In the **Event of Death**

A Handbook for Executors

OFRM Lawyers

The information provided in this guide is general in nature and should not be relied upon as legal advice. You should speak to a lawyer at OFRM about your particular circumstances.

About this guidebook

When a loved one dies, it is important that you have time to grieve and reflect. You want avoid added stresses from being concerned about what needs to occur to manage their finances and other practicalities.

Using our experience of having worked with thousands of families, the Wills & Estates Team at OFRM Lawyers have prepared this guidebook to answer many of the questions that may arise following a death and during managing the estate.

You may find this useful information to refer to in a difficult time immediately following a death, or to refer back to during the estate process.

This information is provided to supplement the guidance and advice that OFRM Lawyers will provide to you. If at any time you require further advice or guidance you can phone OFRM Lawyers Wills & Estates lawyers on 03 5445 1000.

What do I do immediately following the death of the person?

Fortunately, most of the tasks that need to occur can wait, enabling you to focus on the funeral and other arrangements initially.

OFRM Lawyers would recommend the items that need to be seen to immediately are:

- Identify if you have a copy of the most recent Will and know where the original Will is kept. If you don't, or if this raises any questions you should give OFRM Lawyers a call and one of our Wills & Estate Lawyers will be able to advise what needs to be done in those circumstances.
- Read through the Will and identify who are the Executors. The Executors are the people who have responsibility for all steps following the death of the person. Later in this guidebook you can find more information regarding the Executors role and responsibilities.

The Executors will then need to attend to the following:
(Please note: The list below includes the tasks we often see having to be completed but they won't all be relevant in all circumstances)

- Organise the funeral (involving discussions with other family members) and liaise with the funeral director regarding payment of the funeral account. Most funeral directors will be prepared to have the funeral account paid when funds can be released
- Confirm that the funeral director has notified Centrelink of the death
- Secure the Will maker's belongings including:
    - Ensure home and cars are locked securely
    - Contact home and contents insurance providers if possible and advise home is unoccupied
    - Ensure cars remain registered and insured, however try to avoid driving cars unless absolutely necessary
    - Clean out the fridge, turn off power points, mow lawns and other similar household jobs
    - Arrange for any pets to be cared for
    - If guns were owned, locate keys to safe and relocate guns to a gun dealer to securely hold
    - Manage deceased's email and social media accounts
    - If bills are received:
        - Keep a copy of the bill as those details may be required as part of the estate process
        - Maintain a list of bills for future reference
        - Notify the sender that account will be paid once funds are received for the Estate.
    - Contact service providers (telephone, mobile phone, internet, streaming services, ambulance subscription etc) to notify them of the death, and cancelling services if required
- Deal with day to day tasks, such as collecting mail and advise sender of the death.

Death certificate

Most of the steps required to administer an Estate cannot be commenced until the Death Certificate is received. The Funeral Director registers the death (usually after the funeral) with the Registry of Births Deaths and Marriages. You will usually receive the Death Certificate about two weeks after that. Once you have received the Death Certificate you can arrange for mail to be redirected.

When should you meet with OFRM Lawyers to commence the estate process

We would recommend that you phone OFRM Lawyers and chat with one of our Wills & Estates Lawyers to discuss when you should have that first appointment to commence the estate process. The right time will vary in different circumstances including:

- The availability of executors and other relevant people
- When the death certificate will be available
- Whether there are any urgent matters to attend to
- Whether it is best to meet before or after you gather the relevant information.

Gathering paperwork relevant for the Estate

The below list are documents that may be relevant for the estate that you may wish to commence to gather:

- Council rate notices for any properties
- Copy of property titles
- Bank statements
- Bank books
- Mortgage statements
- Credit card statements
- Documents regarding shares
- Documents regarding life insurance
- House, contents, car and other insurance
- Medical and other bills
- Documents regarding aged care arrangements including accommodation bonds
- Most recent tax return
- Recent Centrelink correspondence
- Superannuation statements
- Recent pay slips
- Financial Statements and tax returns for any trusts
- Details of motor vehicles and their registration.

Your remaining responsibilities could include:

- Working with a lawyer to obtain a Grant of Probate (if the assets require this)
- Collecting the Estate assets (which may involve having them valued) and looking after them for the benefit of the beneficiaries

- Notifying the beneficiaries and keeping them updated throughout the whole process
- Ascertaining whether there were any debts or liabilities left, and if so, arranging payment
- Keeping records and accounts of the Estate assets and liabilities
- Seeking advice from an Accountant regarding any potential tax liability, or whether any personal or Estate tax returns are required
- Once all debts are paid, to distribute the remaining assets in accordance with the Will.

