

Burke & Associates Lawyers Probate & Deceased Estate Administration

Fee Structure



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Probate and Deceased Estate Administration

When a person passes away, they generally have assets of some kind to pass along to their loved ones or next of kin. Depending on the circumstances involved, there are different processes in order to complete transfers of property, bank accounts, shares, motor vehicles, etc. In addition, there is communication required to cancel services, such as telephone contracts, cancel a driver's license, notify the electoral roll, lodge a final tax return and ensure all liabilities are paid.

In a time of grief, many people can find this process a little overwhelming, and it is common to seek legal assistance in the estate administration process.

Where there is a property or aged care 'bond' (RAD) in the name of the deceased person, or bank accounts / shares of around \$50,000 or more, it is common for financial institutions, the Land Titles Office or aged care facility to require a Grant of Representation (called either 'Probate' or 'Letters of Administration') before they will release funds or transfer property. Essentially, this is to provide them with certainty that they are taking instructions from the right person.

Probate applies when the deceased person left a Will. This is an application to the Supreme Court of Victoria to 'prove' that the Will you are seeking to follow is valid, and is the last Will made by the person who passed away. To apply for probate in Victoria you must be over 18 years and named as an Executor in the will.

If a person dies without a Will, a similar process may be undertaken. This is known as 'Letters of Administration'. As with Probate, it involves an application to the Supreme Court of Victoria, however there is no Will to prove. Letters of Administration is generally granted to the person or people entitled to benefit from the Estate on the basis of Victoria's intestacy provisions (that is, the people the law defines as beneficiaries when a person does not leave a Will). These people will then be known as the Administrators of the estate.

How can we Help?

Prepare & File all Required Deceased Estate Administration Documents

Our Estates team is frequently engaged by Executors / Administrators to advise on the Estate administration process, prepare the required documentation for an application for Probate or Letters of Administration, and to file same with the Supreme Court of Victoria on their behalf.

Once a grant of representation (either Probate or Letters of Administration) is issued by the Court, this enables the Executor or Administrator to deal with the deceased's assets. It allows the deceased's money held in banks and or managed funds to be collected, their debts to be paid and their property to be sold or transferred.

Assist with Estate Administration

Cash

Cash is the simplest asset to transfer as it can be transferred from the "Estate of Late" bank account to each Beneficiary's bank account electronically or at a branch.

If a lawyer is assisting with the estate administration, we establish the Estate trust account, and can deposit all funds relating to the estate on your behalf.

Real estate

If the deceased held an interest in property, a transfer may need to occur. If the property was owned with another person as 'joint proprietors' this passes by the law of survivorship to the surviving joint owner, and we can assist with the documentation involved in this transfer to produce a new title in the sole name of the surviving proprietor.

If property is being transferred to a particular beneficiary via a Will, or held in a life interest, we can assist with the appropriate transfer. If property is likely to be held in an estate for any length of time, there are forms required to be submitted to the State Revenue Office notifying them of the fact that property is held in an Estate, which forms a type of trust. We can assist with preparing and lodging the requisite documentation.

It is also possible for the Executor or Administrator to sell property within the Estate, and distribute the net proceeds of sale (after the associated sale costs have been paid) to the beneficiaries. We can assist with the conveyancing process and prepare proposed distribution statements for the beneficiaries to clarify their respective interests.

Home Contents and Personal Items

Sometimes specific gifts of personal items are made within a Will, but on most occasions the Will is silent about household items. If the deceased person shared a home, generally household items will pass to the surviving resident (e.g. a domestic partner), unless it is clear that the items belonged solely to the deceased person and should be directed to another person. If the deceased lived alone, or to the extent specific items are identified, the Executor or Administrator of an estate is responsible for clearing out the household contents and distributing them to the beneficiaries. If there are items that no beneficiary wishes to take, these may be sold (if they are of value), or gifted to charity.

Generally the Executor/Administrator manages the household contents, or liaises with one or more beneficiaries to assist, however where conflicts arise between beneficiaries about the distribution or value of contents, we are more than happy to assist.

