



MANAGING THE ESTATES PROCESS

**ANDERSON
LLOYD
LAWYERS**

www.andersonlloyd.co.nz
Christchurch, Dunedin, Queenstown

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INTRODUCTION

When a person dies there are many things that need to be done. The process that is followed to administer an estate can seem daunting, especially when you are grieving the loss of a loved one. To make it simpler, we have prepared this booklet to explain how we will administer the estates process for you.

In the days that follow the death, one of our Estates team members will meet with you. They will talk you through all of the steps that need to be taken to administer the estate, will give you a copy of the Will and get any information of the deceased persons assets and debts that you can provide.

Helpful information that you can bring to this meeting:

- Bank statements, cheque books and credit cards that are held in their name only
- Insurance company details, and if possible the certificates (including house, contents, vehicles)
- Shareholder statements and FIN details, Bonus Bond certificates
- Kiwi saver details
- Birth, marriage/civil union certificate and death certificate
- Drivers licence and passport
- Any household accounts to be changed such as electricity, telephone, SKY etc.
- Work and Income New Zealand benefit numbers or recent correspondence
- Funeral account
- Life insurance details and policy documents if possible.

The team of Estates experts at Anderson Lloyd who will be looking after this estate.

Peter Clarke, Jenny Fitzgerald and Trudy Keenan



BEGINNING THE PROCESS

Before the estate can be administered, High Court approval must be granted unless the estate is a “small estate”*. The two most common forms of approval are Probate and election to administer.

- If there is a Will, then we apply for a Probate order confirming the Will and seeking authority to deal with the estate’s assets. The grant of Probate can take anywhere from two to six weeks.
- If there is no Will, then we will apply to the High Court for a grant of letters of administration giving the appropriate family member authority to deal with the estate assets.

What are executors and trustees?

Wills usually appoint one or more people as “executors and trustees”. Executors must locate the Will, arrange the funeral and ensure that the last wishes of your loved one as instructed in their Will are carried out. If the Will requires any estate assets to be held in trust, then the trustees are responsible for this. The role of the trustee continues until everything is finally paid out. In practice, the roles of trustees and executors are usually the same.

* A “small estate” is defined in the Administration Act as an estate where there is no real property (land) and no one individual asset exceeds \$15,000 in value.

WHAT NEXT?

To deal with the estate, the assets and liabilities of the estate need to be looked at. Some estates will require much more work than others. There are many duties to carry out, including:

- Working with the beneficiaries (those who are nominated in the Will to receive a bequest)
- Writing to the bank, insurance companies and places where investments are held, to advise them of the passing away of your loved one
- Preparing the necessary High Court documents
- Managing and protecting the assets of the estate
- Paying tax and debts
- Transferring any joint assets to the survivor
- Legal issues, including dealing with any claims
- Interim and final distributions
- Preparing accounts
- Regular reporting to beneficiaries
- Dealing with any disputes
- Dividing up the estate (and if required this may include selling things)

We will keep you informed about progress while we administer the estate. There may be times when we may need to contact you to obtain any further directions or instructions from you.

CAN WILLS BE CHANGED?

If the terms of a Will are not appropriate due to changes in circumstances, or because of something that the Will-maker may not have anticipated, the beneficiaries may feel that the Will should be changed and can agree to alter the terms of the Will. This agreement must be recorded in writing and anyone who is a possible beneficiary must sign the agreement after taking independent legal advice. Whenever a Will is changed by agreement there are gift duty implications which need to be considered.

If a Will is challenged, the person who is challenging the Will cannot take legal advice from the firm who is acting for the trustees. Anderson Lloyd will continue to act for the executors and trustees who must remain neutral and the beneficiaries must take their own legal advice independently of Anderson Lloyd.

What if there is a dispute?

If there is a dispute about a Will, a mediator may be able to act (if all parties agree to it). Mediation is often preferred because it's less expensive and faster than taking court action. A successful mediation will result in a written agreement.

Who can make a claim against an estate?

The Family Protection Act 1955 provides that the spouse, partner, and/or children of the deceased are entitled to make a claim if they believe they have not been provided for adequately. If any of the deceased's children have died leaving children of their own, then those grandchildren are also entitled to make a claim.

