

## DECEASED ESTATE BROCHURE

### **Funeral arrangements**

Generally, direct family members arrange the funeral. However, if there is no family or they are unwilling or unable to do this, the executor can make the arrangements. The deceased's Will should be checked for any specific funeral directions.

If there is no funeral plan the costs of the funeral can be paid from the deceased's bank account. You will need to attend the bank with the funeral account, death certificate and a certified copy of the Will.

### **Registration of death**

All deaths that occur in NSW need to be registered with the Registry of Births, Deaths and Marriages within 7 days of the burial or cremation.

A funeral director will normally register the death and apply for a death certificate.

The funeral director will ask you for some personal information about the person who has died. This includes details about their:

- birth, relationship status, death, and burial.
- family members such as spouse, parents and children.
- home address and occupation.

### **Locate Will & notify the beneficiaries**

The executor locates the Will and contacts the beneficiaries and any relevant business associates.

### **When there is no Will**

If a person dies without a valid Will, they are said to have died "intestate". The person's estate is distributed according to the laws of intestacy in the *Succession Act 2006*. Here are some examples of how an estate is distributed under the laws of intestacy (this is not an exhaustive list).

If the intestate person is survived by:

1. A spouse or domestic partner and no children, the total estate passes to the surviving spouse or domestic partner;
2. A spouse or domestic partner, and children:
  - The surviving spouse or domestic partner is entitled to the deceased's personal effects a statutory legacy that is adjusted regularly to the Consumer Price Index as outlined in Section 106 of the *Succession Act 2006*, one half of the balance then remaining; and
  - The children of the deceased are entitled to the balance of the net estate equally;
3. A child or children but no spouse or domestic partner, the children are entitled equally to the estate
4. None of the above, but is survived by parents, the parents share the estate equally if both are alive, or the survivor is entitled to the whole of the estate;
5. None of the above, but is survived by siblings, then those siblings share the estate equally.

### **Look after the estate**

The executor/administrator is to ensure that all assets including property and investments are safe and arrange insurance protection when needed. The immediate needs of the beneficiaries must also be assessed.

### **Value the estate**

The executor/administrator must identify and account for all assets and liabilities. The value of assets must be ascertained, often by obtaining valuations from licenced valuers or estimates from recognised sources.

### **Superannuation**

A superannuation fund is a form of trust and is covered by specific legislation. When a superannuation fund member dies, the trustee of the fund often has discretion in choosing how to distribute the balance of the

member's account. However, in most cases the trustee is restricted to transferring the balance either to a spouse, children or the person's estate.

### **Companies**

A company is a legal entity which has all the legal powers of a natural person. It is owned by its shareholders and managed by its directors, but is separate from them. The assets of a company do not form part of a director's or shareholder's estate. However, if the person owns shares in the company in their sole name, these shares form part of the estate. This applies to both shares in listed public companies and to shares in privately held companies.

### **Discretionary trusts**

Discretionary trusts, often known as family trusts, are commonly used to hold assets and operate businesses. The trustee (who can be a company) holds the assets and income of the trust on behalf of various potential beneficiaries. The trustee generally has an absolute discretion about who will receive the benefit of the assets and income of the trust, with no obligation to pay or distribute anything to any particular beneficiary.

How the trust is controlled is set out in the trust's governing deed. Control can often be passed on by a deceased controller in their Will, if they leave one.

### **Obtain authority to administer the estate**

Before an estate can be administered, the executor or administrator will normally need to apply to the Supreme Court for the authority to deal with the deceased's estate. This is referred to as obtaining 'probate of the Will' or 'letters of administration' when there is no will. The value of the estate and types of assets will determine whether this is necessary.

The Probate Rules specify who is entitled to apply for Letters of Administration. They rank

in roughly the same order as the persons who are entitled to benefit from the estate under the intestacy rules.

### **Complete income tax returns**

Before an estate can be distributed, it is necessary to determine whether a final tax return is required to be filed. In some cases, the calculation of capital gains tax is also involved.