Notify Service Providers

We are happy to assist with notifying service providers of the death of a loved one, and to liaise with you about discontinuing services. We note that, particularly if a house is being sold, there are some services (such as electricity) which may be best continued until the estate administration is nearing completion. The cost of these services is borne by the Estate, and we can assist with making these payments from the Estate trust account.

Transfer Motor Vehicles

VicRoads has a comprehensive 'Deceased Estates' pack, however when there is no Will they are likely to require a letter from a solicitor (which we can provide) to confirm the appropriate person to transact on behalf of the deceased.

Lodge Tax Return/s

The Executor or Administrator of the Estate should lodge a date of death tax return, from 1 July until the date of death on behalf of the deceased. If the deceased had insufficient income during that period to require a tax return, we still recommend submitting a 'non-lodgment advice' to notify the ATO that the person has passed away and will not be lodging future returns. This also serves to put the ATO on notice to claim any unpaid back-taxes from the Estate.

If there is sufficient income generated by the Estate (eg rental income, dividend income, interest income) between the date of death, and the date the estate is distributed to the beneficiaries, the Executor or Administrator will also need to apply for an Estate tax file number and lodge an Estate tax return.

Executors and Administrators generally liaise with an accountant for the tax return/s as required, however we are happy to assist as needed with this process.

Publish Creditor Notification

The Executor or Administrator may be held personally liable if they distribute the estate to the beneficiaries without paying all liabilities of the deceased first. We recommend publishing a notice to creditors in order to ensure all liabilities are identified, and we can assist with this process.

Liaise with Beneficiaries

We can assist an Executor or Administrator with notifying the beneficiaries of the Estate of their interests, and providing estimated timeframes for release of funds. Many Executors/ Administrators find it helpful if we are the central point of contact for the beneficiaries, fielding questions and assisting with any potential conflicts.

Prepare and Distribute Statement of Account for Estate, and Proposed Distribution

Once the assets of the Estate have all been identified and transferred into the Estate, and all liabilities paid, we can assist by preparing a Statement of Account identifying all assets and liabilities, income and expenditure of the Estate, and also a Proposed Distribution Statement outlining the proposed distribution to each beneficiary. This may be adjusted for advancements made to a beneficiary during the lifetime of the deceased (depending on the circumstances), and/or the value of specific items transferred 'in specie' to any beneficiary as part of their inheritance.

Close Accounts

After the estate is fully distributed we can assist you in closing all associated accounts such as;

- "Estate of Late" bank accounts;
- Investment accounts used to generate income during the administration process;
- Insurance held while the items were held in trust;
- Anything else that has put in place or made use of to assist with the administration

Our Packages (Probate and Letters of Administration)

Classic \$3,000.00 plus GST plus disbursements

Complex \$6,000.00 plus GST plus disbursements

Premium \$9,000.00 plus GST plus disbursements

Unusual Applications Based on an hourly charge plus GST plus disbursements

*It is important to note that the package prices are a **general guide**. Many situations will fall somewhere between the packages outlined, and we will provide specific information about the costs once we have clear instructions about each individual matter.*

When a Grant is not required

Generally, the requirement for a Grant of Probate or Letters of Administration depends on the nature and value of the assets of the deceased. Some organisations, such as banks and insurance companies, may release money without sighting a Grant if the amount held in the name of the deceased is minimal and there are no complications.

In some instances, no Grant of Probate or Letters of Administration is required. We can help determine this for you. If you don't need to obtain a Grant, or if this is uncertain, we can contact each asset holder and find out from them directly whether they will require a grant before releasing monies.

We can also engage with the Lands Titles Office to assist with an Application of Survivorship when land is jointly held or write to the share registry to transact as per the directions of the Will.

Generally, if a Grant is not required, we charge on an hourly rate basis for the work undertaken. As a general guide, this is likely to range between \$1,000 - \$2,000, plus GST, plus disbursements.