The Property (Relationships) Act 1976 provides that a deceased person's spouse or partner may choose to elect to make an application under that Act for a division of relationship property if they believe they have not been adequately provided for in the Will.

The law allows for the deceased person's spouse or partner to either take whatever has been provided for them by the will OR take whatever they would be entitled to under the Act. It is important to note that the choice MUST be made within six months from the date that probate is granted.

What if a beneficiary is under 20?

When a Will is challenged, or when it is being changed by agreement, or if a dispute is settled by mediation, any beneficiaries who are under 20 would be represented by their legal guardian, and in some cases the approval of the court may need to be obtained on their behalf.

HOW LONG WILL IT TAKE?

The timing to settle an estate depends on the complexity involved. It can take anywhere from two to six weeks to get the High Court's approval, and for more complex estates (for example if there are assets to sell) it could take several months to gather in assets.

- Claims can be made against an estate up to one year (and in some cases even longer) after the date of grant of probate or letters of administration. If trustees distribute assets in the six-month period after the date of the grant, they may be personally liable for those assets if a successful claim is made.
- We would normally recommend waiting for the six-month period to expire (and where a claim is a real possibility we will suggest waiting twelve months), before the estate is distributed.
- Early distributions are possible, but in those cases, we must advise the trustees to do so on the basis that the beneficiaries indemnify the trustees against liability for any later claims.

HOW MUCH DOES IT COST?

As you will now appreciate, estates aren't as simple to administer as you might have initially thought. There are many different duties to carry out and it's not an easy job especially for grieving friends or relatives. Executors need a good understanding of financial and legal matters. Anderson Lloyd provides you with a professional, independent and impartial service and because of our extensive experience we are able to settle things quickly for you.

Our fees are calculated taking into account a number of factors including the time and labour expended, the complexity, urgency, importance, skill, specialised knowledge, responsibility and risk involved, and the results achieved. We have two ways to estimate the administration of an estate and it depends if the estate is "simple" or not. If it is a non-simple estate, it is very difficult for us to determine a fee at the outset and therefore is charged on an hourly basis. After the initial meeting, we will write to you with a fee estimate which will be based on the following.

A: "Simple" Estate (≤10 assets, ≤ 3 legacies, ≤5 residuary beneficiaries)

Base Fee	\$1390.00
<i>This includes file opening, locating the will, any necessary liaison with the funeral director, first meeting with the family, providing timeline plan, preparing initial statement of assets and liabilities, final reporting statement and letter.</i>	
Applying for Probate	\$690.00
Transmission to Executor	\$405.00
Transmission to Survivor	\$405.00
Transfer to beneficiary or beneficiaries (up to 3)	\$460.00
Sale of Property	
With a mortgage	\$1080.00
Without a mortgage	\$780.00
Closure of bank accounts (each)	\$180.00
Realisation of life insurance policies (each)	\$290.00
Payment of legacies/bequests (each)	\$180.00
Preparing draft Distribution Statement and Indemnities, arranging distribution	\$870.00
Tax Return	\$360.00

B: Non-simple Estate \$2600.00 plus time at an hourly rate of \$215.00 (plus GST).

All figures quoted here include GST unless otherwise stated as being plus GST. Note that our standard GST inclusive fees will not change when GST increases on 1 October 2010.

HOW DO OUR COSTS COMPARE?

Recently Consumer Magazine* reported on a comparison of Trustee Companies Administration Costs and we thought you might be interested to know how we stack up.

Company	Administering a simple Estate	Cost
Perpetual Trustees	\$562.50 base fee +\$562.50 - \$787.50 for probate +2.75% on first \$600,000 of gross assets then 1.5% thereafter +disbursements. Flat fee of 5% for estates under \$50,000.	\$6103
Guardian Trust	\$1125 - \$3375 base fee +\$765 for probate +\$202.50 - \$292.50/hour (depending on complexity) +disbursements	\$5670
Trustee Executors	\$1125 for probate +\$281.25/hour +disbursements	\$4359
Public Trust	\$1400 establishment fee +\$750 for probate +\$210 - \$275/hour (depending on complexity) +disbursements	\$4250

* Source: www.consumer.org.nz/reports/print-view/wills updated 22 April 2010.

