BRAMWELL BATE

LAWYERS

GUIDE TO ESTATES

FROM SIMPLE ESTATE PLANS WHERE ALL ASSETS ARE LEFT TO THE SURVIVING SPOUSE, PARTNER OR CHILDREN TO MORE COMPLICATED PLANS INVOLVING COMPANIES, TRUSTS AND FAMILY BUSINESSES.

ESTATE ADMINISTRATION

When a person dies, their assets and property are known as their "estate". This could include bank accounts, life insurance policies, superannuation schemes, KiwiSaver, investments/shares, property and vehicles as well as personal and household items.

If the deceased person is known to hold a Will, then the original copy of the Will is likely to be held by the law firm who assisted in preparing the Will. A Will specifies the wishes of the deceased, at the time they wrote it.

The individuals named in the beginning of the Will, known as "Executors", or sometimes referred to as "Trustees", could be family members, friends, trusted professionals or a combination. The estate's Beneficiaries are the specified individuals who will receive the funds and/or assets of the estate as per the details in the Will. Sometimes these two groups (Executors and Beneficiaries) are actually the same people, but not always.

If you are named as an Executor of an estate, you will have been contacted by our law firm, Bramwell Bate, who is administering the estate. In some instances, the family may even contact us first.

Depending on the assets held by the deceased, an application to the High Court may be required in order to collect the assets of an estate to be distributed. If the deceased holds more than NZ$15,000 worth of assets with one individual institution (eg. NZ$15,000 held at one bank), or property is owned by the individual (as a share or individually), then Probate will need to be applied for. If assets are worth less than NZ$15,000 then the Death Certificate and a copy of the Will are the documents required to close an account or investment and Probate is not required. In this case, a law firm doesn't necessarily need to be involved.

WHAT IS PROBATE?

Probate is an order of the High Court to confirm the last valid Will of the deceased, and also the Executor's right/s to administer the estate (grant of administration). Probate is now granted quite quickly – usually between four to eight weeks after the documents have been lodged with the High Court. Having Probate gives Executors the authority to administer the assets of an estate.

I AM AN EXECUTOR – WHAT DO I NEED TO DO?

If you agree to being an Executor of a Will, we will ask you to provide us with as much information as you can in regard to the assets owned by the estate. If the deceased is your family member, you should be able to find documents relating to bank accounts, life insurance policies and property, by checking their personal records. If you didn't know them well, then contacting the family is a good place to start for this information.

If you don't wish to hold the responsibility of being an Executor you don't have to. You can choose to renounce – and while that will still mean some paperwork to sign for this, you have a right to decline.

WHAT HAPPENS FIRST?

A meeting or an initial conversation with us is the starting point. This helps us understand the estate assets and who the Executors are. This doesn't have to be done straight away, as the grieving family and arrangement of a funeral is the immediate priority. But, if Executors do not normally live in the same area, then this can be a good time to arrange a meeting, if appropriate. Alternatively, meetings via FaceTime or Zoom, or group phone discussions are welcome. Most communication between our team and Executors (after the initial period) will be by email.

A death certificate will be requested – usually obtained from the Funeral Directors/family members who liaised with the Funeral Directors. This document will be accepted as proof of the passing of an individual and can be used to notify the appropriate organisations – banks, insurance companies etc.

If it is determined that Probate is required, Executors will have to sign a document called an Affidavit for Grant of Probate as part of the Probate application, submitted by the Solicitor.

WHAT IS AN AFFIDAVIT?

An affidavit is a written statement that you sign in front of a person who is authorised to take declarations and administer oaths (a Solicitor of New Zealand). There is a very set format for this document and you will need to provide specific information to us so we can prepare it accurately. The information includes:

- Your full name as it is on your primary form of ID;
- The town you currently live in;
- Your occupation ('Retired' is fine to use);
- Your relationship to the deceased;
- Whether you wish to swear your affidavit on a bible, or alternatively, affirm (swear without a bible);
- Confirm if you attended the funeral of the deceased or can verify the death in another way (being with them when they passed away, or saw the deceased's body);
- If you plan on signing your affidavit at our office or if it will need to be sent to your location outside of Hawke's Bay, and signed in front of a Solicitor that you arrange.

When signing an affidavit, you are swearing/affirming the wording contained in that document and any referenced documents as true and correct. The original Will of the deceased is referenced in your affidavit, and this will remain at the High Court.

Once all Executors have signed the affidavit, the Probate application is submitted to the High Court. It can take between four to eight weeks for Probate to be granted. Sometimes it can be quicker but we suggest allowing for the full eight weeks.

WHAT HAPPENS IN THE PROCESS?