Summary of Our Packages

1. Classic

\$3,000.00 plus GST (plus disbursements)

The Classic Package is likely to apply to you if:

- ☒ the aim is to apply for a Grant of Probate for a Will which –
 - has been validly executed
 - clearly identifies 1-2 Executors
 - clearly identifies up to 5 beneficiaries.
- ☒ there is no Will, but the person entitled to administer the Estate is clearly defined (for example, a spouse or domestic partner, or if there is no surviving partner, 1-2 children).
- ☒ the deceased had no interest in any private trusts, companies or self-managed superannuation fund.

It will not apply if:

- ☒ the deceased was part of a blended family, or excluded a beneficiary from their Will
- ☒ the Will creates a life interest, capital protected trust, or protective trust for a vulnerable beneficiary
- ☒ there are more than 5 beneficiaries, or any beneficiary resides overseas
- ☒ there is any beneficiary whose location is unknown to the Executor/Administrator
- ☒ there are assets outside of Australia, or real estate outside of Victoria
- ☒ there are more than 5 assets (excluding household contents) to be dealt with in total (properties, bank accounts or shareholdings)
- ☒ there are any questions as to the validity of the Will, or capacity of the deceased to make a Will

Where a Classic Package applies, but there are additional assets (e.g. the Classic Package would otherwise apply, but there are 6 assets) to be dealt with, the Classic Package will apply with the addition of \$500 per additional asset.

2. Complex

\$6,000.00 plus GST (plus disbursements)

A Complex Package is likely to apply if:

- ✓ there are between 5-10 beneficiaries
- ✓ a beneficiary resides outside of Australia
- ✓ the location of one beneficiary is unknown
- ✓ there are 5-10 assets (excluding household contents) to be dealt with
- ✓ the deceased had an interest in a self-managed superannuation fund
- ✓ the deceased had an interest in 1-2 private trusts or companies
- ✓ the deceased had an interest in 1-2 properties in one State other than Victoria (*note that this may require a Reseal of the Grant in the relevant state, and the fees involved in lodging the application will incur additional disbursement charges)
- ✓ the nominated Executor has passed away or lost decision making capacity, and the substitute/alternate Executors are clearly identified in the Will
- ✓ there are 3 or more Executors or Administrators
- ✓ 1-2 Executors or Administrators live interstate
- ✓ if there is a Will, it has been validly executed, or if not the witnesses are available to provide evidence about the signing of the Will
- ✓ if there are any questions of the deceased's capacity, the deceased's treating doctor is prepared to sign an affidavit confirming the deceased had capacity to make the Will at the time it was signed
- ✓ if the deceased was part of a blended family, the respective interests for each beneficiary is clearly defined and not contested
- ✓ if a potential beneficiary has been excluded from the Will, there is no challenge issued (*If a challenge is issued, responding to this will be charged separately)
- ✓ the Will creates a life interest, capital protected trust, or other type of trust for one beneficiary

It will not apply if:

- ☒ the deceased held assets outside of Australia
- ☒ any Executor or Administrator resides outside of Australia
- ☒ the Will creates multiple trusts
- ☒ the deceased has an interest in 3 or more private trusts or companies
- ☒ there are more than 10 beneficiaries
- ☒ there are more than 10 assets (including properties, shares, bank accounts, aged care deposit, etc) to be administered
- ☒ if there are multiple Wills, it is unclear which Will is most recent and valid
- ☒ if there is no Will, it is unclear or there is conflict about who has the right to apply to administer the Estate
- ☒ the deceased signed a document which may have application as a Will but does not meet a minimum standard of formality required to demonstrate validity

3. Premium

\$9,000.00 plus GST

The Premium Package will apply if:

- ✓ the deceased held assets outside of Australia
- ✓ any Executor or Administrator resides outside of Australia
- ✓ more than one beneficiary cannot be easily located
- ✓ the Will creates multiple trusts
- ✓ the deceased has an interest in 3 or more private trusts or companies
- ✓ there are more than 10 beneficiaries
- ✓ there are more than 10 assets (including properties, shares, bank accounts, aged care deposit, etc) to be administered
- ✓ you need assistance in determining whether a Will is valid despite significant failures in meeting the formal validity requirements
- ✓ there are significant questions about the capacity of the deceased to make a Will

Package Inclusions

Each Package outlined above includes the preparation and lodging of all relevant documents required for the application for a Grant of Probate or Letters of Administration.

