My experiences in being an Executor to a will, without lawyers

By Kym Pennifold
Introduction

- I was the Executor to my brother Paul’s will
- I also was the Power of Attorney and Substitute Decision Maker (Health Care) for Paul
- Today I wish to share with you
  - Tips for individuals preparing their health and financial affairs before death
  - the lessons learnt by me as the Executor without involving lawyers
  - Tips to help other future Executors

- I am not an expert, if you do need legal advice, then see a lawyer.
Preparing Health and Financial affairs before death

Items to have in place before death

- **A will** – inform the Executor (& loved ones if needed) and your wishes covering the distribution of your estate and funeral arrangements

- **General and Enduring Power of Attorney** – who looks after your financial affairs while you are unable to make those decisions, inform that person (and the backup person), have certified copies ready

- **Advance Care Directive**
  - Who are the Substitute Decision Makers (referred to as a SDM)
  - Your values and wishes for future health care, end of life, living arrangements and other personal matters
  - Health care you do not want in particular circumstances
  - Have many certified copies on hand, copy for GP, treating specialists & health carers, hospital, palliative care providers
Preparing Health and Financial affairs before death

- Items to have in place before death (contd.):
  - **List of your financial affairs** in secure location (let the Executor know)
    - Eg. bank accounts, investments, superannuation, properties, other assets etc.
    - Consider giving **access authority** to your bank accounts to the person with the Power of Attorney
  - List your **direct debits** to credit cards, bank accounts. **may be a problem with who can cancel them**
  - List of your **user name and passwords** to computer, online banking, emails, online organisations, etc
  - **Centrelink & My Aged Care** - consider a nominee/authorised person to act on your behalf
Who to Notify when a death has occurred

- The Executor
- Centrelink – ask to funeral services to do it
- My Aged Care, Health Funds
- Medical & Carer Providers
- Aust. Electoral Office
- Solicitor – Executor to get the original will
- Banks, building societies, credit unions, financial institutions
- Superannuation companies
- Insurance companies, life, accident, home and contents, vehicle, RAA
- Employer/former employer
- Dept. of Veterans Affairs
- Professional org or trade unions
- Aust. Taxation Office
- Post Office for redirecting mail
- Motor Reg and Licences
- Clubs, organisations and associations
- Church or religious organisations
- Home delivery services eg newspapers
- Home appliance rentals, medical aids
- Ambulance services, medicare
- Telephone, electricity & gas, water cos.
- Local government, ES Levy
- Retail Property Manager if renting
- Share sale/transfer service provider
- Seniors Card SA – transport cr. Refund
- Social media and email accounts, facebook, Gmail, twitter, etc.,
Roll of the Executor

- After death the Power of Attorney ceases to have any authority or power.
- The Executor in the will takes control over the financial affairs of the deceased.
- The Executor’s roll:
  - Take care of all assets.
  - Pay estate’s bills and taxes.
  - Obtain probate from the courts if required.
  - Steps in to manage and wind up the financial affairs of the estate.
  - Transfer the net assets of the estate to their new and rightful owners.
What is a Grant? A grant of probate or of letters of administration is a legal document issued by the Probate Registry. The grant enables the legal personal representative named (incl. the Executor) in the grant to formally administer the estate of the deceased person, by collecting and dealing with assets and paying estate debts.

The Supreme Court of South Australia has exclusive jurisdiction in this State to make orders in relation to the:

- validity of Wills of deceased persons;
- appointment of an executor or administrator of a deceased estate; and
- administration of deceased estates.

The Probate Registry deals with applications for grants and other related matters.

Registry Staff may provide directions on making an application for a grant but will not provide legal advice.

Sessions are held by the Probate Registry on a regular basis explaining how to navigate CourtSA. This is procedural information only. No legal advice will be given.

CAA website has general information and Frequently Asked Questions about Wills & Probate.
What I did as Executor to Paul’s Estate – without Lawyers

- Made a To Do List – list of things I needed to do & when
- Redirected Paul’s mail to my address
- Went through the “Who to Notify” list and added relevant ones to the “To Do List”
- Obtained Paul’s list of financial affairs and his financial papers
- Obtained Paul’s bank account & credit card statements and checked last 12 months of entries, id share dividends that weren’t on the list of financial affairs, confirmed direct debits to be stopped and normal income and expenses, compared this to “Who to Notify” list
- Used spreadsheet to record Estate’s assets and liabilities, incl. income & expenses
- It is important to document the financial transactions of the Estate (possible disputes)
What I did as Executor to Paul’s Estate – without Lawyers

- When you notify the bank of a death, any bank account withdrawals will be stopped/frozen
- Set aside my own funds to pay the Estate expenses. (Funeral invoice will normally be paid by the bank from the Estate bank account before probate is granted) other expenses - get refunded later after probate
- Obtained the original will from the Solicitor
- Made a table of each financial institution’s requirements regarding “cashing in” the assets into the Estate bank account
- Researched Court SA website – requirements to submit Grant Application form for Probate, in SA only done online
- Obtained certified copies of legal documents with use of a JP, Darrell Wise & Doug Johns services
# Table of Financial Institution Requirements to release funds

<table>
<thead>
<tr>
<th>Certified Copies of</th>
<th>Court SA - Probate</th>
<th>Investments</th>
<th>Bank</th>
<th>Share Services</th>
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<tr>
<td>Will</td>
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<td>Certified ID Form</td>
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<td>- Passport 70pts</td>
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<td>Yes</td>
<td>Yes &gt;$25,000</td>
<td>No &lt;$15,000</td>
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<table>
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<th>Other Banks</th>
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<td>- PDF Original Will</td>
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<tr>
<td>- PDF Death Certificate</td>
<td>Yes</td>
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<tr>
<td>- PDF ID Form</td>
<td>Yes</td>
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<tr>
<td>including Passport</td>
<td>Yes</td>
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<tr>
<td>including Drivers Licence</td>
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</table>

