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# Wills and Estates

Achieving security and peace of mind



# WILLS AND ESTATES

When someone dies, there is much to do.

Managing a deceased's personal and financial affairs is not easy, especially when loved ones are still grieving. The executor of a Will has many responsibilities – from making funeral arrangements to paying debts and distributing assets.

Caldwell Martin Cox has vast experience in preparing Wills and managing estates. Our lawyers' many years of experience will assist you manage an estate and make the process much less difficult.

This checklist provides a quick guide to managing a deceased's estate.

## What is an estate?

A deceased's estate includes assets held in their name or held in trust for them. All debts must be deducted from the assets, for example money owed to Australia Taxation Office or owing on a mortgage.

Some assets do not form part of a deceased's estate. These include superannuation entitlements or property held in joint names. More on that later....

## Managing an estate

Many steps are involved in managing an estate. It is the executor's responsibility to ensure that this is done as quickly and efficiently as possible. Steps include:

### Obtaining a death certificate

Funeral directors are responsible for registering the death within seven days of the burial or cremation.

They usually order a death certificate, which is available in around 4 weeks.

## Probate

This is when the Supreme Court approves a Will and advises the executor of the Will that everything is in order. It is the legal authority for the executor to deal with the estate.

Not all Wills require probate for example, small estates may not. Usually, probate is required when an estate consists of specific types of assets (eg. Shares, large amounts of cash, property).

## Making a register of assets and liabilities

The executor must make a register of assets and liabilities (debts).



## Assets include:

- Property
- Bank accounts
- Motor Vehicles
- Shares
- Managed fund investments
- Australian Taxation Office refunds
- Shares in a business
- Life insurance policies

## Liabilities can include:

- Money owed to a financial institution (mortgage, personal loan, credit card)
- Sums payable to the Australian Taxation Office
- Liabilities of a business (eg. Rental payments, interest on the business suppliers accounts).

*Remember, some assets may not form part of a deceased's estate and they include:*

- Superannuation entitlements – the name of the person receiving these entitlements is usually noted in the superannuation documentation, otherwise the superannuation fund trustee normally allocates the funds to the deceased's dependents or to the estate.
- Property held in joint names – if a property is held as joint tenants, the surviving party will receive title to the property.

## Calling on assets

Once all assets and liabilities have been identified, and probate has been granted, the executor must call on assets and prepare to distribute them to beneficiaries.

### Calling on assets may include:

- Transferring a property to a beneficiary
- Selling properties owned by the deceased – to do this, the executor may need to change the registration of the property from the deceased to him/her as executor
- Selling or transferring shares – share registries must be advised that the shareholder has died and advised what to do with the shares, perhaps to be sold or transferred to a beneficiary
- Closing bank accounts

## Distributing assets

Following the collection of assets, the executor will have an accurate picture of the deceased's total net estate assets.

After payment of all estate liabilities (debts, funeral expenses, legal costs), the executor can then distribute to the beneficiaries.

## Managing disputes

Unfortunately, sometimes there are disputes about the Wills.

Certain categories of people (e.g. children, spouses including de facto spouses or former spouses and others who were dependant on the deceased) are legally entitled to challenge the will. These cases are largely determined on the parties' future financial needs. The court has very wide powers and they can vary the will substantially.

In these circumstances, it is important that the executor consults their Caldwell Martin Cox lawyer immediately so that every effort can be made to resolve the dispute as quickly and efficiently as possible.



## ABOUT CMC WILLS AND ESTATES

CMC Wills and Estates is the specialist Wills and Estates division of Caldwell Martin Cox.

We have over ten lawyers who practice in Wills and estates, who operate from three locations and serve clients across a broad region.

Our specialist lawyers advise clients on Wills and estates, Family Law, the purchase and sale of property, criminal and traffic law, litigation and dispute resolution, commercial law and business law.



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