BARKER & BARKER
SERVING CANBERRA SINCE 1982

DECEASED ESTATE BROCHURE

Funeral arrangements

Generally, direct family members arrange the funeral. If there is no family or they are unwilling or unable to do this, the executor should 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. The bank will need the funeral account, death certificate and a certified copy of the Will.

Registration of death

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 *Administration and Probate Act 1929* (ACT). 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. **Partner and No Issue (Children)**
   The surviving partner is entitled to the whole estate.
2. **Partner and Issue (Children)**
   - If the net value of the estate does not exceed $200,000 the partner receives the whole estate.
   - If the net value exceeds $200,000:
     - The partner receives $200,000 plus interest on $200,000 at 8% per annum from date of death until payment
     - The remainder of the estate is divided as follows:
       - If there is one child (or issue of one child): The partner receives half of the balance; the child (or their issue) receives the other half.
       - If there is more than one child (or issue of more than one child): The partner receives one-third of the balance; the children receive two-thirds in equal shares.
3. **No Partner; Children Only**
   Children share the estate equally (descendants of a deceased child take that child's share).
4. **No Partner or Issue**
   - The parents share equally if both are alive; otherwise, the survivor receives the whole estate.
   - If no parents survive, siblings share equally (with issue of predeceased siblings taking that sibling's share).
   - If no siblings, or their issue survive, grandparents share equally.
   - If no grandparents survive, aunts and uncles share equally (with cousins taking if their parent predeceased the intestate person).
   - If no next of kin, the Territory is entitled to the intestate estate.

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 (or as tenants in common), 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.

