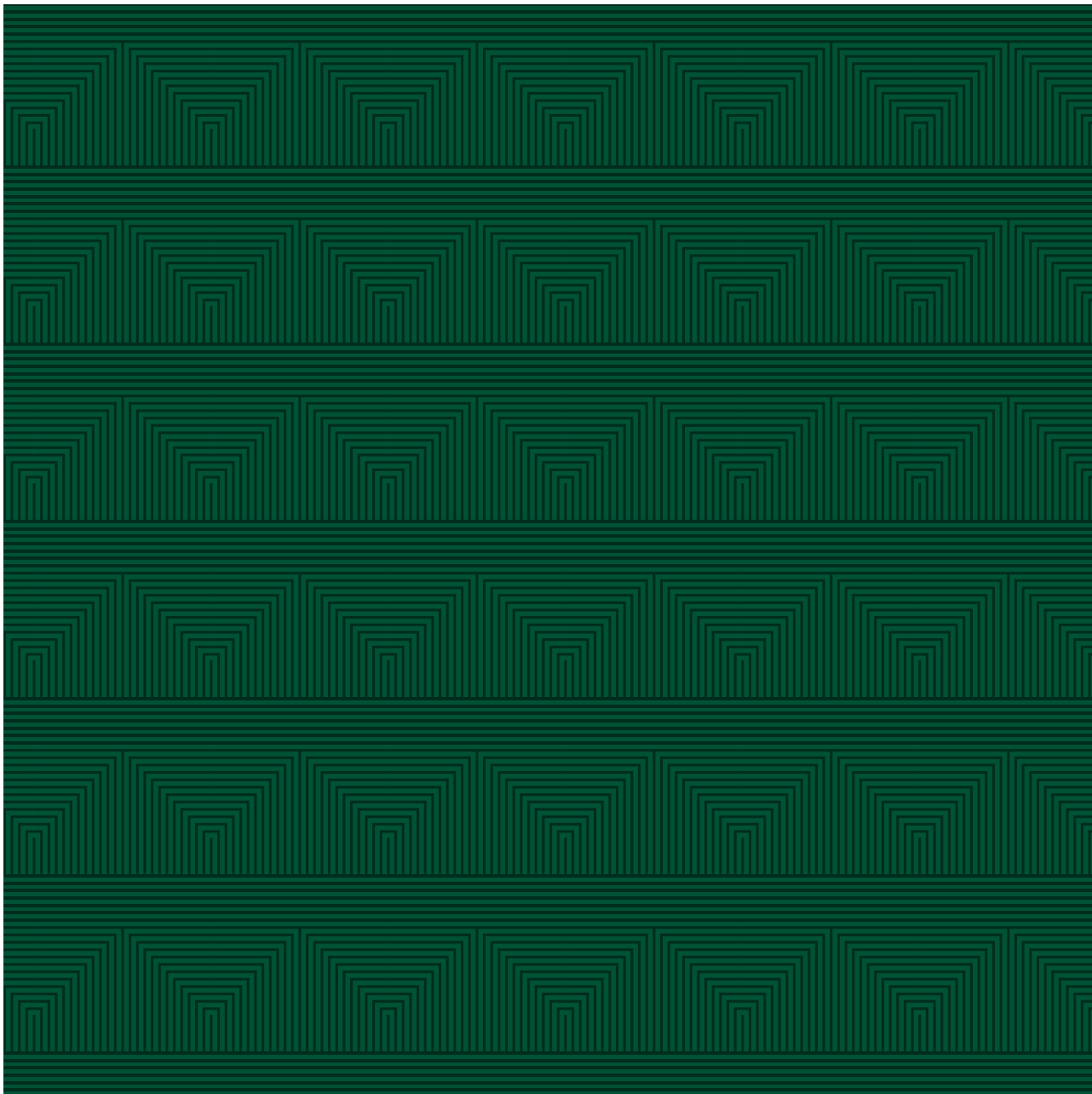




TERRACON

Support Guide to Managing a Deceased Estate





From the team here at Terracon Legal, please accept our sincere condolences for your loss.

Losing a loved one is a significant life event. We encourage you to take the time you need to acknowledge your grief and take opportunities to reach out where you need support or assistance.

We have included in this Support Guide information to help you as you progress the administration of your loved ones' estate. It contains general information, and for specific advice relevant to your circumstances we will provide this to you separately.

As a summary, here is what the process will look like:





What do I need to do first?

Compile relevant documents

Original Will or if it is held by a lawyer, the details of where the original is held;

Statements of estate assets, including bank accounts, share documents, property titles, and other account information;

Details of their accountant and lawyer.

Funeral and Burial or Cremation

The Executor named in the Will is responsible for organising the funeral and making the decision regarding how the body is to be dealt with.

You should refer to the wishes detailed in the Will (if your loved one has chosen to include it) before you proceed.

The costs of the Funeral and Burial or Cremation are often the only expenses that a bank will allow to be released from a deceased person's bank account before they freeze the accounts.

If you know of a funeral insurance cover or pre-paid arrangement, you should contact the relevant institution for details.

Death Certificate

The Death Certificate is applied for by the Executor, or often the funeral director who can lodge an application to Births Deaths and Marriages of the relevant State or Territory on your behalf.

The application and subsequent receipt of the Death Certificate from Births, Deaths and Marriages can take anywhere between 4 - 8 weeks depending on their case load.

You will need to have the Death Certificate before you or your solicitor can proceed with notifying institutions and commencing any applications in relation to the estate.

