

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**

Probate - info from CAA website

- ▶ **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

Document Table

Table of Financial Institution Requirements to release funds				
Certified Copies of	Court SA - Probate	Investments	Bank	Share Services
Will	Original	Yes	Yes	Yes
Certified ID Form	Yes	Yes		Yes
- Passport 70pts	Yes			
- drivers licence 40pts	Yes	Yes	Yes	Yes
Death Certificate		Yes	Yes	Yes
Probate Certificate		Yes	Yes >\$25,000	No <\$15,000
Scan Documents			Other Banks	
- PDF Original Will	Yes		Yes > \$100k	
- PDF Death Certificate	Yes			
- PDF ID Form	Yes			
including Passport	Yes			
including Drivers Licence	Yes			
Probate Needed		Yes	Yes	No
Note to sell real estate	Need Probate			

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.

Welcome to CourtSA

Probate



Grant Application

You're in charge of distributing an estate and need to get an order from the court (called a Grant, Letters of Administration, or Reseal of Grant)



Probate Caveat

Application for a Probate Caveat to stop the distribution of an estate



Originating Application

Testamentary summonses (previously Forms 34, 34A, 34B, and 34C) and other applications under a particular Rule or Act



Probate Subpoena

Use this form to subpoena a will or codicil



Renunciation Application

When an Executor wishes to give up their right to a Grant



Will Deposit

Where you want to deposit the original Will with the Court during the life of the Will maker

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
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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