What is an Executor?

An Executor is the person who is responsible for carrying out the wishes of the person who died as they have as set out in the Will.

The role of the Executor doesn't commence until the death of the Will maker.

It is the Executor's role to manage the financial affairs of the deceased person from the time of their death until the assets are distributed in accordance with their Will. The Executor is also the person who has the responsibility for the funeral of the deceased – including implementing the wishes of the deceased person and making any necessary decisions.

How do you become an Executor?

You can only be an Executor if you have been nominated in that role in the person's Will.

The rights and obligations of an Executor do not commence until the person dies. At that time you can carry out the duties of an Executor. There are some actions which can be completed almost immediately (e.g. arranging for the funeral, identifying and securing assets etc) and there are other actions which usually cannot be completed until a Grant of Probate has been obtained (such as the sale of land and closure of bank accounts in excess of $50,000).

What if there is no Will?

If the person has passed away without a valid Will, then they law defines them as having died "intestate". For the management of their financial affairs after death, an application will need to be made to the Supreme Court for "Letters of Administration".

In those circumstances it is usual that the next of kin will be appointed the Administrator of the Estate and until that appointment the next of kin has the responsibility for any decisions, such as funeral arrangements.

When there is no Will the legal "rules of intestacy" specify how the deceased person's assets will be distributed. This can sometimes be complicated, and therefore we recommend you speak to OFRM Lawyers if someone close to you has passed away without a Will.

Is there only one Executor?

There are three main options for how an Executor is specified in a Will:

1. A sole Executor – one person is appointed to be the Executor
2. An Executor with an alternative Executor also named who will be the Executor if the first is not available
3. Two or more Executors appointed jointly.

If there are people appointed jointly as Executors, they do not all have to take on the role. One person or more can take on the role while "reserving leave" to the others, meaning that they don't take on the role unless there is a need for them to do so at a later stage. The Executor/s who chose not to act can still receive all correspondence and can be kept up to date with the Estate matters. This may make finalising the Estate easier if only one person needs to sign all the required documents, especially if the Executors are not all in the same town.

What if an Executor has passed or is incapable?

If an Executor has passed away or is incapable of acting when the Will maker dies and there is no provision for an alternative Executor, a Beneficiary of the Estate can seek to be appointed to deal with the administration of the Estate.

What if I don't want to be the Executor?

Even if you have agreed to be nominated as the Executor, it is not compulsory to act as the Executor when the Will maker dies. Your own personal circumstances may have changed and for reasons beyond your control you are not able to carry out the duties of an Executor.

The lawyer for the Estate would be able to assist you “renouncing” that appointment. Once you renounce your role then the substitute Executor can act in your place. If there is no substitute Executor in the Will, then any one of the major beneficiaries can apply to the court to be the administrator of the Estate.

Importantly, if you do not wish to be the Executor you have to sign the deed of renunciation of probate before carrying out any duties of the Executor. It is not possible to resign as an Executor part way through the task, unless you obtain the permission of the court.

If the Will maker is still alive and you feel unable to act as the Executor, then you should tell the person as soon as possible so that they can amend their Will to include a person who is better able to take on the task of Executor.

Do I need any special qualifications or skills to be an Executor?

You do not need any special qualifications or skills to be an Executor because you will be guided in that task by your OFRM Lawyer.

Your OFRM Lawyer will work with you to agree on the tasks each of you will do to manage the Estate. This gives you some flexibility as to how much work is required by you in your role as Executor. The lawyer will guide you through the process of finalising the Estate and make it as simple for you as possible.

How do I find out I am the Executor?

When our Wills and Estate Lawyers work with people to make their Will, we assist them in deciding who will be appropriate Executors for their will. Understanding what an Executor needs to do is often a good way to decide who would be suitable. We encourage people when making their Will to check the proposed appointment is acceptable to the Executor.

Often you will be aware that someone has appointed you as their Executor well before they die. It is sensible for a person to discuss that appointment with you when they make their Will and advise you of where the Will is kept and where you can find the documents you will need to manage the Estate.

What if this doesn’t happen?

In a Will, the appointment of the Executor usually is stated somewhere close to the start of the document. If you cannot find a Will the best thing to do is contact the last lawyer you knew had dealings with the

deceased person. This may be when a house was bought or sold, or dealing with another Estate or in family law matters. That lawyer may have the Will or know where it is.

If you believe you may be the Executor of an Estate for someone who has died but you don't know where the Will is, OFRM is able to assist you in locating the Will.

How can I be sure it is the most recent Will?

