



## I've obtained probate in NSW - what are the next steps?

Author: [Chris Alfonso](#)

Email: [chris@ealawyers.com.au](mailto:chris@ealawyers.com.au)

Date: Sunday May 25, 2025

Obtaining probate is a significant milestone when [managing a deceased estate](#). It confirms that the Will is the valid final Will left by the deceased and gives the executor the legal authority to administer the estate. However, once an executor has obtained probate, they are then left wondering, "What happens next?"

In this blog, we walk through the steps that typically follow once probate has been granted, including:

- collecting assets of the estate;
- paying debts;
- finalising tax affairs;
- distributing the estate; and
- finalising the administration.

## What does probate actually allow you to do?

Once the executor has obtained the Grant of Probate, the executor is officially authorised to act on behalf of the estate. This means the executor can:

- collect and secure assets;
- sell or transfer property;

- pay outstanding debts and taxes on behalf of the estate; and
- distribute assets to the beneficiaries.

While this sounds straightforward, there are key steps (and many potential complications) along the way.

## Steps to take once probate has been granted

### Step 1: Collect the assets of the estate

The first task after obtaining probate is to gather the deceased's assets.

The executor can approach the asset bodies the deceased held their assets with (e.g. banks, share registries, superannuation companies, and other institutions) to redeem the deceased's assets.

If the deceased held real estate, then the executor can transmit title either to themselves as the executor or directly to the beneficiaries entitled under the Will.

Tasks at this stage might include:

- closing bank accounts and redeeming the funds in the accounts;
- selling or transferring property;
- selling or transferring shares or investments;
- claiming superannuation - dependent on whether it has been paid directly to a financial dependent of the deceased (e.g. in accordance with a [Binding Death Benefit Nomination](#)) or if it forms part of the estate;
- dealing with personal belongings.

In some cases, the executor might need to liquidate (sell) assets to pay debts or distribute cash instead of transferring the assets directly to the beneficiaries. Many of these decisions will be guided by the Will, the nature of the assets the deceased owned, the preferences of the beneficiaries and executor, and the potential costs and taxes that may be incurred depending on the decisions made.

In most cases, the executor will need to provide the asset bodies (such as banks or share registries) with a certified copy of the Grant of Probate, along with identification and other forms the particular asset body may require.

Once the assets are sold or redeemed, the proceeds of sale will usually be released to the estate of the deceased. The proceeds would need to be processed into a bank account opened in the name of the estate or through a solicitor's trust account if a solicitor is acting on behalf of the executor.

## Step 2: Pay debts and liabilities

Before any distribution can occur, all outstanding debts must be paid.

This will typically be comprised of:

1. any debts of the deceased, being the personal debts and liabilities that the deceased incurred prior to their passing. This may include:
  - mortgages or loans;
  - unpaid bills (utilities, credit cards, rates);
  - medical expenses incurred before death;
  - business debts; and
  - any other liabilities.
2. Any funeral and testamentary expenses, being costs that arise because of the death of the deceased, and note costs incurred prior.

Many funeral expenses may be paid prior to a Grant of Probate being obtained, but any that have not been paid prior should be paid from the assets of the deceased. If the executor or another person pays for the funeral personally, they can be reimbursed by the estate.

Testamentary expenses include costs associated with the executor carrying out their duties to obtain probate and administer the estate appropriately.

It is essential for the executor to carefully check for any outstanding debts and ensure these are paid prior to distributing the estate. Creditors can still make claims after probate has been granted. In some cases, an executor may be held to be personally liable for certain expenses if they fail to arrange payment of a debt prior to distributing the estate.

If the debts of the estate exceed the assets of the estate (in other words, the estate is insolvent), then appropriately incurred funeral and testamentary expenses will be payable first, prior to the payment of any unsecured debts of the deceased.

## Step 3: Attend to tax matters

Tax is a critical part of the estate administration process. Importantly, if the executor distributes assets before finalising the estate's tax obligations, they may be personally liable for any outstanding tax. Getting advice from an accountant or lawyer is essential to manage this risk of liability.

[CALL A PROBATE LAWYER FOR ADVICE: 02 9997 2111](https://www.legalaid.gov.au/individuals/your-lawyer/probate-lawyer-for-advice)

### Income tax

## Executors may need to:

- lodge the deceased's final individual tax return, being a tax return from 1 July of the tax year up to the date of death. This tax return would include all income the deceased earned prior to passing away; and
- lodge one or more estate tax returns if the estate earns income before distribution. The estate becomes a separate taxable entity and needs to obtain its own tax file number. Tax returns would usually be required for as long as the administration of the estate continues and the estate earns an income. There are different tax requirements that apply if the estate continues to earn an income for more than three (3) income years. Income the estate earns could include:
  - interest from bank accounts;
  - dividends from shares owned;
  - rental income; and
  - capital gains (if assets are sold during administration of the estate).