### **Pay all debts**

Creditors, funeral expenses, income tax, fees for administering the estate and out-of-pocket expenses must all be paid. This often requires the executor/administrator to sell some assets. Beneficiaries may choose to provide funds to cover these expenses to keep the assets of the estate intact. If sufficient funds are held, some banks will allow certain expenses to be paid directly from the deceased's bank account. Reimbursement can be sought for payments made on behalf of the estate by the executor/administrator or another party.

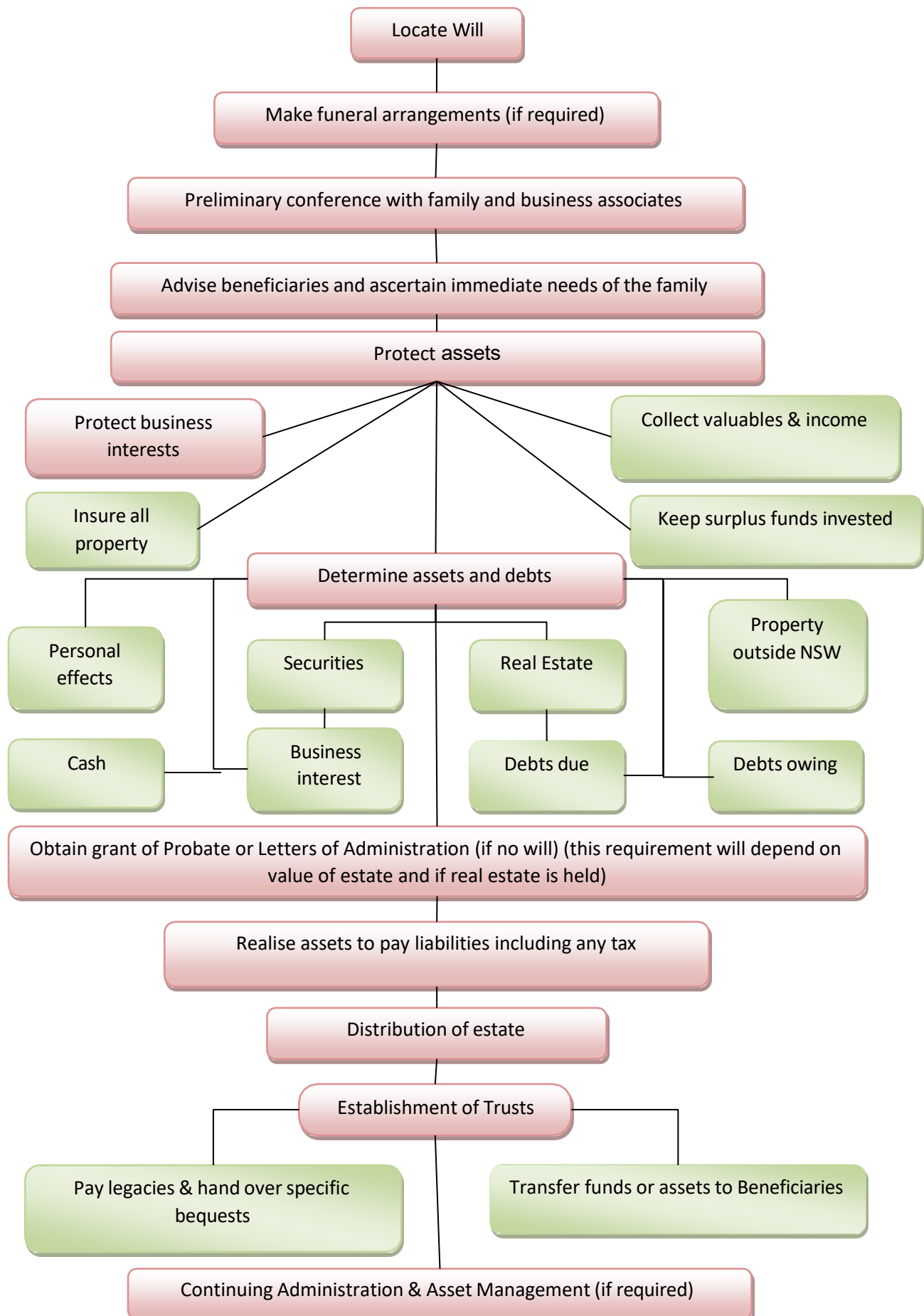
### **Divide the estate**

When all debts have been paid, the executor/administrator can distribute the remaining assets according to the directions of the Will or the rules of intestacy. The timing for distribution will be dependent on whether any claims are likely to be made on the estate by another party.

