

Take care – it's easy to pay more than you need, for estate administration

Helen* passed away in January. She left a will. Her lawyer, Octavia*, holds the will. Her husband, Jack*, is the executor. Helen divided her estate between Jack and her children. The lawyer expects to do the estate administration.

So far, so good.

Jack may decide to instruct the lawyer to do all the work – apply for probate, close the bank accounts, transfer or sell the shares, temporarily put the land Helen herself owned into Jack's name as executor, pay the bills, hold the funds until it's clear there are no more creditors and no claims against the estate, and then make the final distribution and land transfer to beneficiaries according to Helen's will.

Jack may be comfortable with this, knowing that the lawyer knows the property, the family, the background, and knowing that Helen trusted her.

Octavia does not have to tell Jack beforehand how much all this will cost – unless Jack asks. Jack does not have to let Octavia do all, or indeed any, of this work.

In most cases, the application to the High Court for probate (formal authority to the executors to administer the will) is a discrete technical task. It requires no background knowledge of the family or the estate, no discretionary decisions, no tactful family diplomacy, and very little legal advice.

Jack can shop around.

In a small informal survey on neighbourly.co.nz, relating specifically to the cost of applying for probate, 25% of respondents were prepared to pay significantly more to the lawyer who held the will, compared with paying a different lawyer or doing the probate application themselves. It was psychologically too difficult to change, and they valued 'peace of mind'.

However, recent enquiries nationwide suggested many lawyers may charge more than \$1500 for probate alone, and some as much as \$4000. A few charge less than \$1000. There is a huge variation.

Jack has an obligation as executor to use estate funds wisely. He may want to explore several options, including asking Octavia what she will charge, before he decides.

Jack can ask Octavia about (a) the cost of applying for probate; (b) the cost of transferring the land; (c) the cost of doing everything else. As a reputable lawyer, especially as she already knows the family, Octavia should be able to separate these out.

Jack may choose to do some of the work himself. He may use a different provider for the application for probate. He may decide to use a professional to help with trickier bits of the estate administration. If her fees are reasonable and transparent, he may indeed instruct Octavia to take care of everything.

If Octavia tells him he cannot do any of the work himself and he must use a lawyer, Jack would be wise to look elsewhere. It is simply not true that Jack 'must' use a lawyer for everything. Any such statements should ring alarm bells.

Every executor is different, and every estate is different. An executor with clerical skills may be able to do most of the work themselves – but not if overwhelmed with grief, or working 40 hours a week plus raising a family. Another executor who enjoys a challenge and has time to spare may relish the opportunity to peruse the High Court Rules and prepare their own probate application instead of using a lawyer. Others – especially if the estate is well-off – gladly let the usual family lawyer do all the work, because they value that relationship more than saving a few pennies.

Jack and his family may opt to share the work and keep the professional costs to a minimum. Whatever they save can go towards a holiday, their favourite charity, or the grandchildren. **At least Jack knows he has a choice.**

Having been in the Waikato most of her life, Cheryl now practises law from North Canterbury, through her firm Kiwilaw.

* All names are invented. So is the scenario. If there is a New Zealand lawyer named Octavia, this is co-incidence only, and not a reflection on her.

NEED PROBATE?



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