

Australian Administration – More Complicated Than Our Rugby Teams!

Andrew Johnstone of APEARS, Sydney, Australia

I have previously written about the complications in Australian administration, however, due to the changes in law and institutional requirements I like to give a basic update every three years. Dealing with assets in Australia is complex, there is no set statutory limit for Probate, rather it is up to the company, bank or titles offices as to their individual requirements. The following is a basic synopsis of the requirements. I must stress that these are the normal requirements and are subject to constant change at the whim of the entities involved.

• Shares

Generally shares can be dealt with without Probate in Australia when the value of a particular holding is under A\$15,000 (with the exception of Computershare whose limit is AU\$25,000). Some companies will accept a Bond for the value of the holding in lieu of a Grant up to about A\$100,000. The premium on a Bond is a percentage of the value required and therefore becomes uneconomical compared to Probate when the value of each shareholding exceeds A\$30,000.

• Bank Accounts

Again, generally there is a limit of A\$10,000. Most banks will negotiate on this but it depends on the actual bank and branch involved. Some requirements will be different at the same bank in different States. Some banks insist on Probate being obtained in the State in which the account is held and others insist on Probate but are not concerned with where it is obtained in Australia.

• Real Property (including Time-Shares)

Most dealings with real property, except where held as joint tenants, require Probate to be obtained in the same State as the property is held. In Queensland it is possible to deal with property with the production of a foreign Exemplification (or even the original Death Certificate and Will, although you will not get the original Will back!) In New South Wales Time-Share interests can be dealt with

without a Reseal, provided the value thereof is not "excessive"!

• Managed Funds

There are no steadfast rules with any of the Fund Managers in Australia. However, a good guide to use is the same as for shareholdings. For transfers of unlisted units, stamp duty is still assessable.

• Superannuation

Superannuation in Australia is compulsory, and with these schemes most employees also have a death benefit insurance cover. To claim these where the value exceeds AU\$50,000 (which would apply to most cases) an Australian Grant is required. It generally does not matter in which State the Grant is obtained. However, there are various taxation complications associated with this type of asset (e.g. the withholding of up to 47% from the payout to non-financial dependents) and local guidance is highly recommended.

• Where to obtain a Grant?

Real Property is the only asset that requires Probate to be obtained or Resealed in the same State as where the property is located. Some banks will insist on the Probate being obtained in the State in which the account is held. When dealing with shares or managed funds a Grant or Reseal can be obtained in any State, provided a separate declaration is lodged with the company signed by the executor confirming Probate is not being obtained elsewhere. This declaration complies with a section of the National Corporations Act, however, interestingly it does not provide any indemnity or protection for the company or institution concerned!

To further confuse this issue, some States require you to have an asset in that State before obtaining a grant, others don't. Each State has a different fee structure, often scaled to the asset value. Further, some require details of all worldwide assets and liabilities,

details of all beneficiary names, addresses and birth dates. These rules are often based upon outdated legislation which has been superseded, but typical of the departments involved, their internal rules have not kept up with the legislative amendments. A good example is the asset detail requirement which was useful when death duty was existent but would be generally irrelevant to the registrars now.

Please also note that assets held in South Australia should always be avoided. That state is very complex and costly to obtain a Grant. If you know of clients with assets there please review them before it is too late.

• What should you do when assets are discovered in Australia?

Naturally I suggest you contact me for assistance. However, my first advice is to ensure you have all details of all assets held. Secondly, don't take it as read that you have to do what the company or issuer has advised you to do. If you think the value of the asset is borderline, make a special request to the company to waive their Probate requirements in that instance. Finally, contact me for assistance!

Regards from Australia,

Andrew Johnstone

APEARS
Level 2
275 George Street
Sydney NSW 2000
Australia
GPO Box 4859
Sydney NSW 2001
Australia
Ph: 61 2 9279 0516
Fax: 61 2 9279 0514
Email: APEARS@bigpond.com

Congratulations to...

Marie-Louise Bullôt, Fiona McGregor and Robyn Shephard, on successfully completing the University of Waikato Diploma in Legal Executive Studies. Marie-Louise and Robyn live in Auckland and Fiona is from Christchurch. Robyn is an Associate member of NZILE and the President of Auckland Branch.

Fiona and Marie-Louise are both NZILE Fellows.

Kim McDonald, of Jackson Russell in Auckland, on becoming an associate of the firm. Kim is a Registered Legal Executive and Associate member of NZILE.

Daphne Lewis-Mannix on her appointment as a Justice of the Peace in 2006. Daphne works for Mackintosh Bradley Price in Christchurch and is a Registered Legal Executive and Associate member of NZILE.

APEARS

Australian Probate Estate & Asset Related Services

Assisting New Zealand executors, trustees and their legal advisors in the administration of a variety of matters in Australia, including:

- Resealing of Probates and Letters of Administration
- Issue of Insurance Indemnity Bonds
- Transfer and Realisation of assets
- Stamp Duty assessment
- Location of Beneficiaries

For assistance please contact Andrew Johnstone

GPO Box 4859, Sydney NSW 2001, Australia, Email: APEARS@bigpond.com, Phone: 61 2 9279 0516, Fax: 61 2 9279 0514, www.apears.com.au