What are our costs, based on the same scenario as Consumer used?

Anderson Lloyd (based on the same scenario as above)	\$1320 base fee +\$690 for probate +\$405 for transmission to survivor +\$180 for closure of bank account +\$290 for realisation of life insurance policy +\$870 preparation of draft distribution statement & arranging distribution +\$360 for tax return	\$4115
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If you would like to see a copy of the report, ask our Estates team.

NOTES TO BENEFICIARIES

You may wish to keep your inheritance from the estate separate from your relationship property and so the Property (Relationships) Act 1976 may apply to you.

Property that is owned before the relationship began, such as inherited property and gifts are not shared in relationship property. However there are exceptions to this such as home, furniture, or the family car. For this reason, it's wise to be sure that your relationship partner has no claim on this property by making an agreement. The relationship property area of law is complicated. If you are getting an inheritance, or thinking of purchasing something that is valuable or important, talk to your lawyer first.

If you receive a monetary inheritance and wish to keep it separate from relationship property, you should use or create a bank account that is held solely in your name. If you deposit funds into a jointly held account or any other account that is not in your name we will require a signed written instruction from you.

Please do not hesitate to contact us if you have any questions or need help with any of this.

TERMS OF ENGAGEMENT

These terms of engagement

These are our standard terms of engagement as your lawyers. They apply to all services we provide unless varied by written agreement. We will take your continued instructions as your acceptance of these terms so please ask us if you have any questions about them. Please keep this copy for your records.

General scope and quality of our work

At all times we will act to the best of our ability on your behalf, within the scope of your instructions and in accordance with the Rules of Conduct and Client Care for Lawyers which govern the practice of law. All advice we give to you will be based on our best professional judgment and legal knowledge but should not be taken as a guarantee of any particular outcome, as, among other things, we will be relying on the completeness of your instructions, the accuracy of the information provided to us and the actions taken by any other parties involved.

How you can help us

We will always do our best to be available and responsive to you, and to provide services which are technically accurate, innovative, timely and based on sound common sense. You can help us do this by:

- Giving us clear instructions, if possible in writing.
- Telling us if you have any important time limits.
- Making sure we have understood each other and asking us if you are not sure about anything.
- Dealing with any important questions promptly.
- Keeping in regular touch with us – please ask us for a progress report if you are concerned about anything, or do not hear from us when you expect.
- Telling us if you have changed your address or contact numbers.

Personnel

Usually one Partner, Associate or Solicitor will have overall responsibility for the work on each file. We will advise you who that person is. From time to time other members of our professional staff may also be involved if their particular skills are required, or if it is more cost effective to have others attend to particular aspects of the work.

Our fees

Our fees are calculated taking into account a number of factors including the time and labour expended (we will provide you with our staff members' hourly rates on request), the complexity, urgency, importance, skill, specialised knowledge, responsibility and risk involved, the results achieved and our staff members' experience, reputation and ability.

Cost estimates

We are happy to give you an estimate of the costs you are likely to incur for any work we do for you. Because we cannot predict exactly what will be involved, any estimate we give of our fee will normally be a range between a minimum and a maximum figure. We reserve the right to update our estimate if unforeseen events occur and, as the matter progresses, if more accurate estimates are possible. Any cost estimate will normally be for our fee plus the expenses and disbursements we incur on your behalf, and will exclude GST.

Fixed quotes

For some well-defined services we may be able to give you a fixed quote. This will normally be expressed as a fixed fee plus expenses, disbursements and GST. When we give a fixed quote we will always record it in a letter which will set out the fee, state clearly that it is a fixed quote, describe the services included within the fixed quote and set out any conditions.

Expenses and disbursements

Expenses and disbursements may include a file establishment charge and items like Court filing fees and other Government charges, agency costs, tolls, faxes, couriers, photocopying and incidental expenses. Some disbursements may include a reasonable mark-up. We may sometimes need the necessary funds from you in

advance to pay the disbursements we incur on your behalf. This money will be held in your name in our trust account until we pay the disbursements incurred. If the total disbursements incurred are less than that, the balance will be recorded as a credit on our final invoice to you.

