

Estates

In this Brochure the term “Deceased Estate” refers to the net worth of a person at their death. The Estate is the sum of a person’s assets being legal rights, interests and entitlements to property of any kind – less all liabilities.

Whether or not Probate, Letters of Administration or Letters of Administration with Will Annexed will be required, will depend upon the assets of the deceased and their manner of ownership.

What is Probate?

Probate in Victoria is applied for through the Supreme Court of Victoria in its Probate jurisdiction and, in simple terms, is the acknowledgement that the Executor appointed in the Will has proven the Will and is therefore granted Probate to undertake the legal process of administering the estate of a deceased person by resolving all claims and distributing the deceased person’s property under the valid Will.

What are Letters of Administration and who can apply?

If a person has died intestate ie: without a Will, instead of applying for Probate of the Will, an Application for Letters of Administration of the Estate may be required.

In the event that the deceased did not leave a Will, then the next of kin would be entitled to apply for a grant of Letters of Administration. The next of kin sequence would firstly be a surviving spouse or defacto partner, then children. If there was no living spouse or children, the sequence would revert to grandchildren, parents, siblings, grandparents, uncles and aunts and then first cousins. The distribution of an intestate’s estate is also based on next of kin, however there is a scale applied.

What are Letters of Administration with the Will annexed?

Where a sole Executor dies before the Willmaker, or if the sole appointed Executor refuses to act, Letters of Administration with the Will annexed are granted.

The Court will usually grant administration to the beneficiary with the largest interest in the Estate.

This is why it is very important to appoint more than one Executor in your Will and to update your Will should any one of your appointed Executors predecease you.

When does a Grant of Probate, Letters of Administration or Letters of Administration with Will Annexed be required?

Assuming that there are no challenges to the Estate, the requirement for a Grant of Probate or Administration will depend upon the assets of the Estate. Real Estate owned as Sole Proprietor or Tenants in Common would require Probate and so do shares. Bank Accounts with generally more than \$20,000.00 will require Probate, although each Bank has different requirements.

When would a Grant of Probate or Letters of Administration NOT be required?

One such simple common scenario would be partners who own their home and all other assets as joint proprietors ie: joint bank accounts and joint shares. The surviving proprietor would automatically be entitled by law to own the whole of the once jointly owned asset. There would still be some paperwork to be done, but a Grant of Probate or Administration would not be required

Superannuation – Is it part of an Estate?

Generally not, however if you have requested with your Superannuation Fund that the beneficiary of your Superannuation interest be your Estate, then yes the Fund Trustees will pay your Superannuation interest to your Estate and it will be distributed in accordance with your Will.

If you have made a Binding Nomination as to the beneficiary of your Superannuation interest, then the Fund Trustees have no discretion and will disburse your Superannuation interest in accordance with your Binding Nomination, however be aware that Binding Nominations must be regularly reviewed as they usually do have an expiry date. In this instance your Superannuation is not regarded as part of your Estate and will not be listed in any inventory of assets and liabilities for a Grant of Probate or Administration.

If you have made a General Nomination (or NON Binding Nomination) as to the beneficiary of your Superannuation Fund, then the Fund Trustees have discretion as to where your super money will go. Regardless of who you have nominated, it is likely that they will require that person or persons to complete detailed paperwork setting forth the family structure and details of the deceased. This is to ascertain who was financially dependent upon the

deceased and depending upon the outcome of their enquiries, they may disburse your Superannuation Interest differently from what you had nominated.

Again, in this instance your Superannuation Interest is disbursed by the Fund Trustees and is not regarded as part of your Estate.

However, if you have made a Binding Nomination with your Estate as beneficiary or if the Fund Trustees decide it is all too hard and pay your Superannuation Interest to your Estate, then yes, your Superannuation will form part of your Estate.

What is the Process to Administer an Estate?

In a straightforward case scenario of a partner predeceasing their husband and all joint assets including real estate having therefore previously been transferred to the husband and the husband having made an updated Will, upon the husband's death his Executor would:

Place an advertisement advertising their intention to make an Application for a Grant of Probate 14 days after the date of the advertisement. During that time the Probate Application is completed, including a full inventory of assets and liabilities.

As from 1 July 2020 all Probate/ Letters of Administration applications must be done online via Supreme Court's system Redcrest, however the original Will to be sent in.

Upon being granted Probate, A certified copy of the is sent to organisations holding Estate funds, accounts are closed and money is paid to the Estate.

An Application by Legal Personal Representative Form is used to transfer the real estate to the Executors via PEXA.

Presuming the real estate is to be sold, after the appointment of an Estate Agent it is sold and once settlement is effected the sale proceeds are also paid to the Estate.

Accounting advice is usually required to obtain Taxation advice on the deceased's personal Taxation Returns and also on any possible Estate taxation requirements.

Once all of the assets have been converted to cash (or transferred to a beneficiary under the provisions of the Will) and all of the Estate debts are paid, the balance of the Estate money is then disbursed in accordance with the provisions of the Will. Beneficiaries should sign a Deed of Release indemnifying the Executors in relation to the Estate.

Who can make a claim against a Will?

If the aggrieved individual feels that a person who has died has not made adequate provision for them in their Will, they can challenge the Will and have the Court make provision for them out of the deceased's estate. This is commonly known as a Testator's Family Maintenance application. The court must decide whether the applicant has been left with adequate provision for the applicant's proper

maintenance and support. The court will consider the applicant's financial position, including:

- The applicant's financial resources (including earning capacity) at the time of the court hearing and for the foreseeable future
- any prior benefits given to the applicant by the deceased
- whether the applicant was wholly or partly supported by the deceased before his/her death
- whether any other person has a duty to support the applicant
- Finally, the Court will consider whether the deceased actually failed in his/her duty to provide adequately for the applicant under the Will

An application may be refused if, the Court considers that the deceased owed no moral duty to the applicant due to the applicant's questionable character or conduct.

Eligible Persons to make a claim:

- **Spouse or Domestic Partner:** Includes married spouses, registered partners, and unregistered de facto partners.
- **Former Spouse/Partner:** Eligible if they were receiving or entitled to receive maintenance or had pending property settlement proceedings at the time of death.
- **Children:** Biological, adopted, or stepchildren.
- **Children with Special Circumstances:** Children under 18, full-time students under 25, or disabled children.
- **Adult Children:** Must prove they are experiencing financial difficulties and were not adequately provided for.
- **Registered Caring Partner:** Anyone in a registered relationship under the Relationships Act 2008.
- **Grandchildren:** Often must demonstrate they were dependent or partly dependent on the deceased for maintenance.
- **Household Members:** Anyone who was, or was likely to become, a member of the deceased's household.
- **Person with a "Close Personal Relationship":** Individuals who can prove a significant, close relationship.

Key Considerations:

- **Time Limit:** A claim must generally be filed within six months from the date probate is granted.
- **Grounds for Claim:** The applicant must show they were left without "adequate provision for their proper maintenance and support".
- **Assets:** Claims are generally limited to assets owned personally by the deceased, not trusts or superannuation.



15 Templeton Street, Woodend VIC 3442
3A/1 Puckle Street, Moonee Ponds VIC 3039
chinkasteel.com.au