

Applying for Letters of Administration in the absence of a Will

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Date: Sunday September 15, 2024

When someone dies leaving a valid Will, the estate will be distributed in accordance with that Will. However, when someone dies without a valid Will, then an application can be made to the Supreme Court of NSW for a grant of Letters of Administration.

In this blog, we look at:

- the purpose of Letters of Administration;
- when Letters of Administration may be required (or not required);
- who can apply for Letters of Administration;
- who are entitled beneficiaries in the absence of a Will; and
- what documents and information are needed to apply for Letters of Administration.

What is a grant of Letters of Administration?

An application for Letters of Administration is made if a person dies intestate (that is, with no Will). A grant of Letters of Administration is the formal approval from the Supreme Court of NSW for a person, called an Administrator, to administer the deceased's estate and distribute the assets according to the rules of intestacy.

The role of Administrator is similar to the role of an Executor but the right to administer the estate comes from an order of the Court as distinct from a Will.

Do you always need a grant of Letters of Administration when someone dies intestate?

The short answer is no.

If the deceased has minimal assets or all assets owned by the deceased were held as joint tenants either with their surviving spouse or any other person, then a grant of Letters of Administration is not always necessary. This will, however, depend on the requirements of each company or institution that the deceased holds assets with.

If you're unsure if you will require Letters of Administration, you should seek legal advice.

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Attempts must have been made to locate a Will before applying for Letters of Administration

The first step before starting the process of applying for a grant of Letters of Administration is to try and locate a Will made by the deceased. This might include:

- contacting family and friends of the deceased who may know whether the deceased prepared a Will;
- searching the home of the deceased for any such Will; and
- contacting the deceased's lawyers, accountants and financial advisers in case they are aware of a Will.

If the existence of a legal adviser (or other relevant professional) of the deceased cannot be identified, then enquiries may need to be made of lawyers and professionals in the area in which the deceased resided.

If still no Will can be located, an enquiry is required to be made with the NSW Trustee and Guardian and the Supreme Court of NSW to see if either of them may hold a Will of the deceased.

Once all those enquiries are exhausted, it is required that the family tree of the deceased be determined to work out who may apply for a grant of Letters of Administration and who may be entitled to a share of the deceased's estate.

Who can apply for a grant of Letters of Administration?

The deceased's next of kin would usually apply for the grant. That would include a spouse or the children of the deceased. However, in situations where there is no next of kin, the Court may make a grant to the NSW Trustee and Guardian or even a creditor of the deceased.

The general hierarchy of the next of kin who can apply for a grant of Letters of Administration is as follows:

1. The deceased's spouse (husband, wife or de facto partner);

2. The children of the deceased who are over 18 years of age;
3. The grandchildren of the deceased who are over 18 years of age;
4. The deceased's parents;
5. The deceased's siblings (including nieces and nephews if the deceased's siblings have predeceased and left children);
6. The deceased's aunties and uncles (including cousins if the aunty/s or uncle/s have predeceased and left children).

In situations where there is more than one eligible next of kin (for example, the deceased's children if there are multiple children eligible to apply), then all eligible next of kin should apply to be appointed as Administrators. But, if an eligible next of kin does not wish to apply, then they can provide written consent to the other eligible next of kin to apply without them.

Who is entitled to a share of a deceased estate where there was no Will?

Where the deceased was married or in a de facto relationship

If a person dies intestate (there was no Will) and was married or in a de-facto relationship, the deceased's spouse will be entitled to the whole estate if the deceased has no children or has children who are also the children of the spouse.

If the deceased has children who are not children of the spouse (i.e. children from a former relationship), then the spouse will be entitled to:

1. all of the deceased's personal effects;
2. a statutory legacy of $350,000, which is adjusted for inflation based on the Consumer Price Index as at December 2005 and the Consumer Price Index for the quarter year prior to the date of death of the deceased; and
3. one half of the remainder of the estate, if any.

In this situation, the remaining one-half of the residue of the estate is shared equally between all surviving children of the deceased from a prior relationship. If the value of the estate is less than the value of the statutory legacy, then the spouse will be entitled to the whole estate.

A spouse also has a right to acquire property held by the deceased but there are various restrictions that can apply to this. This area of law is complex and beyond the scope of this blog. If you find yourself in this position, you should seek legal advice.

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Where the deceased was not married or in a de facto relationship

If the deceased does not have a spouse, then the eligible beneficiaries will follow the below hierarchy:

1. Any children of the deceased will receive equal shares of the estate.

1. If any eligible children have pre-deceased and have left children of their own who survived the deceased (i.e. grandchildren of the deceased), then the surviving grandchildren will inherit the share of their deceased parent.

2. Similarly, if any grandchildren have predeceased, leaving surviving children (i.e. great-grandchildren), then the surviving great-grandchildren will inherit the share of their deceased parent.

2. If there is no surviving spouse and no surviving children, grandchildren or great-grandchildren, then the deceased's parents will receive equal shares of the estate.

3. If there are no surviving parents, then the deceased's brothers and sisters will receive equal shares of the estate.

1. Similarly to the above, if the deceased's siblings are predeceased and have left surviving children, then those children (the deceased's nieces or nephews) will take equally the share of their deceased parent.

2. If any nieces and nephews are predeceased and have left surviving children, then the great nieces and great nephews will take equally the share of their parents.

4. If there are no surviving siblings, nieces or nephews or great nieces or great nephews, then the deceased's grandparents will receive equal shares of the estate.

5. If there are no surviving grandparents, then the deceased's aunties and uncles will take equal shares of the estate. Again, if an aunt or uncle has predeceased, then the children of the deceased aunt or uncle share what their parent would have received.

6. If all the above fails to find a relevant beneficiary, then the NSW Government will receive the whole estate. It should be noted that there is scope to request that the estate of the deceased pass to dependants of the deceased or to those who may have a just or moral claim or even to an organisation or person for whom the deceased might reasonably have been expected to make provision, for example, a charity.

What documents and information are needed to apply for a grant of Letters of Administration?

Each matter depends on its own peculiar circumstances but as a simple guide, the following would be needed when applying for Letters of Administration:

1. The original death certificate of the deceased;

2. The details of any assets owned by the deceased;

3. The details of any debts owed by the deceased;

4. Any details as to steps taken to locate a Will; and

5. The details of the beneficiaries under the rules of intestacy, including their age(s). This might include marriage certificates (or evidence of a de facto relationship), divorce certificates, birth certificates, adoption orders and anything else needed to prove the relevant family tree of the deceased.

Seek advice from a probate lawyer

We understand that it is often a very difficult and emotional time losing a loved one, and dealing with the administration of the estate where there is no Will can be daunting and frustrating. Our experienced lawyers can assist you throughout the whole process of applying for Letters of Administration to make it as smooth and stress free for you as possible.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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