

# *Estate Management Services*





## *Why use Perpetual Guardian?*

- We are an expert trustee company built on more than 130 years of experience in establishing and managing Trusts and estate planning.
- As a trustee company, we exist in perpetuity – we will not go out of business or die, leaving you without a trustee or adviser.
- We will be here when you and your family need us.
- All Perpetual Guardian staff are professionals with extensive experience in their areas of expertise.
- We are independent, and will act objectively and impartially when dealing with family members.
- We will deal with your affairs promptly and efficiently.
- We offer a full range of associated services, including Enduring Powers of Attorney, online storage of your Will and much more.

*Our priority is to make this as comforting as we can.*

We help relieve stress, by providing a professional and compassionate service.

At some stage, we all experience the death of someone near and dear to us, but few of us are fully aware of the estate administration process. This can be particularly difficult if you are called upon to assist with the many matters that require attention following a death. This guide is designed to inform you of what is involved in administering an estate.

## Getting started

When you are ready, one of our first duties is to have a discussion with you to obtain details of the estate assets and liabilities, as well as details of the beneficiaries.

## Obtain authority to act

In most cases, an executor or administrator must apply to the High Court for a Grant of Administration which is the legal authority to act in the estate. The Grant of Administration is a court order recognising a Will as an authentic document and gives the executor the legal authority to deal with the deceased's estate and distribute according to the instructions in the Will. Until this is issued, no assets can be sold or distributed to the beneficiaries, bank accounts cannot be closed and no money is available for the initial costs the executor may have to cover. If you use a trustee company such as Perpetual Guardian we provide short-term funding to cover these expenses until the Grant of Administration is obtained, assets are sold or bank accounts are closed.

Three of the most common Grants of Administration are:

### Probate

Where there is a Will and the estate is more than \$120,000, an application must be made to the High Court for a grant of probate. We can prepare the application for you and file it in the Court. Probate is applied for by the executor of the Will.

### Election to administer

If the estate is under \$120,000, as a trustee company there are two instances where we can elect to administer the estate:

- When there is a Will and we are listed as sole trustee; or,
- When there is no Will.

Utilising this capability means that administration costs are kept to a minimum for smaller estates.

### Letters of Administration

There are two instances where Perpetual Guardian can apply for

Letters of Administration:

- When the estate is over \$120,000 and there is no Will, an application must be made to the High Court for Letters of Administration. We can do this and administer the estate with instructions from the next of kin; or,
- When the estate is over \$120,000 and there is a Will, but the named executor would prefer not to act as such, we can be appointed to administer the estate. This is called Letters of Administration with Will Annexed.

## Dealing with the estate

There are many steps involved in dealing with the assets and debts of an estate. Some estates will require a lot more work than others. A general summary of what is required to be completed follows.

### Notification

We will notify all relevant organisations (such as banks, insurance companies



## Important

Acting as the executor of a Will is a time-consuming and detailed job. Perpetual Guardian can act as executor either on its own, or jointly with a family member to provide them with access to professional help and advice.

and other service providers) of the death. This enables them to freeze accounts, halt charges or fees and redirect correspondence.

### Assets and liabilities

We will compile an inventory of assets and liabilities for the beneficiaries at the early stages of administration.

### Dealing with the assets

Once we have a Grant of Administration, we will start dealing with the assets. For example, closing bank accounts, redeeming investments, collecting proceeds of any life insurance policies and, if necessary, selling property. All assets will be transferred into our name as administrator and then sold, collected or transferred to the beneficiaries when a distribution is made.

### Payment of debts

When sufficient cash becomes available from the collection or sale of assets, we will pay the debts of the estate. Typically these are the funeral account, outstanding credit card balances and hire purchases.

### Notice to creditors

We will place a notice in the local newspaper asking for creditors to



send details of any accounts that were outstanding at the date of death within a month of the advertisement.

### Taxation and accounting

Matters relating to tax can take the longest time to deal with in an estate. We will endeavour to finalise any tax issues as quickly as possible. We will file any required personal tax returns to date of death and ensure that any tax is paid. We will also file any required estate tax returns from date of death to final distribution.

We will prepare financial statements for the estate and provide copies to the beneficiaries.

### Jointly owned assets

Jointly owned assets do not form part of the estate and will pass to the surviving owner(s). We will be happy to notify the relevant authorities and arrange transfers from joint names to the survivor(s) should this be required.

### Distribution

There are a number of Acts of Parliament which affect the ability of a trustee to make a distribution of an estate. These Acts deal with the rights of persons who may have a right to claim against the estate as a creditor, a dependant, a relative, or someone who has been in a relationship with the deceased.