Timing of our invoices

It is our practice to interim bill on a regular basis, monthly, two monthly, or three monthly, depending on the nature and amount of work being done, to ensure that you are able to monitor closely our costs and disbursements. We will always send a final invoice following completion of the work and a trust account statement if we have handled funds on your behalf. An invoice may include an amount to cover future disbursements we anticipate incurring on your behalf. Each invoice will include a summary of the work we have completed for you. If you need further details for your records please just ask. Each invoice we send is separate from any other. Second and subsequent invoices relating to the same ongoing work will not normally include any amount remaining unpaid from any earlier invoice. We may sometimes require payment from you before commencing or continuing work.

Payment of our invoices

Unless we have made a different arrangement with you, payment in full of any invoice is due by the 20th of the month following the date of the invoice. You can pay any invoice by cash, cheque (payable to "Anderson Lloyd Trust Account"), VISA or bank transfer. If you, as our client, comprise more than one person (e.g. business partners or a married couple) each of you is separately responsible for paying all amounts owing to us. When we are holding money on your behalf in our trust account, we may draw on that money for our fees and disbursements when invoiced. You authorise us to deduct our fees and disbursements from any judgment, settlement or other money received by us on your behalf. Although you may expect a third party to pay our invoices, or you may request us to direct our invoices to a third party, you remain responsible for the timely payment of our invoices.

Delay or difficulty in paying our invoices

If you anticipate having difficulty paying an invoice on time, please immediately contact either the Partner, Associate or Solicitor who sent you the invoice or our credit controller. We may make an arrangement with you for payment by instalments. We reserve the right to charge interest on any invoice remaining unpaid after the due date unless prior arrangements have been made. Interest is calculated at The National Bank of New Zealand's base rate for lending plus 4% per annum as at the date of the invoice. We would also normally stop doing any further work until the invoice is paid, after giving reasonable notice to you and reasonable assistance to find another lawyer, and we have the right to retain possession of your file and any documents belonging to you until we are paid.

Legal aid

You may be eligible for legal aid. We reserve the right to decide whether or not to act for you on any legally aided matter. Please advise us if you are considering applying for legal aid. We will then advise you whether we would be prepared to work on that matter on a legally aided basis.

Credit enquiries

By engaging us, you authorise us to carry out reasonable credit enquiries and you authorise anyone we contact to provide to us any information about you that we reasonably request as part of our credit enquiries. You also authorise us to provide information about you to credit agencies in connection with any amount owed to us which is overdue for payment.

Verifying your identity

Please do not be offended if we ask you to show us documents verifying your identity. We are legally required by the Financial Transactions Reporting Act 1996 to take a copy of documents verifying the identity of every new client.

Money handling procedures

All money you pay to us for any purpose should, wherever possible, be paid by cheque made out to "Anderson Lloyd Trust Account" and crossed "not transferable"

or "account payee only". By prior arrangement with us, such payments may also be made by any usual form of bank transfer directly into "Anderson Lloyd Trust Account" at The National Bank of New Zealand, Dunedin branch, account number 060901-0015250-02 or in cash. Any investment property (such as security certificates) to be delivered to us for you should be hand-delivered, posted by registered mail or couriered to the Partner responsible for your legal affairs. All investment money we receive will be held in a trust account in your name. Any investment property we receive will be stored in a secure place until disbursed in accordance with your instructions or these terms of engagement.

Financial assurance scheme

The receipt, holding and disbursement of investment money on our clients' behalf is subject to inspection pursuant to regulations made under the Lawyers and Conveyancers Act 2006.

Interest on money we hold in trust for you

Whenever it is reasonable and practicable to do so, we will lodge any funds held in our trust account on your behalf in a bank deposit account bearing interest at a rate specially negotiated for our clients. Withholding tax will be deducted and paid to the Inland Revenue Department on the interest you earn. If we have your IRD number, you can elect to have withholding tax deducted at your applicable rate. Please advise us if this changes. As required by the IRD if we do not have your IRD number, it will be deducted at the default rate (which may be higher than your actual rate). We will charge an administration fee on funds invested in a bank deposit account bearing interest.

Professional indemnity insurance

We hold professional indemnity insurance that exceeds the minimum standards specified by the New Zealand Law Society.