Our packages also include meetings with the Executors / Administrators to discuss the process of the estate administration and to clarify which tasks you would like our office to undertake on your behalf. Generally, this includes:

- Writing to each relevant institution to deal with the assets of the estate
- Liaising with financial advisers, accountants and stockbrokers
- Writing to service providers to discontinue services
- Establishing the Estate Trust Account, depositing all incoming estate funds and paying estate liabilities
- Liaising with beneficiaries
- Advising relevant parties as applicable (creditors, SRO)
- Liaising with the Executors to deal with particular assets (sale of properties or shares, or transfer of assets in specie to particular beneficiaries)
- Preparation of Estate Statement of Account
- Preparation of Proposed Distribution Statement
- Distributing funds to beneficiaries upon Executors/ Administrators' instructions, and obtaining appropriate indemnities

UNUSUAL APPLICATIONS

As outlined, the following applications do not fall into the packages outlined above, and will be costed individually.

GRANTS TO ATTORNEYS

Where the sole executor, or the person entitled to a grant of administration, is resident outside of Victoria, administration may be granted to an attorney. The grant is generally limited until the executor or person entitled to the grant obtains a grant, or in such other way as the Registrar directs. The original or a certified copy of the power of attorney together with a surety guarantee must be filed.

GRANTS TO CORPORATIONS

It is well established law that a corporation sole may obtain a grant of representation. However, unless authorised by statute (example, Trustee Companies), a corporation aggregate may not obtain a grant because it cannot swear the necessary oath.

The disablement of a corporation aggregate (such as a public or private company) cannot be overcome by allowing an officer of the corporation to take the oath. The practice in such cases is to make a grant (in testate cases) of administration with the will annexed to a personal nominee or 'syndic' of the corporation for the use and benefit of the corporation.

Grants are commonly made to syndics in cases where an executorial appointment, in favour of an individual fails, and the testator has disposed of their entire estate to a charity ' that is a corporation. Applicants in such cases are required to file the instrument of appointment of the syndic which must be under the seal of the corporation. Unless dispensed with, and only for good reason, a surety guarantee should be filed.

CREDITOR APPLICATIONS

An application by a creditor may be made in cases where the deceased died testate or intestate. The application must be supported by an affidavit detailing the amount of the debt due from the deceased, particulars of the debt, together with such evidence proving the debt as may be appropriate. Generally, the Registrar will require the consent to the application of all those entitled to the grant in priority to the creditor.

STATUTORY WILLS (COURT-MADE WILLS)

The Wills Act 1997 enables the Court to authorise the making of a will, or the revocation of a will, for a person who lacks testamentary capacity. The application may be made by any person, however leave of the Court is required in order to make the application. If the Court authorises the making of a will then the original will is signed by the Registrar, and sealed with the Court seal. The original is retained by the Registrar for safekeeping.

REQUESTING AN ADMINISTRATION ACCOUNT

In all cases where the Court grants representation, the person to whom the grant is made must file with the Court a true and just account verified by affidavit of the administration of the estate, when requested to do so by the Court or the Registrar.

Anyone who has sufficient interest in the estate can request the Registrar to require the executor or administrator to file an account. In determining the request, the Registrar considers the interests of the estate, the beneficiaries and the costs and inconvenience occasioned by the preparation of the account. On filing, the account is placed on the Probate Office file and is available for public search.