<table>
<thead>
<tr>
<th>Probate Needed</th>
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<th>No</th>
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<tr>
<td>Note to sell real estate</td>
<td>Need Probate</td>
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<td></td>
</tr>
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</table>
Why I decided not to use Lawyers

- I had done most of the work as Executor in dealing with the Estate
- I had knowledge of finances and some law requirements
- I was confident in submitting online probate application to Courts SA
- Paul’s will and estate was reasonably straight forward and he had a will

Avoid paying legal fees
  - submitting online probate application – estimate $1,500
  - manage and windup of the estate – estimate from $2,500
  - lawyers hourly rate $440

I did use a Professional Taxation Accountant to deal with the ATO – some unresolved tax matters that needed to be resolved, they could easily access Paul’s tax information at the ATO

The Executor is personally liable for any outstanding tax owing by the Estate if the funds have been distributed to the beneficiaries.
Court SA Online Probate Application

- Need to register online to lodge cases with Court SA
- Complete Grant Application form online, save as draft and can comeback to it later
- Original Will needs to be “marked” signed by Executor & certified witness (eg JP) on the back of the last page
- Original Will scanned as 1 PDF document, exclude last blank page (normally has the Solicitor’s name who did the will), DO NOT REMOVE STAPLES from the will
- Scan Death Certificate both sides as 1 PDF document
- Scan Certified (by JP) ID form (100 pts) plus certified supporting documents eg passport, drivers licence as 1 PDF document, needed for self executor submissions
- Electronically attached the scanned PDF documents to the online grant application
Court SA Online Probate Application contd.

- Itemise each Estate’s Asset and Liability - value as at date of death, courts have a different definition of an asset & a liability, don’t include funeral expenses, liability only if invoice is overdue.

- Once complete, self check spelling & grammar (no system check), certificates will use your exact wording and values.

- Proceed and pay court fees with credit card (fees based on total assets of the estate $837 <$200K up to $3346 >$1M).
Assets & Liabilities for Probate Application

- **Assets** Type, description, value as at date of death & by whom, held in SA or not, Y or N Registrar’s Certificate is required – some of the common assets
  - Cash on Hand (used to pay Estate bills before Probate)
  - Bank or similar accounts, separate for each bank account & account details
  - Shares or similar investments (shares, no. of units, value per unit, total value)
  - Motor Vehicles & Boats (use executor’s valuation)
  - Furniture, household & Personal Effects (use executor’s valuation)
  - Real Estate (use Valuer-General’s valuation) only list solely owned property by the deceased
  - Superannuation, Life insurance
  - Other Assets
    - Self Funded Pension investment
    - Credit card (if credit balance)
Assets & Liabilities for Probate Application contd.

- Liabilities, each liability separately stated, description, value
  - List only those expenses where the invoice is overdue for payment
  - Do not include funeral expenses
  - (Nil for Paul, no outstanding bills)

- Listed assets & liabilities for Probate does **not match the actual** final ones of the estate, eg.
  - different time values for assets,
  - Income received after date of death
  - actual expenses of the Estate,
  - exclude funeral bonds as an asset
Court SA Processes

- After submitting the online application, a PROB number (case reference number) will be allocated to the application.
- Print off Original Will Coversheet and complete it.
- Glue Coversheet to white A4 envelope and place inside the envelope Original Will (you don’t get it back) and Certified ID Form.
- Deliver A4 white envelope and contents (do no bend) to Court SA Probate Office – Sir Samuel Way Building Victoria Square.
Court SA Processes contd.

- Once the examination officer of the Court is satisfied (take as least 4 weeks), receive an email
  - A Grant of Probate of the Will is issued electronically on CourtSA website, can be downloaded/saved/printed off at home
  - A Certificate of Disclosure is issued electronically on CourtSA website by the Registrar of Probates for each financial asset you requested eg Bank, investments, can be downloaded/saved/printed off at home
  - If application is rejected, a general reason is given via email, encouraged to seek legal advice, need to collect the white A4 envelope, receive a refund of court fees and resubmit the application again from scratch and pay the court fees

- Forward the respective Certificate of Disclosure to each financial institution, send electronically, some may ask for certified copy of the certificate – but in SA no paper copy will be issued by the courts, best they accept electronic copy or JP to certify downloaded/printed copy
Next Steps

- **Sale of the assets** – convert into "cash", paid into bank account (start with those assets that don’t require probate, eg car, clothes, furniture)

- Financial Institutions eg investments, pay value of the assets into bank account "Estate of ...."

- **Pay all Estate expenses** including ATO for any tax debts (last bill if any)

- Bank will convert the bank accounts into the “Estate of .....”, no online access

- Once the bank has processed the probate certificate and converted the name into “Estate of ....”, the bank will pay any expenses of the Estate (document evidence) and/or reimburse the Executor via bank cheque or EFT from the Estate bank accounts, no bank fee

- Final task – **distribute the net assets** from the Estate bank account to the new and rightful owners **in accordance with the Will**
Main Lessons Learnt

- Executor needs to use **own funds** as cash float for the Estate’s expenses before Probate, maybe get a cash reserve before the person passes away, $5K to $10K depending on the Estate.
- List of Estate’s assets is important.
- Stopping direct debits can be an issue.
- Access to usernames and passwords is important.
- Court’s definition of assets and liabilities for probate is different to actual.
- Have many copies of certified legal documents e.g. will, power of attorney.
- It takes a lot of **time and effort** to be an Executor.
- It can be done **without lawyers**.

Any Questions