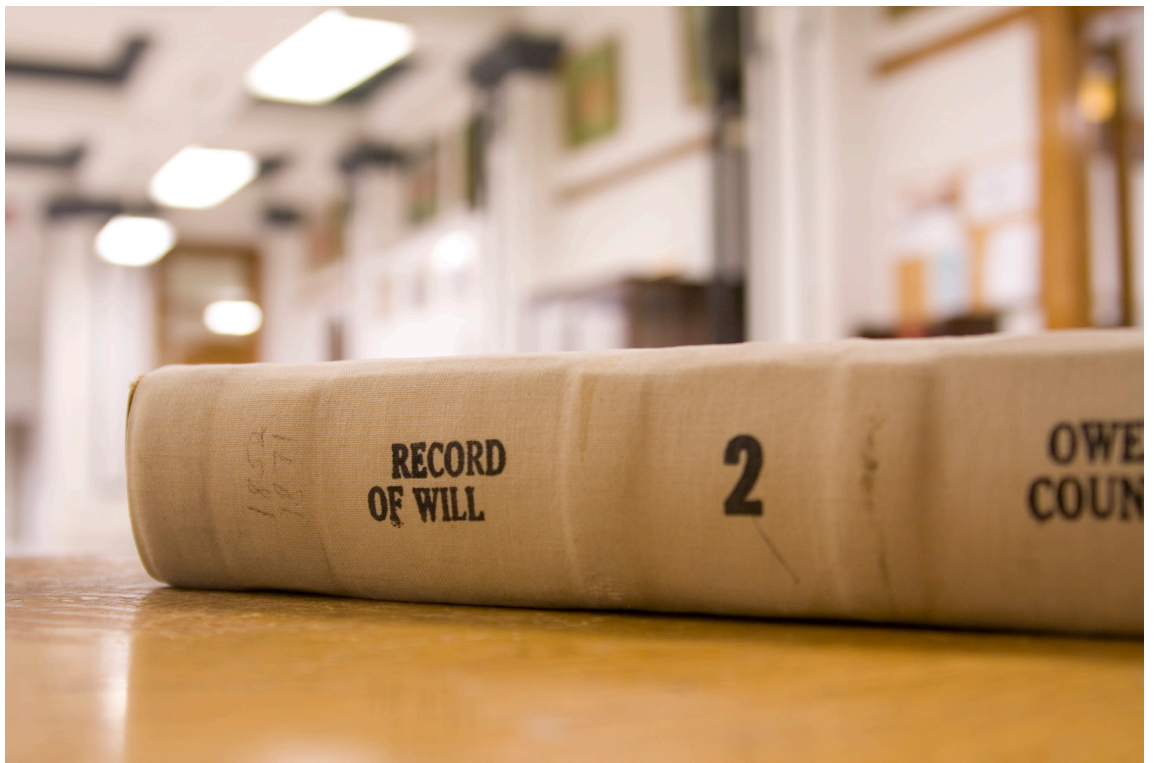


Wills and Probate





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This publication is intended to be an outline of the law and procedures on this subject for the purpose of general reference only and cannot be relied upon as legal advice in any particular case. If any advice or assistance is needed, please contact this firm on (852) 2810 1212 or email us at probate@onc.hk.

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What happens when a man dies?

When a man dies, his estate will, after deduction of debts, funeral and testamentary expenses, be distributed according to his will or to the intestate law.

Executor and administrator

Before the estate can be distributed, someone has to obtain the grant of probate (in the case of will) or the letter of administration (in the case of intestacy) in respect of the estate from the Probate Office of the High Court.

The one who obtains the grant of probate is called the Executor. He is simply the person chosen by the deceased and named in the will to be the one responsible for the job of administering the estate.

The one who obtains the letter of administration is called the Administrator. The Non-contentious Probate Rules contain elaborate rules governing who can become the administrator. He is usually a person related to the deceased by blood or marriage.

Grant of probate and letter of administration

After estate duty has been abolished in Hong Kong on 11 February 2006, the procedure of applying for Grant of Probate and Letter of Administration has become more straightforward. It is no longer necessary to go through the estate duty clearance process before a person could apply for representation. The Executor or Administrator can simply submit to the High Court a form of “Schedule of Assets and Liabilities of the deceased” together with his own Affidavit which sets out in detail his entitlement to the administration and/or the identities of the beneficiaries in the estate. If the High Court is satisfied with the Affidavit, it will grant the Probate or Letter of Administration. The Executor or Administrator can then start to distribute the estate.

If the deceased had a safe deposit box whether it was held solely under his name or jointly with others, the Executor or Administrator must first obtain from the Secretary for Home Affairs a Certificate for Necessity of Inspection of Bank Deposit Box. On issue of the said certificate, the applicant should make an appointment with the Estate Beneficiaries Support Unit of the Home Affairs Department for the inspection of the safe deposit box. Officers from the Estate Beneficiaries Support Unit will attend the inspection process.

Release of money for payment of funeral expense and maintenance of former dependants

Since the application for grant of Probate or Letter of Administration may take some time, in order to relieve the immediate hardship of the family members, the Secretary for Home Affairs is empowered to issue a certificate for release of money for payment of funeral expenses and maintenance of former dependants after 11 February 2006.