#### **Family Protection Act 1955**

This Act allows certain family members to make a claim against an estate if they feel they have been inadequately provided for under the terms of the Will. The Act specifies which family members can make a claim.

#### **Property (Relationships) Act 1976**

This Act not only applies to married couples, but also people living in *de facto* relationships (subject to certain time frames), those in a civil union and same-sex couples. The Act provides for sharing of relationship property on death. A surviving spouse or partner



has a choice to accept the provisions under the Will or apply for a division of relationship property.

### **Law Reform (Testamentary Promises) Act 1949**

This Act provides a remedy for people who have performed work or services and who have been verbally promised some provision in the Will in consideration for such services but the Will contains no such provision.

#### **How long will it take?**

The actual time frame is dependent on a number of factors – the number and location of beneficiaries, the complexity of assets, the number of overseas assets and any legal challenges raised.

In some situations, an interim distribution may be made at the discretion of the executor subject to the factors listed above. Typically distributions occur after six months, after which the estate proceeds to closure.

### **How can I protect my inheritance**

Your inheritance could have a significant impact on your own wealth and it is important to seek planning advice in this regard. It is important to make sure you have the right estate planning advice to ensure your assets are protected. We aim to assist you in securing your financial future and can discuss ways to achieve this through sound estate planning structures. You should consider that under the terms of the Property (Relationships) Act, inheritances received from an

estate are the separate property of the person receiving them but they can become relationship property.

Examples of keeping this separate are:

- Pay the inheritance into a Trust; or,
- Invest funds in your sole name (through an investment portfolio or into a bank account).

If you use inherited funds in any of the following ways, they may not be considered separate property and could be considered relationship property and be available for division:

- If the funds are paid into a joint bank account; or,
- If the funds are used to pay off the mortgage on the family home; or,
- If the funds are used to purchase a family home.

Please discuss your particular situation with your Perpetual Guardian adviser who will refer you for specific advice. If you feel your personal situation may give rise to any other

concerns which may impact on the way your Will should be prepared, this should be discussed as well. You should not rely solely on the commentary provided in this brochure.

### **What happens if I die without a Will?**

If you have not made a Will you will have no control over how your assets (including your inheritance) are distributed when you die. In addition, those left behind may be subjected to lengthy and costly delays while the

## **Important**

It is a great idea to sit down and talk with one of our experts to ensure that you are able to get the most out of your inheritance. It is also extremely important that you understand the implications of the Property (Relationships) Act and how it may affect what you do with your distribution.



Court appoints an administrator to distribute your assets in accordance with the Administration Act 1969. The provisions of this Act are updated from time to time, but as of March, 2015 the key points relating to this Act are:

- If your spouse/partner is living at the time of your death and you have no children or parents alive, the whole of your estate passes to your spouse/partner;
- If you have children living at the time of your death and no spouse/partner, the whole of your estate passes to your children in equal shares;
- If your spouse/partner and children are alive when you die, your spouse/partner receives all personal belongings, \$155,000 and one third of the residue. Your children will receive two thirds of the remainder (in equal shares) when they reach 20 years of age;
- If your parents are living at the time of your death, and you have no spouse/partner or children alive, the whole estate passes to your

parents;

- If your spouse/partner and parents are living at the time of your death, and you have no children, your spouse/partner receives all personal chattels, \$155,000 and two thirds of the remainder. Your parents receive one third of the remainder in equal shares; or,
- If you have no spouse/partner, children or parents alive, the whole estate passes to certain blood relatives in accordance with the law.

### Important Note

Perpetual Guardian does not accept any liability for loss arising as a consequence of anyone acting in reliance on these notes alone without individual advice. Equally, liability will not be accepted where individual or specific advice was given but all relevant details were not supplied to Perpetual Guardian.

Perpetual Guardian is a trading name of Perpetual Trust Limited.

## Definitions of terms you may come across:

**Administrator:** A person or organisation appointed by the Court to manage the estate of a deceased person.

**Beneficiary:** A person or organisation who is left property under the terms of the Will.

**Bequest:** A gift of personal property that has been left by a Will.

**Dependant:** A person who relies on another, i.e. minor children.

**Devise:** A gift of real estate that has been left by a Will.

**Estate:** All assets and debts owned by an individual at the date of their death.

**Executor:** A person or organisation appointed under a Will to protect, gather in and distribute the estate.

**Intestate:** To die without leaving a Will.

**Legacy:** A gift of money left in a Will.

**Letters of Administration:** A High Court Order which authorises an administrator to manage a deceased person's estate.

**Probate:** A High Court Order which shows that a Will has been proved and that a named executor and trustee are appointed.

**Will-maker:** The person who has made the Will.

**Trustee:** A person or organisation which holds assets over time for beneficiaries.



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