

# **PROBATE DECEASED ESTATES**

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## **What is “Probate”?**

Probate is the process of proving and registering with the Supreme Court the last Will of a deceased person.

Someone needs to deal with the deceased’s assets and liabilities and the grant of Probate by the Supreme Court is, in effect, the legal authority to that person(s) to administer the deceased’s estate.

## **Executor(s)**

Where the deceased leaves a Will, the executor(s) will be named in the Will.

If there is more than one, any or all may apply, but at least one must apply for a grant of Probate with power reserved to the others to do so at a later date if there is a need to do so.

If there is no named executor alive or willing to apply, then usually the principal beneficiary will apply for “Letters of Administration”.

## **Executor(s)’s duties**

First to locate the Will, identify and, ultimately, collect assets. Pay debts. Then, distribute the net assets after all debts and expenses have been paid.

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## **Nevett Ford's role**

Generally the executor will, having located the Will, engage Nevett Ford to advise and assist them in the application for Probate and in the administration of the estate.

We would scrutinise the Will to ensure there was no irregularity and would then prepare and lodge the application for Probate and once a grant is obtained, assist the executor in collection and distribution of assets and payment of debt.

## **The application**

The application for Probate is a Court process.

We will advertise the intention to apply for Probate on the Supreme Court website.

An application and supporting material including an affidavit by the executors, proof of death, an inventory of assets and liabilities, among other documents, are prepared and lodged.

## **Beneficiaries**

Beneficiaries named in the Will ought be notified by providing them with a copy of the Will, and, when Probate has been obtained, advising them when a distribution is likely to be made.

Upon the distribution being made, it is usual to obtain their acknowledgement and a release of the executor's liability to them for having properly administered the estate.

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## **Challenges to Will**

In Victoria, and in other States, it is possible for someone to challenge the terms of a Will asserting that proper provision has not been made for them.

If successful, the Supreme Court will make orders altering the terms of the Will so that proper provision is made for a person the Court determines is entitled.

Potential claimants include spouse, de facto partners, children and indeed anyone for whom the deceased is said to have a responsibility to make provision for, and where that person is able to establish that they have a financial need.

The legislation (*Administration and Probate Act*) sets out the factors which a Court will take into account in determining whether a person is entitled to have an order made in their favour.

Among the factors to be considered include the relationship between the parties; the size of the estate; the financial need of the applicant; the health of an applicant; the assistance that the applicant provided to the deceased during their lifetime, and whether they received any benefits during their lifetime.

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## **Our people**

### **Directors**

- Peter Wilson
- Paul Stephens

### **Senior Lawyers**

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- Viv Stephens
- Kent Mallinson

### **Lawyers**

- Rebecca Hanley
- Meaghan Smyth

### **Legal Executive**

- Paul James

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