

NEWSLETTER

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ESTATES - DO I NEED TO OBTAIN PROBATE?

When someone passes away leaving a Will, Probate may need to be obtained so the deceased's assets can be dealt with by the Executor of the Estate.

Probate is the Courts' formal recognition of the Will and appoints the Executor (as set out in the Will) as administrator of the Estate. If the deceased did not leave a Will or if the Will does not include certain information (i.e. if no Executor is appointed or the Executor appointed does not wish to act), Letters of Administration may be applied for.

Probate/Letters of Administration are applied for by filing the original Will (if applicable) together with supporting documentation in the High Court. This is not always necessary and depending on the assets involved, may not be required.

Usually if the deceased had funds over \$15,000.00 (in a bank account) or had investments over this amount (i.e. bonus bonds, life insurance policies), Probate/Letters of Administration will need to be obtained before funds can be released. Likewise if the deceased owned a property in their sole name, Probate/Letters of Administration is required in order for the ownership to transferred into the Executor's name.

If the deceased held any accounts jointly with another person or owned a property jointly as "joint tenants", Probate/Letters of Administration is not required as the survivor is automatically entitled to have the accounts and the ownership of the property transferred solely into their name.

Alternatively, if the deceased owns property with another person as "tenants in common", the survivor is not automatically entitled to the deceased's share of the property and Probate/Letters

of Administration will need to be obtained.

For example, Bernie and Theresa married in 1990 and lived together in their home for 20 years until Bernie sadly passed away. Bernie left a Will appointing Theresa as Executor of his Estate. The Will provided the balance of his Estate (after his debts, funeral expenses etc) was to be divided into two equal parts. The first half was to be given to his wife Theresa and the second half was to be divided equally between his two children from his first marriage, David and Sally. Bernie and Theresa did not have any children together.

Bernie had funds in two bank accounts (which were jointly held with his wife) and their home was owned by Bernie and Theresa as tenants in common as to a half share each.

Theresa was able to transfer the joint accounts into her name. As their house was owned by themselves as tenants in common, she needed to obtain Probate. Once Probate was granted, Bernie's share of the property was transferred into Theresa's name as Executor. Theresa wished to stay in the house and came to an agreement with Bernie's children, David and Sally, to buy their share of the property. The property was valued and Theresa paid both David and Sally their equal shares in order for the ownership to be transferred into her personal name.

Should you have any further queries in relation to Estates, please do not hesitate to contact the Collins & May Law Team.

Next Issue: Transferring Assets in Order to Defeat Creditors.