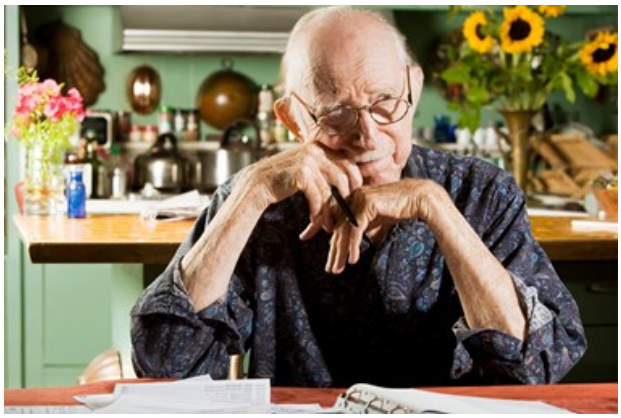


Grant of Representation when dealing with a deceased estate

Author: Jane Holford
Email: jane@smithfamilylaw.com.au
Date: **Monday August 16, 2021**

If a person dies leaving assets in Victoria, the executor or next of kin of the deceased person may need to apply for a Grant of Probate or Administration to deal with the deceased estate. Once a Grant of Probate or Administration has been made, a Grant of Representation can be issued by the Supreme Court, to enable an executor or administrator to deal with the deceased person's assets. A Grant of Representation is not always required. In this blog, we look at what it is and when it may be required.

What is a Grant of Representation?

A Grant of Representation ('**GoR**') is a document issued by the Supreme Court of Victoria which enables the executor or the administrator to deal with the deceased's assets; that is, distribute the assets to the beneficiaries. It is applied for online and, if successful, the Supreme Court of Victoria will issue an electronic Grant of Representation to the Applicant(s).

What is an executor?

Where a person dies, leaving a Will, they will have named an executor (or more than one), who is the person appointed to carry out the wishes of the Will-maker.

What is an administrator?

Where a person dies without a Will or the Will is deemed invalid, the Court appoints a person (the administrator) to manage the deceased estate.

The GoR is proof that the person named on that document has the legal right to collect and distribute the estate.

The estate of the deceased, broadly speaking, is the assets and liabilities the deceased held at the time of their death. The GoR allows the executor or administrator to access and distribute the deceased's estate. This means they can do things like:

- collecting money in bank accounts;
- paying the deceased's debts; and
- transferring and/or selling their property.

Types of Grant of Representation

There are 3 main types of grants.

1. Grant of Probate

A Grant of Probate is the type of grant given to the executor(s) named in the last valid Will left by the deceased.

1. Letters of Administration (with the Will annexed)

Letters of Administration (with the Will annexed) can be granted in circumstances where the deceased left a valid Will, but for whatever reason, the named executor(s) cannot or will not apply for a Grant of Probate.

In these circumstances, Letters of Administration (with the Will annexed) will usually be granted to the person with the greatest interest (or entitlement) under the Will.

1. Letters of Administration

Letters of Administration are granted when the deceased either did not make a Will or the Will they did make is not valid (e.g. it was not signed correctly).

In these circumstances, Letters of Administration will usually be granted to the closest surviving next of kin of the deceased (e.g. a spouse or a child).

Do I need to apply for a Grant of Representation?

Not necessarily. Whether you need to apply for a Grant of Representation will often depend on what kinds of assets the deceased left and the requirements of the organisations or institutions that held the assets at the time of death (e.g. banks or superannuation funds).

In most cases, institutions that hold an asset of the deceased, require a certified copy of the GoR not only to make sure that you have the legal authority to manage the deceased's assets but also to confirm that the Will of the deceased is valid.

However, the requirements for each asset holder differ between institutions.

If you're an executor or administrator of a deceased estate, you should contact each asset holder and find out directly from them what requirements you must fulfil before they can release the deceased's assets to you. This can differ on a case-by-case basis.

For example, sometimes banks and/or other institutions will not require a Grant of Probate in circumstances where the amount held in the name of the deceased is minimal or below a certain threshold and there are no complications. It really depends on the institution and the type or amount of assets held.