Services and Notifications

If you know of services that your loved one received, take steps to advise them of the death. These may include visiting nursing services, grocery deliveries, telephone accounts.

You can start preparing Date of death notifications to: Centrelink, Australian Taxation Office, vehicle registration office, utilities/services etc.



What do I need to do first? Continued...

When do I approach a solicitor?

You can contact our office at any stage, and we would be happy to guide you through the process.

We would encourage you to make an appointment to come in and meet with us so that we can provide you with some guidance on what the next steps will be to manage and finalise the estate.

In this first meeting, we will aim to obtain some details regarding the deceased, their Will (if one was made), their family, assets and details of their previous advisors including accountants and financial planners.

From this information, we will be able to shed light on the following:

The correct interpretation of the Will (if available), including who are the appointed executors and beneficiaries;

Whether a Grant of Probate or Letters of Administration will be required to administer the estate;

Providing an overall timeframe for the finalisation of the estate; and

Provide a fixed fee quote for the legal work.

A plan for the contact of the relevant institutions regarding the death, including those that hold assets in the name of the deceased;

Who can I reach out to if I am having trouble coping?

If you or a member of your family needs support, please contact Beyond Blue Support Service on 1300 22 4636 or visit their website at [beyondblue.org.au/the-facts/grief-and-loss](https://www.beyondblue.org.au/the-facts/grief-and-loss)



Key Terms and Steps

What is a Will?

A Will is a legal document which details a Will Maker's (traditionally termed 'testator' for male or 'testatrix' for female) wishes about their assets and affairs when they have died.

A valid formal Will must meet certain legal formalities - it must be in writing and signed in the presence of two adult witnesses.

Who is a Beneficiary?

Beneficiaries in a Will are individuals or entities who stand to inherit or benefit from gifts made under a Will.

Who is an Executor?

An Executor is an appointed person in a Will who is legally authorised to manage the deceased estate and to carry out the Will Maker's instructions in the Will. There can be one or more Executors appointed in a Will, either acting together or as substitutes to each other.

The role of the Executor includes the following responsibilities:

make an application for probate (if required)

preserve and protect estate assets

gather estate assets and pay liabilities

defend the estate in the event of any legal proceedings

manage and finalise the deceased person's tax affairs

distribute the assets to beneficiaries in accordance with the Will



Key Terms and Steps Continued...

What is a Grant of Representation (including Grant of Probate and Letters of Administration)?

The Executor will often need to make a Court application to the Supreme Court in the relevant jurisdiction for a sealed legal order to have authority to deal with the deceased's estate.

If there is a Will, the grant of representation that is sought at the Supreme Court is called a "Grant of Probate".

If there is no Will, the grant of representation is called "Letters of Administration".

Below is a summary of the timeline in making an application for probate:

Death Certificate is received, and we have an initial meeting with you;

Collate information related to the assets of the deceased;

A Notice of Intention to Apply for Probate is published in the Canberra Times, the notice period to creditors to the estate is 14-days from the date of publishing to come forward;

At the end of the 14-day notice period, we will be able to meet with you to go through the court documents prepared for the Grant of Probate application, and have all documents signed and witnessed;

The application is lodged at the ACT Supreme Court;

Typical timeframes of the return of a sealed Grant of Probate is between 3-5 weeks in the ACT.

The Court may also request further information before issuing the Grant of Probate.

The Grant of Probate is issued to the Executor/s.



Key Terms and Steps Continued...

Do I need to apply for Probate or Letters of Administration?

Whether or not you require a Grant of Representation will depend on the circumstances of the estate.

Typically, if there is real estate owned in the sole name of the deceased or a bank account/s in the same Bank that is more than \$30,000 - \$50,000 (depending on the bank), you will need to obtain a Grant of Representation before the assets can be dealt with.

In these circumstances the Executor of the estate must obtain Court confirmation that the current Will is valid and the most recent Will of the deceased.

This is something we can guide you on once we have some further information regarding the estate.

Collection and realisation of assets

Once the grant of representation is granted, the Executor will collect the assets of the deceased, realise other assets, pay liabilities and expenses and provide for bequests and legacies under the will.

Sometimes, the distribution of an estate can be delayed if, for example, an Executor has received notice that a claim is being made against the estate. Once notice of a potential claim is received, the estate cannot be distributed until the matter is determined by the Court or an agreement is reached between the parties.

Payment of legacies and bequests

Once the Executor has collected and realised the assets of the estate, paid the liabilities and provided they have not received notice of any potential claims, then the Executor is free to make the cash legacies and gift the specific items under the Will i.e. furniture and jewellery.

There may be instances where a deceased person is survived by minor children. If they are given cash legacies conditional on them reaching a certain age, the Executor also acts as the trustee to hold those funds and invest it on the beneficiaries' behalf until they have reached the specified age.

Distribution of the estate

Subject to the payment of legacies and bequests and no claims having been made against the estate, the remainder of the estate can now be distributed, provided all beneficiaries have been properly identified. Once the distribution of the estate is completed, each beneficiary who is entitled to share in the estate will be provided with detailed financial statements.

In some cases, a will directs that the estate must be managed over a period of time - usually over a beneficiary's lifetime. Continuing estates require monitoring and planning to ensure the most appropriate tax and investment strategies are implemented for the beneficiary.



The Wills and Estates team at Terracon Legal can help you with both obtaining a Grant of Probate and Administering Deceased Estates. We charge fixed fees throughout our matters, so you will always have clarity on what you are charged for at each stage of the works we undertake for you. If you have any questions regarding a deceased estate or require legal assistance, please feel free to contact our team.

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