legal work of and incidental to obtaining the grant of Probate, up to delivery of the grant of Probate by the court.

We will give you a costs disclosure document after we first see you in relation to the estate. Costs are on a sliding scale and are based on the value of the estate.

What should I do now?

Baldock Stacy & Niven is unable to do anything until an official Death Certificate has been issued by the Registry of Births, Deaths and Marriages. We are not even able to give you a copy of the Will until this has occurred.

- ❖ **Firstly** you should find out and make a list of everything the deceased owned or was entitled to. The list could include a home, car, money, bank or building society accounts, furniture, household appliances, jewellery, shares and other investments, insurance policies, superannuation, and holiday pay from work. In addition, if the estate is to be divided between a number of beneficiaries, the assets may have to be valued.
- ❖ **Secondly** you should ascertain the location of the original Will, if it is not held by **Baldock Stacy & Niven**
- ❖ **Thirdly** you should make an appointment to see **Baldock Stacy & Niven** when the original death certificate is available.

DISCLAIMER

This Guide is not a substitute for legal advice and is only of general informational value. It has been prepared to help you understand the legal aspects of being an executor. It is not intended to set out the exact procedures for applying for a Grant of Probate. You should not rely on the contents of this Guide without first obtaining our advice.

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