

## **LEGAL FORMALITIES AFTER DEATH**

The death of a relative or loved one is an emotional time involving contact with professionals who we are not always in contact with. The initial contact would usually be the funeral director who attends to certain legal formalities. They see to medical, death and cremation certificates and registration of the death with the Department of Internal Affairs.

In the weeks following the funeral, it is usual to commence the administration of the deceased's estate. The person or persons appointed as executors under the deceased's will are responsible for obtaining a grant of probate of the will. If the deceased did not leave a will, one of the next of kin would apply for Letters of Administration. Application for either Probate or Letters of Administration is made to the High Court.

On the issue of the Probate or Letters of Administration document, administration of the estate commences. It includes getting details of all assets and liabilities of the estate, protecting the assets and selling them as appropriate. Accounts due and any taxes owing should also be paid in the course of administration.

A will may be challenged on a number of grounds. Sometimes a testator may not have mental capacity to make a valid will. The more common ground is where some-one has received inadequate provision or no provision in the will. Those claims arise in a number of ways, often a family member who is not happy about their inheritance, or someone else who has assisted the deceased on the basis of a promise that they would be included in the will. The Property (Relationships) Act has also introduced rights for a spouse who has not been adequately provided for in the will.

In most cases claimants have 12 months from the grant of Probate to file proceedings and if the estate has been distributed the executors or administrators may be personally liable if the estate has been distributed and a claimant is successful in bringing proceedings.

Distribution of an estate usually occurs when the administration has been completed. However it is unlikely to be within 6 months of the grant of Probate as personal liability would fall on the executors should a debt arise during that time. If the executors become

aware of other claims it would be usual for them to postpone distribution until the claims have been made or the time for making a claim has past.

Distribution, where the deceased left a will, will be in accordance with the directions in the will. Where the deceased did not leave a will, the estate will be distributed amongst close relatives according to the fixed rules in the Administration Act.

It is therefore recommended that everybody leaves a valid will to avoid having their estate going to folk who they may not wish to provide for.

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