For payment of funeral expenses, the application can be made by a family member, a friend, a fellow worker or even a neighbour of the deceased. The bank upon receiving the certificate will be required to make payment direct to the funeral service supplier.

As regards maintenance of former dependants, the application must be made by the Executor or Administrator. The former dependants should have been supported financially by the deceased immediately before he died and have a beneficial interest in the estate. The Secretary for Home Affairs has the power to grant the maintenance by monthly instalments for a maximum period of three months each time. Further application will have to be made if necessary. The bank will then release money to the Executor or Administrator.

The importance of a will

There are many advantages in having a will. The two major ones are as follows.

The maker of a will can direct the disposition of his estate according to his wishes

If one dies without having made a will, the intestate law will determine who gets what, which is not always what the deceased would have wished. For example, if a man has a wife but no surviving parents and children, he may like to leave all his property to his wife. But if he dies without having made a will to that effect, half of his estate will go to his brothers and sisters, or even their children. Further, the law only recognises legal relationship. Hence, in the case of a co-habitee who was not formally married to the deceased, would not be entitled to the deceased's estate. If a man dies leaving no relatives recognised by the intestate law, the whole of his estate will go to the Government. Presumably few people would prefer to dispose of his property in this way.

A will can also make flexible provisions regarding the administration of the estate which is not possible under the intestate law. For example, a trustee can be appointed for the benefits of the children, i.e., he administers the fund for their education and welfare until they reach a certain age.

The beneficiaries of a will could obtain the benefits of the estate in a much easier way

As explained above, it is normally much easier to obtain the grant of probate if the deceased leaves a will which clearly sets out the identities of the Executor and the beneficiaries. On the other hand the Administrator has to look into the Non-contentious Probate Rules and collect evidence to establish the identities of the beneficiaries, as well as his own entitlement to administration. This often delays the whole process and, worse still, may not be accomplished at all: the documents proving legal relationships might have been lost or were defective in one way or another.

The cost of making a valid and well-drafted will by solicitors is cheaper than most people think. Yet the benefits that it can bring are many. The maker of a will can enjoy the peace of mind that those dear to him will be well looked after when he dies.

Inheritance (Provision for Family and Dependants) Ordinance

In the past, since the Court only recognize those beneficiaries specified in the intestate law or named in the will, other dependants of the deceased who are not within the above categories, namely cohabitee of the deceased, do not receive any share of the estate. However, if the deceased died after 5 November 1995, whether or not he had left a will, any of his dependants can make an application to the Court within 6 months from the date of the Grant of Probate or Letters of Administration for an order that reasonable provision be paid out of the estate to the dependants. The Court will take into account numerous factors, namely the size and nature of the estate, the current and future financial resources and needs of the applicant and the beneficiaries.

About us

ONC Lawyers is a professional and dynamic legal practice based in Hong Kong. We have been growing continuously since our establishment in 1992, and have now become one of the largest local law firms with more than 40 lawyers and a total staff of over 130.

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Contact us

For enquiries, please contact members of our Private Clients Department:



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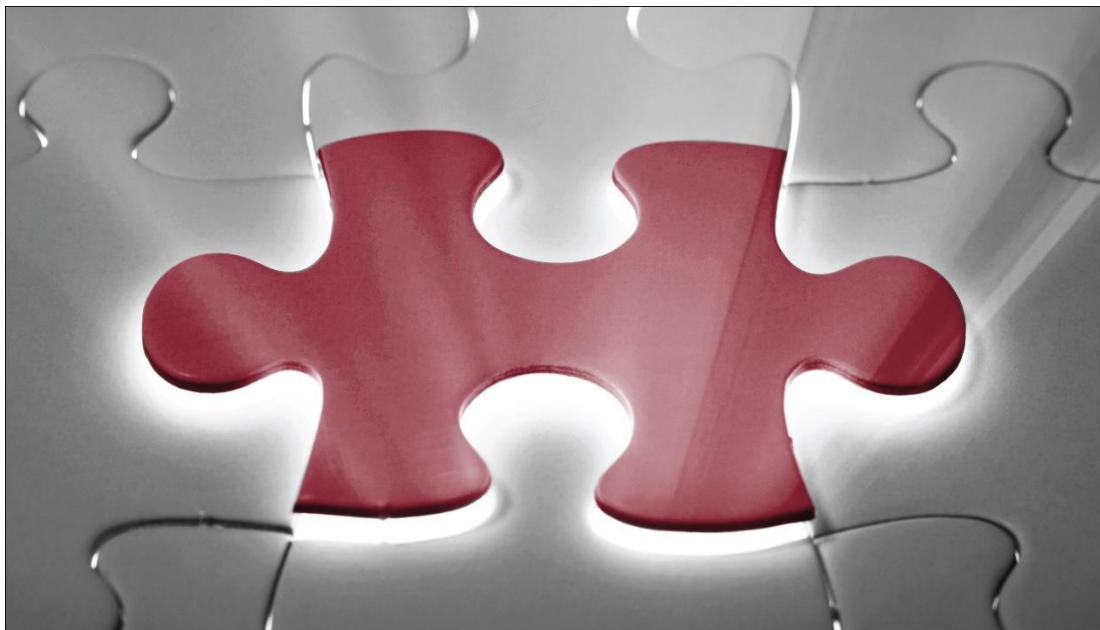
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