

DISCLAIMER

This Factsheet provides an introduction to estate administration. This factsheet is **not intended to be a substitute for professional legal advice** and no reliance should be placed on the information as if it were such. For personalised guidance and assistance with estate administration tasks, we encourage you to seek advice from YLP Legal. Our skilled estate administration solicitors can help you understand your duties and responsibilities as an executor or administrator, and guide you through the complex legal requirements involved in settling an estate.

Liability limited by a scheme approved under Professional Standards Legislation

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Introduction

Administering a deceased estate is the legal process that takes place when someone passes away.

It may be necessary for a grant of probate or a grant of letters of administration ('a Grant') to be obtained from the Supreme Court of South Australia. A grant is a court order that proves the will and confirms the legal personal representative's (LPR) authority to administer the estate of a deceased person.

Probate (obtained where there is a valid will)

- A grant of probate appoints the executor named in the will and empowers them to distribute the estate to the beneficiaries named in the will.
- Applying for a probate generally requires the executor to provide to the Court:-
 - The original last will and testament;
 - The original death certificate; and
 - Details of the deceased's assets and liabilities.
- Once a grant of probate has been issued by the Court, then the Executor will administer the estate which can include:-
 - Debts being paid out (legal costs, tax owing, executor costs, etc);
 - Selling estate assets if required;
 - Specific gifts listed in the will being distributed to the intended beneficiary; and
 - Beneficiaries receiving their inheritance in the proportions stated in the will.

Letters of Administration (obtained where there is no valid will)

- Letters of Administration appoints an administrator to manage and administer the estate of a deceased who left no valid will.
- The beneficiaries of the estate are predetermined by the *Administration and Probate Act 1919 (SA)*.
- The process of obtaining Letters of Administration requires more work, additional documents to be lodged, and is therefore generally more expensive than obtaining a Grant of Probate.
- It is necessary for the administrator to report to the Public Trustee in relation to the administration of the estate.

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Letters of Administration (with the will annexed)

- If the deceased died with a valid will, but the named executor has already died and no substitute executor has been named, then an administrator will need to be appointed.
- The administrator will then administer the deceased's estate in accordance with the terms of the will.

Disputes

- An inheritance claim can be made within six (6) months of the date at which an Executor obtains a grant of Probate or a grant of Letters of Administration.
- The *Inheritance (Family Provision) Act 1972 (SA)* sets out who is entitled to make a claim.
- A challenge will not succeed on the grounds that the will was unfair or unjust in its distribution, if the will provides adequately for the applicant's maintenance, education and advancement in life.
- When your asset distribution intentions are clear and you have received sound legal advice, it is less likely that a challenge will be made against your estate, reducing the chances of your estate paying the legal fees associated with the challenge.
- Who can make a claim or raise a dispute?
 - Spouse
 - Former spouse
 - Domestic partner
 - Child
 - Child of spouse or domestic partner (with conditions)
 - Grandchild
 - Parent (who cared for deceased immediately before the deceased's death)
 - Sibling (who cared for deceased immediately before the deceased's death)

Estate administration can be a complex and overwhelming task for the deceased's family. For this reason, it is highly recommended that the executor, or the deceased's next of kin seek legal advice as soon as possible after the deceased has passed away.