For an Executor to be able to administer the Estate after a person has died, it is often necessary that they obtain a Grant of Probate from the Supreme Court. That Grant of Probate gives them the legal power to act upon the Will and administer the Estate.

To obtain a Grant of Probate the Executor needs to be able to assure the court that the Will they are seeking probate for, is indeed the most recent Will of the deceased person.

If the Will has been made with a lawyer it is likely that the Executor has been told the name of the legal firm where the original Will is kept. The lawyer is then able to check the records and confirm if it is the last Will.

Sometimes it is necessary to write to all lawyers who may have had dealings with the Will maker to determine which lawyer holds the most recent Will on file.

If the person kept their Will at home then you must complete a thorough search. Generally it would be expected that a person would destroy a previous Will and would only keep in their possession the most recent Will. Essentially you must use your good judgement to determine whether there may be a later dated Will in existence.

In every application for a Grant of Probate an advertisement needs to be placed on the Probate office website signifying an intention to apply for a Grant of Probate. Fourteen days after the advertisement is lodged, the Probate application can be submitted to the Supreme Court (these advertisements used to appear in local papers). One of the reasons for this requirement is that it gives an opportunity for any other person who might be holding a later dated will to bring this to your attention. However, very few people would read the advertisements and you should not rely upon the advertisement as the only way to identify if you hold the last valid Will.

Who is the lawyer for the Estate?

Technically speaking, there is no lawyer for the Estate. If a lawyer is involved then that person is acting for the Executor assisting them in the administration of the Estate.

Some Wills include a provision that a particular legal firm is to be appointed to act in connection with the administration of the Estate, but such a provision is not binding upon the Executor, who is free to choose the lawyer that is most suitable for them. The chosen lawyer does not have to be in the same town as you (or even the same state in some circumstances), as the majority of the work required can be completed online.

If you have been appointed Executor you need to appoint the lawyer to assist you with the Estate. The best way to start that process is to phone and speak to one of our experienced Wills and Estates Lawyers who will be able to assist you.

In choosing who to engage as the lawyer to assist you in managing the Estate, we would recommend you seek a lawyer who:

- Is able to explain the Will and the process to you in clear language that you understand – there is no need for a lawyer to use complex language, acronyms or concepts that you don't understand
- Will take the time to understand your needs and concerns and work with you to ensure those needs and concerns are met
- Can provide you with a clear estimate of the costs and timelines
- Uses technology to reduce the time and steps involved
- Is able to keep you informed of the progress of the matter
- Has experience in estate litigation so they are aware of what can become issues with estates and how to avoid that.

The OFRM Wills & Estates team works this way and would be pleased to assist you.

Is there a reading of the Will?

You have probably seen the dramatic movie scenes when the family are seated before the lawyer who reads out the contents of the Will and the camera pans to the excited/disappointed/angry faces of the family in turn.

That scene only happens in Hollywood. It is rare in Australia for there to be a 'reading of the Will'. The contents of a Will are much more easily and appropriately distributed by people being provided with a copy of the Will.

Upon death, the Will is under the control of the Executor. They determine if copies are to be sent to anyone. However, section 50 of the *Wills Act* states that a number of people are entitled to be given a copy of the Will if a request is made by:

- any person named or referred to in the Will, whether as a beneficiary or not
- any person named or referred to in any earlier Will as a beneficiary
- any spouse of the deceased at the date of death
- any domestic partner of the deceased
- any parent, guardian or children of the deceased
- any person who would be entitled to a share of the Estate if the deceased person had died without making a Will
- any parent or guardian of a child referred to in the Will or who would be entitled to a share of the Estate if the deceased had died without making a Will
- any creditor or other person who has a claim at law or in equity against the Estate of the deceased and who produces evidence of that claim.

It is sensible for beneficiaries to be given a copy of the Will, even prior to them asking. Doing this often avoids the angst caused by uncertainty and speculation. There is a natural curiosity when a person dies as to what provision they have made in their Will. Keeping secrets might change curiosity into frustration and anger. As Executor, it is a good idea to discuss provision of copies of Wills at that first appointment with our Wills and Estates Lawyer.

Once the Probate application has been filed, any member of the public can obtain a copy of the Will from the Probate Office upon providing payment of the search fee.

Given that so many people might possibly read the Will after death has occurred, is a reminder that great care should be taken when making any comments that are justification of decisions made. You should consider explanations where it is appropriate. It is best to avoid words that are merely intended to hurt or offend.

What if the Executor is not the next of kin?