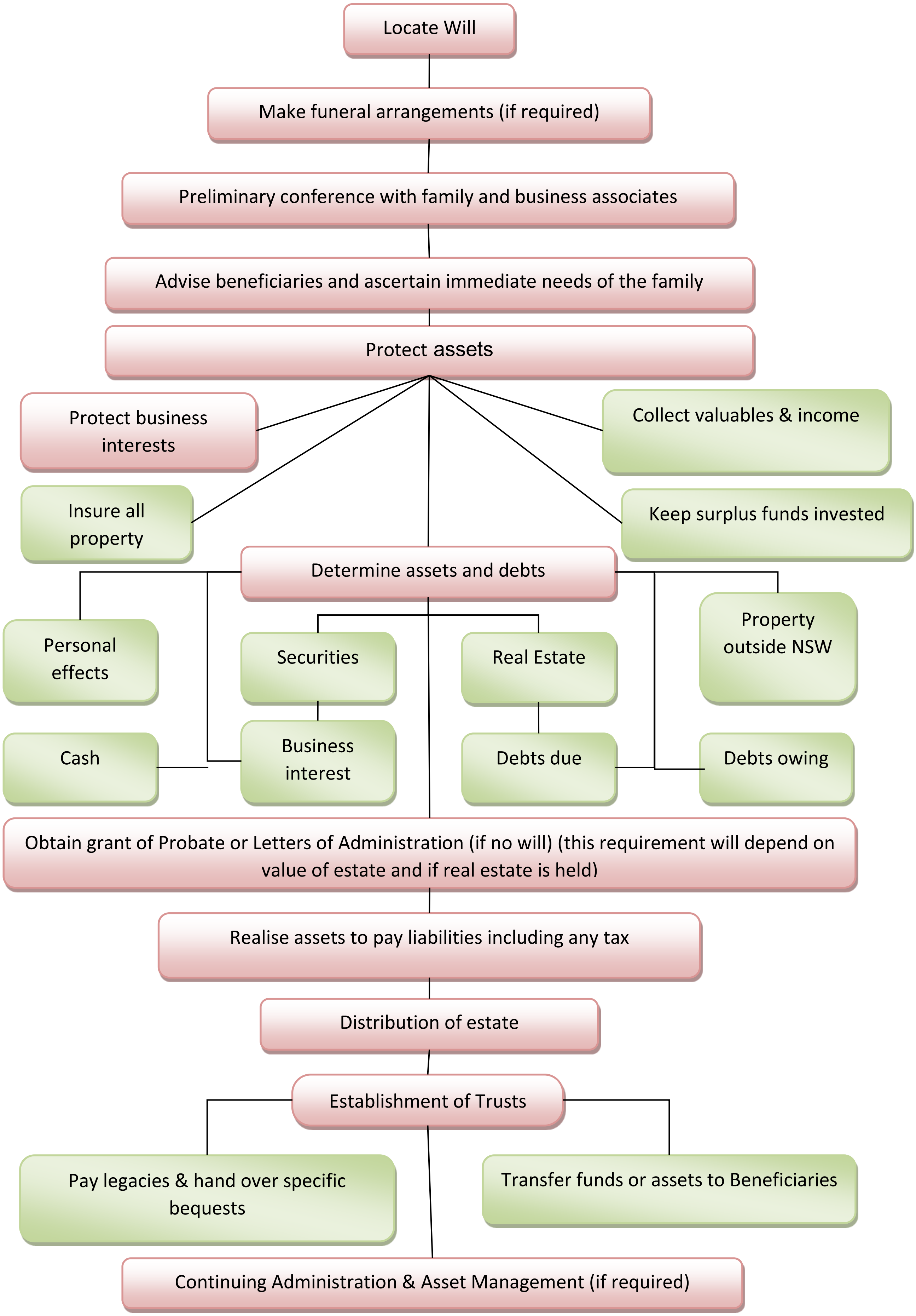
Divide the estate

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 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


Locate Will
Make funeral arrangements (if required)
Preliminary conference with family and business associates
Advise beneficiaries and ascertain immediate needs of the family
Protect assets
Protect business interests
Collect valuables & income
Insure all property
Keep surplus funds invested
Determine assets and debts
Personal effects
Securities
Real Estate
Property outside NSW
Cash
Business interest
Debts due
Debts owing
Obtain grant of Probate or Letters of Administration (if no will) (this requirement will depend on value of estate and if real estate is held)
Realise assets to pay liabilities including any tax
Distribution of estate
Establishment of Trusts
Pay legacies & hand over specific bequests
Transfer funds or assets to Beneficiaries
Continuing Administration & Asset Management (if required)

PEOPLE OR ORGANISATIONS YOU MAY NEED TO NOTIFY

✓	Organisation	Contact	Notes
	Australian Electoral Commission	132 326 https://formupload.aec.gov.au/Form?FormId=Notificationdeath	
	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)	1800 838 372 or email Bereavement.SA@dva.gov.au	
	Employers		
	Executors of the will		
	Foreign pension authority. If the authority's details are unknow, 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		
	Public Trustee & Guardian (if subject to a Financial Management Order)	(02) 6207 9800 or email PTG@act.gov.au	
	Access Canberra – Road Transport (if held a driver's licence and/or if held registered vehicles	(02) 6207 7611	
	Firearms Registry	(02) 5126 9076 or email ACTFirearmsRegistry@afp.gov.au	
	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	
	Others		

WHAT WE NEED TO ASSIST WITH ADMINISTERING THE ESTATE

	The will	☐ Original or photocopy if the original cannot be located (if not already held by Barker & Barker) ☐ Contact details of beneficiaries (email, address & phone number)
	Death Certificate	☐ Original ☐ Plus original or certified copy of the death certificate of any deceased executor or beneficiary
	Bank accounts	☐ Account numbers or statements, passbooks & debit cards
	Cars, boats, caravans, trailers	☐ Registration papers ☐ Estimated market value ☐ Insurance policies
	Shares	☐ Dividend statement or name of company and SRN
	Real estate	☐ Rates notice ☐ Estimated market value (an agent can provide a market appraisal) ☐ Insurance policies
	Superannuation	☐ Statement or name of company and policy number ☐ Adviser details for self-managed super funds
	Liabilities	☐ Details of any home loans, mortgages, personal loans ☐ Credit card debts ☐ Outstanding bills for phone, household utilities, council rates, water usage, strata levies, nursing home, home care, pharmacy, funeral ☐ Taxation debts, including HECS-HELP debts
	Identification	☐ Deceased’s passport, licence, birth certificate ☐ Executor’s passport & licence or licence, birth certificate, Medicare card & change of name marriage certificate if name differs ☐ Birth certificate, marriage certificate or change of name certificate for any beneficiary whose name is different to the will.

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