

Draft Protocol for minors – administration bonds

This is a protocol for the deposit of a minor's entitlement, under intestacy or administration with the will annexed, with NSW Trustee & Guardian (NSW Trustee).

1. Summary

Absent special circumstances, this protocol is to be applied in cases where a minor is entitled under intestacy or under a grant of administration with the will annexed and:

- a. the person with parental responsibility has been appointed administrator and is unable to secure sureties for an administration bond for the minor's share in the estate; or
- b. the person with parental responsibility, who is not the administrator, does not consent to the dispensation of an administration bond, and the administrator is unable to secure sureties for an administration bond for the minor's share in the estate.

NSW Trustee is to be entrusted with the minor's entitlement until they achieve their majority. NSW Trustee may rely on its statutory power of advancement pursuant to s 17 of the *NSW Trustee & Guardian Act 2009* ("the Act")

2. Objective

The purpose of this protocol is to protect the interests of minors until their majority by safeguarding their entitlement in the deceased's estate in cases where sureties are unavailable to provide that protection.

The protocol enables the person with parental responsibility for the minor to apply to NSW Trustee for advancement of funds for the purpose of the maintenance, education, advancement or benefit of the minor.

3. The Protocol

The following procedure applies:

- (1) The applicant for administration or administration with the will annexed is to provide an undertaking, with the guidance and endorsement of their legal representative, to deposit the funds due to the minor with NSW Trustee following payment of all debts, funeral and testamentary expenses and distribution of any other gifts or shares in the estate to other entitled beneficiaries. See "Form of Undertaking" below;
- (2) The undertaking is to set out the procedure and timeline under which this protocol will be satisfied, including for the sale of any real estate;
- (3) The funds are to be deposited with NSW Trustee by a date set by the Court ("the agreed date"), but usually within four months of the grant;

- (4) The applicant is to serve a copy of the undertaking, sealed by the Court, on NSW Trustee and file an affidavit of service with the Court. Upon receipt of the affidavit of service, a grant of representation will be made in favour of the applicant;
- (5) The administrator is to notify the Court within 14 days after the agreed date, that the funds have been deposited with NSW Trustee. If that date cannot be met the administrator is required, no later than 14 days before the agreed date, to approach the Court to explain the delay and seek an extension of time to deposit the funds;
- (6) The person with parental responsibility for the minor may approach NSW Trustee, in accordance with usual procedure, for an advance of funds for the benefit of the minor; and
- (7) The funds may be released to the minor upon application by them, when they reach the age of 18 years.

4. Form of Undertaking [modify as necessary]

- (1) My name is [name of applicant for administration or administration with the will annexed]. I am the applicant for [administration or administration with the will annexed dated [date]] in the Estate of [deceased's name] who died on [date], case number [number];
- (2) [Name of minor], the subject of this protocol is [relationship of minor to the deceased eg son or beneficiary under the will dated [date]] entitled under [intestacy or will dated [date]] to a share in the deceased's estate, comprising [state the share as a fraction or percentage or the terms of the legacy under the will] which I estimate will be valued at [\$amount];
- (3) My solicitor [name of solicitor] has assisted me in preparing this undertaking. His or her signature, acknowledging the terms of this undertaking, is inserted below;
- (4) I will take the following steps to ensure that the funds due to [name of minor] are deposited on his or her behalf with NSW Trustee by [date, subsequently referred to as the "agreed date"] or within such time as the Court further orders:
 - a. I will collect the funds of the deceased held by all financial institutions and deposit in [my solicitors trust account or I will open an account in the name of the deceased estate with [name of bank]];
 - b. #[If real estate is to be sold] I will list the real estate at [property address] for sale by [method of sale] by [name of agent if known] and deposit the sale proceeds in the account named in paragraph (4)(a);

- c. #I will sell [asset to be sold] by [method of sale] and deposit the proceeds in the account named in paragraph (4)(a);

Note: Other arrangements regarding assets of the deceased may be included in this list but only following agreement of the Registrar, who will consider each submission on a case by case basis.

- d. I will pay all the debts, funeral and testamentary expenses and distribute any other gifts or shares in the estate to other entitled beneficiaries. The debts, funeral and testamentary expenses and other gifts or shares that I am aware of are [list them and include estimate of liability and other gifts/shares]; and
- e. The remaining funds after payment of the liabilities and distribution of any other gifts or shares to other beneficiaries also entitled as set out in paragraph 4(d) will be transferred to NSW Trustee on [agreed date]:
 - i. If the estate is not fully realised and the agreed date cannot be complied with, I will make an application to the Court at least 14 days before the agreed date, by letter and affidavit in support, setting out the reasons for any delay and seeking an extension of time for the deposit of funds with NSW Trustee. If I am granted an extension I will serve the order on NSW Trustee prior to the agreed date; or

(5) I understand that NSW Trustee will send me an acknowledgement of receipt for the funds within 14 days of the funds being received by them, such letter will include information on the management of the fund, including fees and how to apply for advances for the child from the trust funds pursuant to s 17 of the Act. I will file a copy of the acknowledgement with the Court within 14 days of receiving it;

(6) I understand that the Court will confirm in writing, or by email, that the Protocol appears to have been complied with; and

(7) I understand that, in the event that I do not comply with this undertaking, the Registrar may list this matter in the Probate list for me to show cause why the grant should not be revoked and an order made for me to account for my administration of the estate of the deceased.

5. Arrangements between NSW Trustee and the Court

In addition to the service of the sealed undertaking by the applicant on NSW Trustee, the Court will notify NSW Trustee by email that the undertaking has been made and sealed by the Court.

NSW Trustee should acknowledge receipt of the notice and advise the Court if and when they have been served with the undertaking by the applicant. The Court will

then issue the grant. The Registrar should enter a reminder one week after “agreed date” to follow up if necessary.

The Court should notify NSW Trustee of any application by the administrator to extend time for compliance with the undertaking and forward a copy of any order made. The latter requirement is in addition to the obligation of the administrator to serve the order on NSW Trustee.

NSW Trustee should advise the Court if and when the funds have been deposited with them and if full compliance with the undertaking appears to have been made.

Signature of applicant: _____ Date: _____

Name of applicant: _____

Address: _____

Contact email: _____

Telephone: _____

I have assisted my client, _____, to prepare the above procedure for compliance with the Court’s protocol for minors and verify his/her signature on the undertaking above.

Signature of solicitor: _____

Name of solicitor: _____

Firm: _____

Firm address: _____

Contact email: _____