Antippa Lawyers

since 1961

PROBATE

Foreword:
This brochure is a basic guide to the process of Probate and Administration of a deceased estate. ANTIPPA LAWYERS can guide you with the details.

WHAT SHOULD YOU DO UPON DEATH?

Notify people of the death including:

- Cancel any home help or home delivery services.
- Life Insurance direct debit facility;
- Electoral Roll;
- Centrelink;
- Vic Roads;
- Lodge Tax Assessments;
- Council & Utility authorities;
- Building and other Insurances;
- Employer;
- Superannuation;
- Banks;
- Health fund;
- Schools;
- ANTIPPA LAWYERS; Medical Practitioners, Dentist, Vet;
- Subscriptions;
- Clubs, organisations & societies;
- Friends & relations.

INTRODUCTION

When someone dies, Victorian law requires the affairs of the deceased to be wound up. A deceased person cannot continue to hold real property, bank accounts, shares, superannuation, furniture, cash or positions of employment. Tax must be paid within 6 months of death and pension payments must be stopped immediately.

WHAT IS THE PROCESS?

Probate means proving the authenticity of the Will. That is, it requires proving that the Executors appointed in the Will are alive, willing and competent to undertake the tasks involved.Also, it is important that the Will is the last will made by the deceased and that there are no objections to that Will.

WHAT IF THERE IS NO WILL?

If someone dies without leaving a Will, this is called dying 'intestate'.In this case, an application for Letters of Administration would be made. Where there is a Will but the Executor has died or is unable or unwilling to perform those duties, then an application for Letters of Administration with Will Annexed would be made.

HOW IS AN APPLICATION MADE?

Probate is an application to the Supreme Court of Victoria for the Registrar (usually by bureaucratic decision and not usually a judge in a Court) to look at the application.

WHEN IS IT NECESSARY TO APPLY FOR PROBATE?

If someone dies leaving more than $5000.00, it is necessary to apply for Probate or Letters of Administration. If real property is held as "joint proprietors" with someone else still living, then that real property is not included in Probate. Binding superannuation directions may also be excluded.

WHAT DOCUMENTS DO I NEED TO GATHER?

You will need the original of the following documents: death certificate, Will, certificate of title, share certificates or statements, bank books and statements, debit and credit cards from banks and merchant cards and superannuation statements. You may need copies of the birth certificate, passport, marriage certificate, death certificate of deceased Executors, market appraisals of real property, antiques and other valuable furniture and personal possessions.

WHAT DOES THE APPLICATION CONSIST OF?

Antippa Lawyers will write to the banks, superannuation, life insurers and others to verify the balance as at the date of death. We will also publish an advertisement on the Supreme Court's website in case someone wants to contest the Will.

The application is a full set of documents which summarise all the information you provide us. The documents are called Affidavits. An Affidavit is a statement which you must swear on the Bible or affirm. The original Will and other documents are kept by the Court.

HOW LONG WILL THE PROCESS TAKE?

The Supreme Court of Victoria will usually take between 4 and 8 weeks to read all of the Affidavits and other documents which make the application for Probate. This depends on whether the Court wants any amendments to the Affidavits.

WHAT HAPPENS WHEN PROBATE IS GRANTED BY THE COURT?

Real property can be let but not sold. Junk can be disposed of and real property rejuvenated ready for sale. The Executors must keep paying all bills from their pocket. Beneficiaries should be patient for 6 months after the date of grant of Probate. If any real or personal possessions are distributed before this 6 months - period has expired, Executors can be personally liable.

SO, WHEN CAN A BENEFICIARY GET THEIR ENTITLEMENT?

‘Administration’ means executing the Will. In other words, this is the process of closing bank accounts, superannuation funds, life insurances and selling real property. All of these types of property are converted into cash. Real property can be sold. Further tax returns may need to be prepared by the deceased’s Accountant.

The cash is then distributed to beneficiaries in accordance with the Will (if there is a Will, otherwise, in accordance with the laws of intestacy to the various next of kin, heirs and other relations). A beneficiary is someone named in the Will who will benefit from the Will.

Before any distribution is paid to beneficiaries, Executors will be repaid their out-of-pocket expenses. However, Executors are not usually paid for their services.

Antippa Lawyers will administer the estate for you.

Antippa Lawyers
Room 3, Level 5, 2 Collins Street,
Melbourne Vic
(03) 9650 2115
lawyers@antippa.com.au
www.antippa.com.au