To gather all estate assets, one of our Estate Administrators or Solicitors will correspond with many different organisations, depending on the requirements. These could include banks, the High Court, district and regional councils, Funeral Directors, Land Information NZ, insurance companies, share registry offices, sharebrokers, Accountants and Work and Income.

It is important to be aware that when a bank is notified of the death of a person (either by family, an Executor or by the law firm) the bank then freezes the bank account. This is significant. It is a safety measure by the bank to stop any unauthorised withdrawals after a person dies. But it also means that all direct debits are stopped. Direct debits that relate to insurance, rates, power or other payments that could still be essential need to be considered and alternative arrangements should be made. The most crucial point here is insurance – as missed direct debits for insurance premiums can result in policies being cancelled.

Freezing of a bank account occurs if the bank account is in the sole name of the deceased. If the bank account is a joint account with a partner or spouse the bank account will remain operational and will not be frozen.

If bank accounts are held jointly, taking the death certificate to the bank allows the bank to remove the deceased's name from the account. Direct debits will remain. We can help you make these arrangements.

Throughout estate administration, funds received and payments made come from the our trust account. This is an accurate record of all funds relating to the estate – so any funds paid into the trust account need to reference the estate name to be correctly tracked. Payments made to external parties have to be proven by attaching evidence such as the invoice the payment relates to. Any payment out of a trust account must be approved by each Executor (either via email confirmation, phone call or a signed authority to pay estate expenses) and then authorised by one of our Directors.

WHEN CAN AN ESTATE BE WOUND UP AND DISTRIBUTED?

Executors or administrators may distribute an estate after six months following the grant of Probate or Letters of Administration if no notice of a proposed claim has been received. Therefore, beneficiaries should not expect distribution earlier than six months after the date of the grant. In certain circumstances, Executors or administrators

may distribute part of an estate earlier, for example, to pay for a child's education or maintenance. There can be delays while assets are sold and, if there are complex business and investment assets, finalising valuations and clarifying tax obligations can also slow things down.

Where a claim is made against the contents of a Will or the court is asked to assist in interpreting a Will, distribution will be delayed until the court has heard the case. Where there are no claims against the estate and the assets are left to one beneficiary (eg. a surviving spouse or partner), an estate should in most cases be wound up and distributed by the end of the six-month period.

If an estate is distributed before the six months' is up and there are subsequently successful claims, the Executors or trustees may be held personally liable to meet those claims. If the estate is distributed after the six months and there is a later successful claim, they will not be held personally liable but the claim may still be settled using any funds in the estate.

If one beneficiary has an entitlement to, for example, the interest from an asset for the rest of their life and upon that beneficiary's death the asset passes to another beneficiary (the residuary beneficiary), the estate cannot be wound up until the first beneficiary dies. The responsibilities of the Executors include administering the investments during the lifetime of the first beneficiary continue until the estate is finally distributed.

WHAT ARE THE COSTS INVOLVED?

Generally, the fees charged by a law firm for the time and legal expertise taken to administer an estate are paid by way of funds within the estate itself. Executors will periodically be sent statements and invoices that show the funds brought into and paid out of the trust account. Executors have to authorise or approve all payments made, so timely responses to requests to pay estate costs are appreciated.

If the assets of an estate are minimal and the costs involved in the administration add up to more than what is held in the trust account, then the Executors will be sent a bill to pay. In this instance, our team will be sure to make the Executors aware of this possibility in advance and you may choose to administer parts of the estate themselves, where appropriate.

WHAT BENEFICIARIES WILL BE ASKED FOR:

When the time comes to distribute an estate, all beneficiaries will need to supply the following before any funds will be transferred:

- Photographic Identification – Driver licence or passport;
- Proof of bank account – a bank generated document or a screenshot from a bank's website or app showing the bank

account name and account number. Typed or handwritten bank account details are not acceptable; and

- Additional information is required when transferring funds to overseas bank accounts and transfer fees as well as current exchange rates also need to be taken into consideration.

ANTI MONEY LAUNDERING (AML)

AML is a requirement by law, that means law firms and banks adhere to a specific framework to verify the identity of the people they are working with and on behalf of. Before we can begin working on the estate administration we will require documents to verify each estate Executor's identity. That will mean supplying identification (ID) such as your driver's licence or passport, firearms licence or gold card, your bank card, credit card or birth certificate. Sometimes more than one form of ID is required. We will let you know.

Along with ID, confirmation of your address is also required – so a recent document such as a phone or power bill, bank statement or rates demand, which shows your name and address will be sufficient. The document should be dated within the past year if you are an existing client, or within six months if you are a new client. If any of the documents expire during the period you are working with us, we will let you know and ask you to provide an updated document.

We hope this information has been helpful in giving you an overview of the steps that we will take to administer the estate. Our team are always here to help with any questions you may have.

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