## Capital Gains Tax (CGT)

CGT does not apply automatically when a person dies, but it can apply when:

- the executor or beneficiaries sell estate assets (e.g., real estate, shares, investments); or
- certain assets pass to certain types of beneficiaries (for example, if shares are gifted to a foreign tax resident).

If assets with an embedded CGT liability are transferred to a beneficiary, then the future tax liability that the beneficiary will incur upon selling the asset may need to be calculated and equalised among the other beneficiaries.

There are numerous CGT considerations depending on the assets owned by the deceased, when those assets were acquired, and who is receiving those assets. Advice from a lawyer or accountant may be necessary to manage all of these considerations.

[CALL A PROBATE LAWYER FOR ADVICE: 02 9997 2111](#)

## Superannuation death benefits tax

Superannuation can sometimes be taxed when the recipients of the superannuation entitlements are non-dependent beneficiaries, whether it is paid directly to the beneficiary or via the estate.

If superannuation benefits are paid directly to a dependent (e.g., spouse, child under 18), they may be tax-free.

If paid to adult non-dependents, tax may apply to the taxable component of the benefit (up to 15% or 30%, depending on circumstances).

If paid via the estate, the executor is responsible for ensuring the superannuation death benefit tax is paid to the ATO.

## Transfer duty (Stamp duty)

In many cases, no transfer (stamp) duty is payable when transferring property from an estate to a beneficiary, provided the transfer is made in accordance with the terms of the Will.

If dutiable property is transferred to someone who is not entitled to the property under the Will, or if the transfer is in proportions that do not align with the terms of the Will, then transfer duty may become payable.

## Step 4: Distribute the estate to beneficiaries

Once assets have been collected, debts paid, and tax matters resolved, the executor can look to distribute the estate in accordance with the terms of the Will. This may involve:

- transferring certain assets to beneficiaries;
- selling assets to pay cash gifts to the beneficiaries;
- distributing personal items; and
- setting up any ongoing testamentary trusts, if required by the Will.

The terms of the Will may dictate how certain assets are to be provided to the beneficiaries.

Executors should always ensure they have fully satisfied all liabilities and legal requirements before making distributions to avoid future disputes or personal liability. This can include preparing a final distribution statement or report for beneficiaries and keeping detailed records of all transactions and decisions made during the administration.

Before distributing, the executor should file a notice of their intention to distribute and ensure timeframes under the relevant legislation have been considered.

Finalising the estate may take time, especially if there are tax or trust requirements that continue beyond distribution.

## Common executor questions

### How long will all this take?

Even after probate is granted, the full process of finalising the estate can take several additional months. It will typically depend on the nature and complexity of the assets, terms of the Will, and any disputes among the beneficiaries or against the estate.

The administration of the estate will usually be completed within 1 year from the date of death, but complex estates may take a year or more.

You can read more about timelines for administering a deceased estate in our earlier blog, [“How long does probate take in NSW?”](#)

## Can I distribute early if I think everything is sorted?

Yes, but care should be exercised. The executor should always confirm that all debts (including taxes) have been paid, there are no risks of [claims against the estate](#), and timeframes under the relevant legislation has elapsed.

Executors who distribute too early risk becoming personally liable for unpaid debts or taxes. Executors should tread carefully and consider obtaining legal advice.

## Do I need a lawyer to administer a deceased estate?

It is not essential that a lawyer assists with administration of an estate, but in most cases, it is recommended. Instructing a lawyer to assist with this process can help the executor to minimise risk and stress.

Even if the estate is not extremely complex, executors often engage lawyers because:

- the process is administratively heavy;
- it can be difficult to know what steps need to be taken if an executor is unfamiliar with the process and all the technicalities involved;
- executors may not have time to deal with asset holders, government agencies, and taxes;
- occasionally the instructions received from asset holders can be misguided, sending an executor down the wrong path initially and then imposing additional requirements later. An experienced lawyer will often know what steps are required from the outset;
- there is a real risk of personal liability if mistakes are made.

**Remember:** Executors can be personally liable if they distribute assets too early, miss debts or tax obligations, or mishandle the estate.

A probate lawyer can help you navigate the process smoothly, reduce risk, and avoid costly mistakes.

## Get help from a lawyer experienced in probate

While obtaining probate is a major step for an executor, completing the estate administration properly is just as important. Executors carry serious responsibilities and can face legal consequences if the estate is not handled correctly.

Speaking with a lawyer experienced in probate and deceased estates can help you navigate the legal and financial complexities of acting as an executor.

E&A Lawyers have a dedicated and experienced probate and estates team who can help you. For more information or to arrange a consultation with a lawyer, you can call or email us.

## Contacting E&A Lawyers

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

[02 9997 2111](tel:0299972111)

[info@ealawyers.com.au](mailto:info@ealawyers.com.au)

## Find this article useful or interesting?

You may also like to read:

- [Executor duties when dealing with property of a deceased estate](#)
- [Risks of DIY probate](#)
- [Can I sell property of a deceased estate before probate is granted?](#)

---

*This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact E&A Lawyers.*