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## **EXECUTORS AND PROBATE**

Your Executor is appointed by you, the Willmaker, to carry out your wishes as expressed in the Will and dispose of the property accordingly.

You should appoint someone who is in good health and likely to live for many years to come and whom you can trust, making sure they are happy to act as Executor when the time comes.

Generally speaking, the role of an Executor is common sense and where a complicated estate is involved, which may include obtaining of Probate, the Executor can seek help from a solicitor, the Public Trustee or a Trustee Company. An Executor's duties may require him/her to liaise with a funeral director to arrange a Death Certificate, make the funeral arrangements and arrange disposal of the body of the deceased if the Will specifically requests this.

An Executor will be required to locate and identify property belonging to the deceased such as bank accounts, land and property, cars, investments or outstanding debts. The Willmaker can make the job of the Executor(s) easier by completing (and keeping up-to-date) an Assets and Liabilities Inventory.

A Death Certificate will be needed to claim insurance, superannuation, bank drawings, funeral expenses and to apply for Probate or Letters of Administration.

Once Probate is granted the Executor needs to clear all debts including funeral expenses, taxes or loans and distribute the assets and specific items to the Beneficiaries as required. An Executor needs to keep an accurate record of all transactions and disposals to avoid any disputes later.

Probate is a certificate from the Probate Office stating that the Executor has proved the Will to be the last one made by you and that he/she is the Executor named. The Probate Office will provide a certificate (Grant of Probate) that recognises the Executor is the authorised person to proceed to distribute the assets.

Probate is not required if all assets are held in joint tenancies as ownership automatically passes to the other party. It is usually also not required if the estate is small or uncomplicated.

Probate is required as authorisation for bank or asset holders to release assets or transfer ownership as required by the Will.

Principal: **Greg Martin**  
BA LLB

An Executor can apply for Probate through a solicitor or Public Trustee or by completing the necessary summons himself/herself and submitting it with a copy of the Will, death certificate, list of assets and liabilities and a copy of a newspaper advertisement that must be placed 14 days earlier.

A Grant of Probate can be made only when there is a Will available. In the case of a person dying without a Will (intestate) the Courts step in and distribute the estate to the next of kin according to the intestacy rules.

A Probate order in this case is replaced by Letters of Administration that the next of kin apply to the courts for and in a way similar to a Probate order. Self-help kits are available to deal with probate or Letters of Administration. Probate Offices are in each state.

### **FUNERAL ARRANGEMENTS / ORGAN DONATIONS**

Write a document detailing such things as funeral directors to be used, whether you want burial and where, or cremation and disposal of ashes and your thoughts on flowers, donations, music etc. Also include body part donations if you wish. Remember as separate documents they are not part of the Will and may be varied by relatives at the time.

### **PEOPLE TO NOTIFY**

Draw up a list of people you wish notified of your death. This is a personal requirement only and ensures that anyone you wish notified will not be forgotten in the moment. List the name, address, telephone numbers, email address and relationship of each person.