REVOCATION OF GRANTS

In circumstances where a grant has irregularly or unlawfully been obtained, the Supreme Court (Administration and Probate) Rules 2014 make provision for proceedings to revoke a grant of representation. An application for revocation is made by summons in the proceeding in which the grant was made. Discovery of a later will, lack of testamentary capacity, and fraud in obtaining the original grant are common grounds for revocation.

Disbursements - Supreme Court of Victoria Probate Office Filing Fees

The following costs will be added to your package cost in most cases, as they are fees payable to the Supreme Court on an application for either a Grant of Probate or Letters of Administration.

Online Advertisement

For posting on the Court's website a notice of intention to –

(a) Apply for a grant of representation	\$23.70
(b) Apply for a reseal of probate, letters of administration or grant	\$23.70
(c) Administer an estate by State Trustees under section 79	\$23.70

Application for a Grant of Representation (calculated on the gross value of Victorian assets only)

On filing a grant of representation (including an application for reseal) or an originating motion under Rule 7.04(1) of Chapter III, whereby –

(a) The gross value of the estate is less than \$500,000:	\$62.20
(b) The gross value of the estate is \$500,000 or more but less than \$1,000,000:	\$333.20
(c) The gross value of the estate is \$1,000,000 or more but less than \$2,000,000:	\$622.00
(d) The gross value of the estate is \$2,000,000 or more but less than \$3,000,000:	\$1,362.50
(e) The gross value of the estate is \$3,000,000 or more:	\$2,103.00

Our Succession Planning Lawyers

At Burke & Associates we have a team of succession planning lawyers who are able to assist you with your succession plan.

Meghan Warren

Meghan specialises in representing medical, health and life sciences professionals in their many practice challenges including succession planning.

Contact Meghan at:

mwarren@burkelawyers.com.au

Find out more about Meghan here:

<http://www.burkelawyers.com.au/meghan-warren>



Rohani Bixler

Rohani has been practicing exclusively in the areas of estate planning, estate administration and estate litigation since 2006. She has experience with many types of applications, including not only Grants of Probate and Letters of Administration, but also Statutory Wills and Informal Will applications. Rohani has also been nominated as an Executor by both friends and clients, and brings her personal experience to assist Executors who have not previously acted in this role.

Contact Rohani at:

rbixler@burkelawyers.com.au

Find out more about Rohani here:

<https://www.burkelawyers.com.au/people/rohani-bixler/>



Margaret Girardi

Margaret has experience in drafting simple and complex Wills including testamentary trusts as well as other estate planning documents. Margaret is committed to helping her clients gain the peace of mind that comes with knowing they have planned ahead to protect their assets and to secure the future of their family. She also assists her clients with the administration of estates.

Contact Margaret at:
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Find out more about Margaret here:
<http://www.burkelawyers.com.au/margaret-girardi>



Shabitha Sumanathasa

Shabitha enjoys working in the area of estate planning and deceased estates. She is committed to finding the right solution for her clients in a timely manner and provides clear explanations and advice with reference to possible outcomes.

Contact Shabitha at:
ssumanathasa@burkelawyers.com.au

Find out more about Shabitha here:
<http://www.burkelawyers.com.au/shabitha-sumanathasa>



Additional Information About Our Costs

When providing you with a tailored quote for your succession planning needs, our fee will be based on the following hourly rates:

Meghan Warren	\$420.00 per hour plus GST
Rohani Bixler	\$425.00 per hour plus GST
Margaret Girardi	\$420.00 per hour plus GST
Shabitha Sumanathasa	\$250.00 per hour plus GST
Paralegal support	\$190.00 per hour plus GST

The fees and hourly rates presented in this document are indicative only, current as at 1 July 2020 and are subject to change from time to time.

If engaged by you to complete your succession planning we will provide you with a formal Disclosure Statement and Cost Agreement as required by the *Legal Profession Uniform Law (Victoria)* which will include an estimate of your our total costs in the matter.

If disbursements or “out-of-pocket” expenses are incurred when completing your succession plan, the cost must be paid by you in addition to our fee.