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A guide to understanding estate administration

By Perpetual Private Insights

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This guide provides beneficiaries of an estate with a summary of the estate administration process and the legal requirements. As each estate is different, the information is a general outline and is not intended to cover all circumstances.

Based on our experience in administering thousands of estates, we've grouped the administration process into six key steps:

1. Confirm assets and liabilities
2. Apply for a probate
3. Calculate tax implications, including personal tax returns and capital gains tax
4. Collection and realisation of assets
5. Payment of legacies and bequests
6. Distribution of the estate

Step 1: Confirm assets and liabilities

The assets and liabilities of the estate must be verified before a formal valuation can be conducted. Following this, a statement of assets and liabilities is prepared and forms part of the information that is provided to the Supreme Court in most jurisdictions.

Step 2: Apply for a probate

The executor of the estate must obtain Court confirmation that the current will on file is valid and the most recent will of the deceased. This is called the probate and it must be acquired before the assets of the estate can be administered.

Step 3: Calculate tax implications

An individual tax return from the period 1 July to the date of death must be prepared and lodged on behalf of the deceased by the executor. If a trust has been set up, the executor will also need to complete a trust tax return for the income received or derived by the deceased estate. In some cases, a trust tax return will have to be lodged every financial year until the deceased estate is fully administered.

Special capital gains tax (GGT) rules apply to the transfer of any CGT assets from a deceased estate. We suggest that beneficiaries seek specialist advice in relation to the GST implications of passing on or disposing of the assets of a deceased estate.

Read more about this in our article 'Will I pay capital gains tax on my inheritance?'.

Additionally, as per most state legislative requirements, the executor is required to publish a notice of intention to apply for a probate in a major newspaper or court website. They must also publish a statutory notice to all creditors, providing any creditor of the estate the relevant statutory period to lodge a claim against the estate. Generally, no distribution of the estate can be made until this notice has expired.

Step 4: Collection and realisation of assets

Once the probate is granted, the executor will collect the assets of the deceased, realise other assets, pay liabilities and expenses and provide for bequests and legacies under the will.

The distribution of the estate can be delayed if the executor is put on notice that a claim is being made against the estate. Once the notice of a claim or a potential claim is received, the estate cannot be distributed until the matter is determined by the Court or an agreement is reached between the executor and the claimant.

Step 5: Payment of legacies and bequests

Subject to the collection and realisation of assets, payment of liabilities and there being no notice of any claims (or potential claims), cash legacies and specific items gifted under the will, such as furniture and jewellery, are distributed.

Where minor beneficiaries (those under 18 years of age) receive cash legacies, or where the will directs, funds may be retained and invested on the beneficiaries' behalf until they are entitled to receive the funds.

Step 6: Distribution of the estate

Subject to the payment of legacies and bequests and no claims having been made against the estate, the remainder of the estate can now be distributed, provided all beneficiaries have been properly identified. Once the distribution of the estate is completed, each beneficiary who is entitled to share in the estate will be provided with detailed financial statements.

In some cases, a will directs that the estate must be managed over a period of time – usually over a beneficiary's lifetime. Continuing estates require monitoring and planning to ensure the most appropriate tax and investment strategies are implemented for the beneficiary.

We're here to help

The administration of a will can be a long process. Depending on the complexity of affairs, it may take at least six months, and sometimes years, to administer the estate. Factors such as a legal challenge to the will can also affect the timing.

You should use this time to seek advice on the best way to manage your inheritance when you receive it. With expertise in financial planning and tax advice, you can draw on Perpetual's team of financial advisers, solicitors and taxation experts to ensure your inheritance is provided to you in the most effective way.

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