

What to expect from your first appointment with a probate lawyer

Author: Kerry-Ann Smith
Email: kerryann@smithfamilylaw.com.au
Date: **Sunday July 7, 2024**

Obtaining a Grant of Probate and administering a deceased estate can be a daunting and complex process for the executor of a Will. Knowing how to prepare for an initial appointment with a deceased estates lawyer will help minimise stress and ensure the process of probate progresses efficiently and effectively.

What will be covered in the first interview with a probate lawyer?

Your initial appointment is your opportunity to tell your lawyer about your situation and share with them any concerns you may have.

The death of a loved one affects everyone differently. At Smith Family Law, we take time to listen to your questions and concerns and will provide you with an overview of the process and potential legal issues depending on your situation. We will then provide you with legal advice as to your responsibilities and obligations that is tailored to your individual circumstances and the individual circumstances of the estate involved.

We will also give you a clear idea of the range of options and solutions available to you and an estimate of costs. In most cases, we provide a fixed fee for our services for probate and Letters of Administration.

ARRANGE AN APPOINTMENT WITH A PROBATE LAWYER: 03 8625 8957

How can you prepare prior to your appointment with a probate lawyer?

Prior to your first appointment, a good place to start is by preparing some questions you may have for your lawyer. It is common to have a lot of questions about the process of applying for probate or Letters of Administration and administering a deceased estate, as well as your rights and obligations as an executor or beneficiary.

Writing these questions down and bringing them along to your appointment can help ensure that your concerns will be addressed.

What should you bring to the appointment?

In preparation for your initial consultation with a probate lawyer, knowing what to bring is important to ensure your lawyer has sufficient information regarding the matter in question.

We recommend collating the following documents prior to your appointment:

- A copy of the death certificate (if there is one).
- A copy of, or the original Will (if there is one). If you bring a copy of the Will, it is important to make a note of the whereabouts of the original Will.

If the Will appears to be unusual, informal, or 'home-made', or the original cannot be located, you should try to obtain any information you can regarding the circumstances around the making of the Will, including details of any people who would know the deceased's stated intentions around the time they made the Will.

The more information you can provide your lawyer, the more streamlined the process will be. In circumstances such as these, your lawyer may need to obtain affidavits from third parties, such as what is known as an Affidavit of Due Execution, or your affidavit may require further detail or explanation.

- If there has been a letter or Statement of Wishes, a letter from a doctor in relation to the deceased's testamentary capacity, or other documents stored with the Will or in the deceased's private papers.
- Information regarding the beneficiaries of the Will, their current address and relationship to the deceased.
- Information on the overall family structure or a family tree.

If the deceased left no valid Will, the Rules of Intestacy determine who will receive the estate and in what proportions. Therefore, where there is no Will, it is important to bring details of the family structure to the first appointment.

It is also important to note whether there is a separated (but not divorced) spouse, as they may be entitled on intestacy if the deceased left no valid Will.

Whether or not the deceased divorced and or married after the Will was made is also important information to provide to your lawyer, as divorce and marriage can affect the distributions under

the Will.

Understanding the structure of the family can also help prepare the lawyer for potential family provision claims (contesting the Will) that may be issued. In the first appointment, it is wise to note down and warn the lawyer of these possible claims.

- Details of the witnesses of the Will. If it is not apparent from the Will itself, inquiries may have to be made as to the names and whereabouts of the witnesses to the Will.

Identification of the assets of the deceased

An executor will need to ascertain what assets the deceased owned at the time of their death. It is recommended that a list of assets is compiled and brought to the first appointment with your lawyer. Once all the details are obtained and confirmed, the application for probate can be prepared.

Below is an overview of most of the primary types of assets you may need to provide information on.

Real estate

If the deceased left real property, it is important to identify important details of the property. These details include:

- the address;
- title details (volume and folio numbers);
- approximate value (for example, a recent valuation report or rates notice);
- if the property is rented, information regarding the agent and rental agreement;
- whether the property is a residential home of a beneficiary; and
- information regarding relevant insurance policies, security, and intentions for the property, such as whether it will be sold or transferred to a beneficiary or beneficiaries.

It is a good idea to bring along a copy of the Certificate of Title, council rates, valuation reports or any other relevant documents to your appointment.

Bank accounts

If the deceased left bank accounts, it is important to identify which bank the accounts are held at, what the account details are and what type of accounts have been opened (i.e. a savings or term deposit account).

It is also important to note whether these bank accounts have been opened jointly and, if so, the names and details of the other owner. Only bank accounts in the sole name of the deceased, and not joint bank accounts, are included in the probate application.

Shareholdings

If the deceased held shares at the time of their passing, it is important to obtain a copy of the share certificates. Alternatively, copies of recent correspondence relating to each shareholding will be useful to bring to the first appointment as correspondence will need to be forwarded to various share registries requesting confirmation and details of the shares, their processes and procedures for transferring or selling them.

Chattels of value

Items with monetary value, such as cars, boats, antiques, collectables and jewellery are assets which need to be listed separately in the probate application. Identifying their whereabouts, insurance status and security is important.

The estimated value of these items is also required. Items will have to be independently valued by an experienced and reputable valuer unless there are purchase documents or other documents attesting to their value.

Superannuation and life insurance benefits

Superannuation and death benefit entitlements, life insurance, or pension benefits can form a major proportion of a deceased person's assets, whether or not they form part of the deceased person's estate.

Accounts, membership numbers and fund details (including whether the deceased made any binding or non-binding nominations) are required to determine entitlements and will be needed to secure pay outs to beneficiaries. It is important to bring these details to your first appointment with your lawyer.

In some circumstances, a funeral benefit will be payable from an insurance fund. Therefore, making inquiries about the deceased's policy and membership entitlements is essential.

Debts and liabilities

It is important to identify any debts or liabilities owed by the deceased or the estate. The liquidity of the estate is an important conversation to be had with a deceased estate lawyer prior to considering obtaining a Grant of Representation.

Understanding the nature and extent of certain assets is essential in determining whether a Grant of Probate or Letters of Administration of the estate will be required. Knowing whether or not an asset can be distributed without a grant can help streamline the process. It is, therefore, important to provide your lawyer with details of the assets and liabilities in your first appointment so that your lawyer can provide you with pragmatic advice that is tailored and specific to the estate.

Get help from a probate lawyer

There is a lot to consider upon the passing of a loved one, and getting organised to meet with a deceased estate lawyer can be an overwhelming experience. However, with sufficient preparation and a well-documented inventory of the estate assets, these first steps can be less daunting.

The deceased estate's team at Smith Family Law has significant expertise and experience in probate applications. Contact us if you require further assistance in preparing for your appointment or if you need assistance in getting started. The sooner you attend to this, the more streamlined the process will be.

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.