### **Establish trusts**

Executors/Administrators are responsible for setting up trusts for beneficiaries. Trusts are required if the beneficiary is under 18 years of age or mentally incapable, or if there are specific instructions in the Will. Such trusts need ongoing administration, often over many years.

**See over page for flowchart**



**PEOPLE OR ORGANISATIONS YOU MAY NEED TO NOTIFY**

✓	Organisation	Contact	Notes
	Australian Electoral Commission	132 326 <a href="https://formupload.aec.gov.au/Form?FormId=Notificationdeath">https://formupload.aec.gov.au/Form?FormId=Notificationdeath</a>	
	Australian Taxation Office	132 861	
	Australia Post	Contact post office to arrange mail redirection	
	Banks, Credit Union	Contact any bank or credit union, cancel direct debits	
	Centrelink (if receiving a pension)	132 300	
	Child Support Services (if paid or received child support)	131 272	
	Clubs such as RSL		
	Department of Veterans' Affairs (if receiving a pension or benefit)	133 254	
	Employers		
	Executors of the will		
	Foreign pension authority. If the authority's details are unknown, contact Centrelink's international services	131 673	
	Funeral bond, insurance or prepaid funeral	Lodge claim for payment of policy	
	Funeral director		
	Health fund		
	Health professionals such as doctor, physiotherapist, dentist, podiatrist, optometrist		
	Insurance companies		

	Landlord or Real Estate Agent	Inform landlord/tenant or real estate agent that manages property.	
	Medicare	132 011	
	Professionals such as solicitor, accountant, financial advisor		
	NSW Trustee & Guardian (if subject to a Financial Management Order)	1300 364 103	
	Transport NSW (if held a driver's licence and/or if held registered vehicles	132 213	
	Firearms Registry		
	Subscriptions (newspaper, magazines, software programs, Foxtel, Netflix)	Contact service provider to cancel or transfer	
	Utilities (electricity, gas, telephone, internet)	Contact service provider to cancel or transfer	
	PayPal, eBay, social media, Flybys, rewards programs	Contact provider & arrange closure or transfer of points	
	<b>Others</b>		

## WHAT WE NEED TO ASSIST WITH ADMINISTERING THE ESTATE

<b>The will</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Original or photocopy if the original cannot be located (if not already held by Clark Rideaux)</li> <li><input type="checkbox"/> Contact details of beneficiaries (email, address &amp; phone number)</li> </ul>
<b>Death Certificate</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Original</li> <li><input type="checkbox"/> Plus original or certified copy of the death certificate of any deceased executor or beneficiary</li> </ul>
<b>Bank accounts</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Account numbers or statements, passbooks &amp; debit cards</li> </ul>
<b>Cars, boats, caravans, trailers</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Registration papers</li> <li><input type="checkbox"/> Estimated market value</li> <li><input type="checkbox"/> Insurance policies</li> </ul>
<b>Shares</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Dividend statement or name of company and SRN</li> </ul>
<b>Real estate</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Rates notice</li> <li><input type="checkbox"/> Estimated market value (an agent can provide a market appraisal)</li> <li><input type="checkbox"/> Insurance policies</li> </ul>
<b>Superannuation</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Statement or name of company and policy number</li> <li><input type="checkbox"/> Adviser details for self-managed super funds</li> </ul>
<b>Liabilities</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Details of any home loans, mortgages, personal loans</li> <li><input type="checkbox"/> Credit card debts</li> <li><input type="checkbox"/> Outstanding bills for phone, household utilities, council rates, water usage, strata levies, nursing home, home care, pharmacy, funeral</li> <li><input type="checkbox"/> Taxation debts, including HECS-HELP debts</li> </ul>
<b>Identification</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Deceased's passport, licence, birth certificate</li> <li><input type="checkbox"/> Executor's passport &amp; licence or licence, birth certificate, Medicare card &amp; change of name marriage certificate if name differs</li> </ul>



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