An Executor does not need to be a person's next of kin. It can be a trusted friend, relative, accountant, lawyer or other professional. The *Wills Act* provides next of kin with an entitlement to see a deceased's Will and if you are a residual Beneficiary you are entitled to know how funds are being used. However, there is no requirement that an Executor is a next of kin.

What is the role of your OFRM Estate Lawyer?

The role of an Estate lawyer is to assist with each of your responsibilities discussed above. Depending what assets are held, the lawyer will advise the required steps from there.

Our aim is to guide you through the process of finalising the Estate as smoothly as possible, answering any questions along the way, and advising on the best courses of action. Our team has a great deal of experience in Wills and Estates and can assist in any scenario.

What happens at a first appointment with a lawyer?

The aim of the first appointment with our Wills & Estate lawyer is to:

- Estimate approximately what were the assets and liabilities of the deceased
- Identify what further information needs to be gathered to be able to apply for a Grant of Probate
- Identify the beneficiaries
- Scope the work required to obtain a Grant of Probate and subsequently administer the Estate
- Lawyer provides advice on any relevant legal issues
- Estimate the legal costs involved.

What is a Grant of Probate and when is it required?

Probate is the process of proving the last Will with the Supreme Court, establishing:

- This was the last Will
- Who the Executors are
- That the Will was executed validly.

A Grant of Probate is the document issued by the Supreme Court authorising the Executor to manage the Estate in accordance with the Will.

Is it necessary to get a Grant of Probate?

If houses or land was owned as a joint tenant and that is the only asset, then a Grant of Probate is not necessary as the land can be transferred into the sole name of the surviving owner.

If bank accounts and share holdings are worth less than a total of $50,000 a Grant of Probate is often not required, as the banks and share registries will act on a copy of the Will and death certificate only.

If you think the assets won't require a Grant of Probate you should still discuss this with our Wills and Estates Lawyers as you will need to make sure this is correct, as well as understanding what steps are required.

Process of applying for Probate

Assets requiring a Grant of Probate include:

- Solely held real estate
- Bank accounts and shareholdings exceeding $50,000
- Nursing home accommodation bonds
- Superannuation if it is paid to the Estate.

The process of applying for Probate includes:

- Identifying what are the assets and liabilities the Will maker had at the time of their death
- Writing to each of the organisations where assets are held and requesting current balances (and the requirements to release those assets)
- Obtaining the death certificate
- Advertising the Executor's intentions to obtain a Grant of Probate on the Supreme Court website, 14 days before the application is submitted
- Once information is received regarding the current asset balances, preparing the Probate application, which includes completing an Inventory of Assets
- Signing the completed Probate application
- Submitting the Probate application to the Supreme Court
- Once approved (which may take 2-3 weeks), Probate is granted.

What happens after Probate is granted?

Once Probate is granted, most organisations require a certified copy to be provided to them to close the accounts and release the assets to the Estate.

Each organisation may also have additional requirements, such as completing and signing application forms and withdrawal slips or signing share transfer forms.

The six month time limit

There is a period of six months from the date Probate is granted in which a person can make a claim on an Estate.

In Victoria there is only a narrow class of people who can claim for further provision from an Estate, where the deceased may have had a moral obligation to provide for which includes:

- Spouse or partner
- Child
- Step-child
- A person who has always believed they were a child of the deceased.

This list is not exhaustive and if there is any concern that someone could make a claim, it is advisable to wait six months after Probate is granted before distributing the Estate. Your OFRM Lawyers Wills & Estates Lawyers will discuss with you and help you make the decision about when is the right time to distribute the Estate.

Alternatively, if you believe provision made for you under a Will is inadequate to cover your current and future needs, OFRM can provide guidance to you on the possibility of making a claim on the Estate.

How long does my role as Executor last?

The amount of time an Estate takes to finalise varies depending upon:

- How much time it takes to gather the information required for the Probate application
- The time it takes for the Grant of Probate to be approved by the Supreme Court
- The time it takes to realise and distribute the assets of the Estate.

Most Estates take less than six months to finalise once the Grant of Probate has been obtained. If the Estate involves property which needs to be sold, large share portfolios, unknown assets, or tax affairs which need to be completed, finalisation of the Estate could take considerably longer.

Your role as Executor usually concludes once the last distribution has been made, often this is after final tax returns have been completed.

Do I receive any sort of payment or commission?

Unless it is stated in the Will, you are not automatically entitled to be paid for the work you perform, although you are entitled to claim expenses you incur through this process. If the administration of the Estate is particularly time consuming and complex, you may be able to apply to the Supreme Court to receive a commission. Alternatively, you may be paid a commission if all the residual beneficiaries of the estate consent. If you intend to seek a commission for being an executor, you must notify the beneficiaries as soon as reasonably practical after commencing your role.

