

A large, light gray, stylized letter 'T' is positioned on the left side of the page, partially overlapping the main logo. It has a white outline and a subtle gradient.

A circular logo containing a stylized white letter 'T' on a black background.

TANG LEGAL

B a r r i s t e r s & S o l i c i t o r s

Deceased Estates

WHAT HAPPENS WHEN YOU ARE NAMED AS AN EXECUTOR OR ADMINISTRATOR OF AN ESTATE?

Being named as an executor or administrator of an estate can be an overwhelming experience for many. Often the person will be grieving whilst suddenly having to acquaint themselves with the legal obligations associated with the office of executor/administrator.

For the majority who have little experience with the legal role of an executor or administrator of an estate, it is difficult to know where to begin and can become a taxing process on the person.

The executor or administrator has a number of issues to consider, including:

- *What were the deceased's assets and liabilities at the date of death?*
- *Did the deceased have any financial interests that fall outside of the estate?*
- *What are the taxation implications associated with distribution of specific assets to certain beneficiaries?*
- *Is it necessary to take out adequate insurance to protect the value of specific assets until they are distributed?*
- *Are there ongoing liabilities to be met before an application to the Court is made and is there sufficient liquidity in the estate to pay expenses?*
- *Has an original will been located or is there only a copy?*
- *If there is no will in place, what does the Administration Act 1903 (WA) say about the persons and the proportions in which they are entitled to distribution from the estate?*
- *Have all of the potential persons who may have a claim on the estate been sufficiently provided for in the estate? If not, is there a risk of a family provision claim being made by anyone?*
- *Does anyone dispute the testator's capacity at the time the will was made?*

WHAT IS THE DIFFERENCE BETWEEN AN EXECUTOR AND ADMINISTRATOR?

- An **executor** of an estate is the person specifically named in a will who is entrusted to carry out the terms of the will and otherwise administer the estate and potentially assets that may fall outside the estate in accordance with statutory requirements and the terms of any relevant documents.

Where an executor or substitute executor has been named and is able and willing to act, **an application for a grant of probate** must generally be made to the Court.

Even where an original will cannot be located, a person named as executor in a copy or draft of the will is still capable of applying to the Court to obtain probate of the copy or reconstruction of the lost will.

- An **administrator** of an estate is the person appointed by the Court to manage the estate and potential assets that fall outside the estate in accordance with the provisions of the *Administration Act 1903* (WA) if no will has been located.

In this case, there may be more than one person who is entitled to apply to administer the deceased's estate under the provisions of the *Administration Act 1903* (WA). Similarly, the statute dictates the proportions in which certain persons will be entitled to distribution of the deceased's estate.

An application for letters of administration to the Court is necessary, supported by a number of documents, including the consents of any others who may be entitled to apply.

- An administrator can also be appointed by the Court where there is a will in place, but the named executor has renounced their position, leaving the Court to appoint a replacement to carry out the terms of the will.

WHY GET LEGAL ADVICE?

What may seem simple soon turns out to be complex

Invariably in our experience, what many may assume to be a simple estate matter can rapidly become peppered with complexities.

These may include where the original will is lost, where there is no will in existence, where an applicant may have to prove their status as a de facto partner or where someone disputes the testamentary capacity of the deceased.

The legal requirements of an application

Aside from some estates, for example where the entirety of assets are jointly owned, the executor or administrator must make an application to the Supreme Court for a grant of probate/letters of administration.

Both applications must be supported by an affidavit made in compliance with procedural and legislative requirements.

These requirements can be complex and onerous particularly in relation to lost wills or applications for letters of administration. Without obtaining legal advice, many potential executors or administrators may have a limited chance of obtaining a grant from the Court.

You may be held personally liable

Perhaps most importantly from the perspective of an executor or administrator, they may be held personally liable for any loss to the estate due to inordinate delays in administration. This can extend to paying interest on beneficiaries' unpaid distributions.

Legal advice can help an executor to understand their legal duties and how best to negotiate various issues whilst limiting the risk of personal liability.

By way of example, many are unaware that they are technically obliged, by operation of the *Non-Contentious Probate Rules 1967 (WA)*, to pass the accounts and file a plan of distribution of the estate within 12 months of the date of probate. A solicitor can assist an executor or administrator in negotiating an agreement with beneficiaries to avoid this expensive and time consuming step.

Helping you to recover commission

Unless specifically provided for in the will, typically an executor or administrator cannot charge for their time spent in administering an estate without approval from the Court.

The consequence of this is that many are left significantly out of pocket as they are forced to take time off work to deal with the time consuming aspects of administration.

Legal advice can assist an executor or administrator in making an application to the Court to receive a percentage of commission from the gross value of the estate to compensate them for time spent in carrying out their duties.

DECEASED ESTATE LITIGATION

In the event an executor or administrator is faced with litigation from a claimant against an estate, legal advice can be indispensable in obtaining the best outcome for the estate.

Alternatively, we also have experience in assisting beneficiaries of the estate who have been inadequately provided for in the will or under the provisions of the *Administration Act 1903* (WA). We have been successful in negotiating significantly greater provision from an estate for various beneficiaries.

OBTAINING LEGAL ADVICE

Lawyers at TANG LEGAL are trained and experienced in handling all deceased estate matters.

We have fixed our fees in relation to standard deceased estate applications to provide certainty to our clients with respect to the anticipated fees of a Court application.

DECEASED ESTATE APPLICATIONS FIXED FEE

DECEASED ESTATES	
Application for Probate - Simple	\$1,100
Application for Letters of Administration with the Will annexed	\$1,500
Application for Letters of Administration	\$1,990

***Note:**

Standard applications only, do not extend to the following (all of which will be subject to a revised estimate or charged on an hourly basis):

- *Applications for a grant of probate where the will or application is contested.*
- *Collating information, conducting detailed searches such as title, company and/or business name searches.*
- *Advice or assistance in relation to the valuation of assets and liabilities.*
- *Complex matters or matters that involve a high degree of skill, for example lost wills, proof of de facto status, obtaining sureties.*
- *Amendments to the documents prepared or answering requisitions from the Court.*
- *Advice on executorial/administrative duties*
- *Advice on Family Provision claims/litigious matters*
- *Acquiring translations or interpreters for an affidavit and/or death certificate*

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