Other circumstances where a Grant of Representation may be required

There are a few other circumstances that will determine whether or not you need to obtain a GoR:

Real estate

Where the deceased owned real estate (either solely or as a tenant in common), a Grant of Representation is always required. This is to ensure that only the person (or people) with legal authority to deal with the deceased's real estate, can do so.

Joint assets

Joint assets are another type of asset where it is necessary to directly consult with the asset holder to determine the requirements for them to release the asset to you.

This is because jointly held assets automatically transfer to the surviving joint asset holder and those assets do not form part of the deceased person's estate.

For example, if the deceased's assets are held in a joint bank account, a certified copy of the death certificate may be enough for the asset to be transferred to the surviving joint holder.

Similarly, if the deceased held real estate jointly with a surviving joint holder, a Grant of Representation will not be required. A Survivorship Application is instead required to transfer the deceased's interest in the joint real estate to the surviving joint holder.

A Survivorship Application is completed by the surviving joint holder(s) when a joint tenant on a property title has passed away. If successful, the deceased's name will be removed from the title, so that only the surviving joint holder(s) remain on the title.

Superannuation

Superannuation is not automatically included in the deceased person's estate when they pass away and therefore is not always distributed in accordance with the terms of their Will. If the deceased did have a valid binding death benefit nomination (which can be made using a form provided by the superannuation fund) at the time of their death, the superannuation fund will distribute the funds held in the deceased's name directly to the nominee(s) named on the binding death benefit nomination.

If the deceased did not have a valid binding death benefit nomination at the date of their death, or the nomination has lapsed (they are ordinarily required to be renewed at specified intervals) or is invalid, then the superannuation fund trustee will generally have the discretion to determine how the deceased's death benefit should be paid (e.g. to a spouse or the deceased's children). Binding death benefit nominations usually have an expiration date of 3 years from the date they were last signed.

A superannuation fund trustee also has the discretion to pay a deceased's death benefit to that person's estate, meaning the death benefit will be distributed in accordance with the terms of their Will.

As superannuation entitlements are not automatically included in a deceased's estate, the superannuation fund may not require you to have a Grant of Representation before they are willing to pay the death benefit to the beneficiaries.

Assets held outside Victoria

If the deceased only left assets in the State of Victoria, you would only need to apply for a Grant of Representation in the Supreme Court of Victoria. However, if the deceased held assets in other states, you do not need to apply for a GoR in each different state but rather, once you have received a GoR from the Supreme Court of Victoria, you can then apply for what is called a 'Reseal of Probate' in each other state where the deceased held assets.

Essentially, the relevant court in the relevant state will 'reseal' your original Victorian Grant of Representation in their jurisdiction. It acts the same as the usual GoR and allows you to manage and distribute the deceased's estate in the relevant state. It is simpler than applying for a fresh Grant of Probate because the Will does not have to be "proved" as valid. All that is necessary is to prove that a grant has been made by another Court, recognised in Victoria.

Whilst a Victorian grant is generally not recognised by other states, it will be recognised by Australian companies having registers in other states. This means, for instance, if shares are held on an interstate register, the share registry will generally accept the Victorian grant and a reseal of the grant in the state in which the shares are registered will not be required.

Assets held outside Australia

If the deceased held assets outside Australia, the process of obtaining a Grant of Representation can be much more complex.

Usually, other Commonwealth countries (such as the United Kingdom and New Zealand), will reseal Australian GoR's.

For countries not part of the Commonwealth, the process is more complicated as not all foreign jurisdictions will recognise an Australian Grant of Representation (or even an Australian Will). It is prudent to seek legal advice where the deceased held assets overseas. Depending on the asset (type and value) and what country it is held in, an Australian Grant of Representation may not be enough.

How a Wills and Estates lawyer can help

Depending on the types of assets and liabilities of the estate and where the assets of the estate are located, it can be difficult to figure out if you need a Grant of Representation. Contact us to discuss your specific circumstances.

Contacting Smith Family Law

03 8625 8957

info@smithfamilylaw.com.au

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.