Your task as Executor can be made much simpler with the help of lawyers at OFRM, who will ensure you thoroughly understand your obligations as an Executor, and who will guide you through the process in an empathetic and sensitive manner.

Does being an Executor exclude me from being a beneficiary?

No.

The major beneficiary of an Estate is often the best person to be the Executor for two reasons. First, they are well known by the Will maker and are likely to know most of the relevant information that is required to administer the Estate. They should have a good idea of the assets owned by the deceased.

Secondly, as they are a beneficiary there is the natural motivation to carry out the tasks of administering the Estate promptly and thoroughly.

However, the Executor must be careful if there are other beneficiaries to make decisions that are not preferential to their own personal position. **As an Executor you have an obligation to act in the best interests of all the beneficiaries** and if you have any doubt, you should consult with a lawyer.

In some situations, it is appropriate to obtain the consent of the other beneficiaries. For example, if the Executor wished to purchase land owned by the deceased, then the purchase price must be reasonable and every opportunity should be given to obtain the best possible price for this asset, even if that means placing the property for sale by auction. If an Executor buys property from an Estate, even if the price is reasonable,

the Court can undo the transaction unless each beneficiary gave informed consent. This requires an Executor to obtain a valuation of the property and to advise the beneficiaries that the property could possibly sell for more at an auction.

Who pays the legal fees of the Estate?

Provided there are enough assets in the Estate, Executors are entitled to have the costs of necessary professional services paid by the Estate. However, in circumstances where there will be insufficient funds to pay the legal fees associated with an Estate, the Executor will be responsible for any legal fees as lawyers work for you and not for the Estate. This happens rarely and is something our Wills & Estates Lawyers will be able to discuss with you at the first appointment.

Can the Estate administration take place electronically?

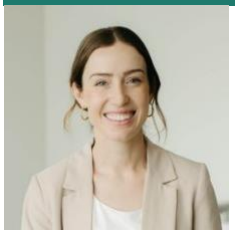
Although there are some day to day Estate administrative tasks which must be completed by you personally, the majority of legal work can now be completed with a lawyer electronically.

At OFRM we understand that many Executors are busy with their own lives, therefore we have procedures in place to ensure that majority of the legal work can be completed without meeting with you physically. OFRM can meet with you over the phone or via a video call and can then arrange for signing of most documents via electronic means.

Our Estate Lawyers

OFRM Lawyers' team of Estate Lawyers are available to assist you.

Madeleine Debono — Wills & Estates Lawyer



Madeleine Debono's empathy and ability to navigate the legal and practical issues means she is the ideal modern Wills & Estate lawyer.

Estates, probate, estate administration – mention of these legal processes often leads to images of musty law offices and slow old fashioned manual processes full of legal mumbo jumbo. Working with OFRM Wills & Estate lawyer Madeleine Debono is the exact opposite.

"Sorting out the estate of a loved one should never be an overwhelming or stressful event. My role is to work with my clients to make sure they both understand the process and that the process occurs smoothly."

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Alix Steed — Wills & Estates Lawyer

Alix Steed is a highly skilled Wills & Estates Lawyer with well developed skills in complex estate planning and administration. Alix is the ideal lawyer for you to work with in developing your estate plan or administering an estate that involves complex asset structures or intergenerational businesses like farms.

"My aim is to make sure that my clients have a clear understanding of the legal issues relevant to their situation so they can make informed decisions and understand the structure of their solutions," she says. Alix takes pride in building strong relationships with her clients, creating a comfortable and trusting environment.

Working with Alix, you can be confident that your estate planning and administration needs will be handled with care, and that you will achieve the best possible outcome.

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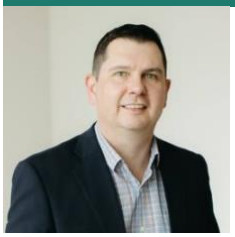
Griffyn Bainbridge — Wills & Estates Lawyer



Since moving to Bendigo in 2022 to join OFRM Lawyers, our clients consistently comment on Griffyn's calm and reassuring nature, which helps them feel at ease during even the most challenging situations.

"My passion lies in guiding people through difficult and often stressful circumstances, such as complex business deals or the loss of a loved one, by providing them with timely advice to make informed decisions."

Griffyn is committed to relieving clients' stress, listening carefully to their concerns, and working tirelessly to help them achieve the best possible outcome.

Griffyn can assist with all legal issues regarding your business as well as wills and managing estates particularly where there are disputes or complex estate issues.

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