Lawyers' fidelity fund

The New Zealand Law Society maintains the Lawyers' Fidelity Fund for the purposes of providing clients of lawyers with protection against pecuniary loss arising from theft by lawyers. The maximum amount payable by the Fidelity Fund by way of compensation to an individual claimant is limited to \$100,000. Except in certain circumstances specified in the Lawyers and Conveyancers Act 2006 the Fidelity Fund does not cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of the client.

Conflicts of interest

Sometimes a conflict of interest may arise. We have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises, we will advise you of this and follow the requirements and procedures set out in the Rules of Conduct and Client Care for Lawyers.

Information about you

As part of our continuing effort to improve the services we offer, we collect and store certain client information. This helps make sure we send letters and invoices to you at the right address. It also helps us to send you information about services we offer, send you information on legal topics likely to be of interest or importance to you and let you know about events we are sponsoring. Most importantly, it helps alert us to any potential conflict of interest we might have in acting both for you and for any of our other clients. We may collect the information either from you or from other people as a result of providing our services. You have the right at any time to have access to any information we hold about you and to ask for any incorrect information to be corrected. We assure you that all information about you that we collect and store always remains confidential and will, except to the extent required by law or permitted by the Rules of Conduct and Client Care for Lawyers, be used only for the purposes outlined in these terms of engagement or in carrying out your instructions to us.

Storing records of legal work and trust account transactions

You agree that we may convert your file into an electronic format. We will store your file for at least seven years after the date of our final invoice. After that, we may destroy your file (we may destroy a paper file earlier if we have converted it into an electronic format). This does not include any documents we agree to hold for you in safe custody. Records of all investment money and investment property will be kept in accordance with the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 and the Privacy Act 1993. Records of your transactions through our trust account are stored in computerised form. You may have access to all

records relating solely to your investment money and investment property without charge during normal business hours. Any investment money or investment property we receive on your behalf cannot be used for the benefit of anyone other than you unless you owe us money in which case we may deduct the amount due from investment money we hold for you.

Questions and complaints

We maintain a procedure for handling any complaints by clients, designed to ensure that complaints are dealt with promptly and fairly. If you have a question about any invoice we send you or if you are unhappy with any other aspect of our work please tell us about it straight away. You can contact our Chief Executive, who may be contacted by letter, by phone or by email at ceo@andersonlloyd.co.nz. Our Chief Executive will investigate whatever it is you are unhappy about and contact you to discuss it. This will be at no extra cost to you. Misunderstandings can arise; generally, these can be resolved with little inconvenience or formality. And of course we need to know when we do not get things quite right so that we can get them right the next time. The New Zealand Law Society operates the Lawyers Complaints Service and you are able to make a complaint to that service. To do so, phone 0800 261 801 and you will be connected to the nearest Complaints Service Office, which can provide information and advice about making a complaint.

Client Care and Service Information

Below is copy of the Client Care and Service Information set out in the Rules of Conduct and Client Care for Lawyers:

Whatever legal services your lawyer is providing, he or she must:

- act competently, in a timely way, and in accordance with instructions received and arrangements made:
- protect and promote your interests and act for you free from compromising influences or loyalties:
- discuss with you your objectives and how they should best be achieved:
- provide you with information about the work to be done, who will do it and the way the services will be provided:
- charge you a fee that is fair and reasonable and let you know how and when you will be billed:
- give you clear information and advice:
- protect your privacy and ensure appropriate confidentiality:
- treat you fairly, respectfully, and without discrimination:
- keep you informed about the work being done and advise you when it is completed:
- let you know how to make a complaint and deal with any complaint promptly and fairly.

The obligations lawyers owe to clients are described in the Rules of Conduct and Client Care for Lawyers. Those obligations are subject to overriding duties, including duties to the courts and to the justice system.

If you have any questions, please visit

www.lawsociety.org.nz or call 0800 261 801.

General

We may change these terms of engagement from time to time, in which case we will send you amended terms.

Our obligations under these terms of engagement and our duties of care are owed to you and not to any other person.

As always, we greatly value your custom. If you have any questions about these terms of engagement, please ask. We will do our best to help

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