

Estate Administration: Who Carries the Torch?

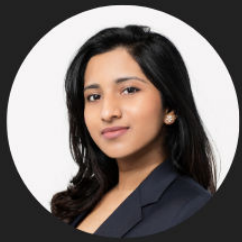
by SM Shanmugam and Shona Anne Thomas

Ask any individual who has experienced death in the family, and he/she will most likely be aware of estate administration. For the uninitiated, this process consists of compiling and managing the assets of the deceased, settling debts of the deceased and distributing the remaining assets to the beneficiaries of the Estate. It is the duty of an Executor (where there is a Will) or Administrator (where there is *no* Will) to carry out and complete the administration of the deceased's Estate.



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What happens, though, if the Executor or Administrator meets his/her demise? The short answer is that the administration of the Estate must be continued and completed by a new Executor or Administrator. To simplify an otherwise complex topic, practical explanations are set out in a Q&A format below:



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Situation A: Pepper dies leaving a valid Will appointing her husband, Tony, as her sole Executor. Tony also has a Will, appointing his friend, Peter, as the Executor of his estate.

1. Who administers Pepper's Estate if Tony dies before completing his duty as Executor?

Peter, as the Executor of Tony's Estate, will have to step into Tony's shoes and become the Executor of Pepper's Estate. This is known as the "chain of representation" or "chain of executorship".¹

2. Does this happen automatically?

No. Peter will need to first obtain grant of probate in Tony's Estate to be entitled to act as Executor of Pepper's Estate. However, Peter need not further apply for probate in Pepper's Estate.



3. What are the circumstances in which the ‘chain of representation’ does not apply?

The chain of representation will no longer apply where it is broken by an intestacy or the failure to obtain probate of a Will.² Further, the chain of representation will also not apply if the testator had appointed two or more Executors, and where the death of an Executor leaves other Executors surviving him.³ Coming back to our scenario, this would be the case if:

- (a) Tony dies without a Will;
- (b) Peter fails to obtain probate of Tony’s Will; or
- (c) Pepper’s Will appointed two or more individuals as Executors of her Estate. For example, if Tony and two others, Steve and Thor were named Executors in Pepper’s Will.

4. What happens if Pepper’s Will stipulates that Thor be appointed as substitute Executor in the event Tony is unwilling or unable to act as sole Executor?

This is quite complicated as it comes down to the timing of Pepper and Tony’s respective deaths. Had Tony predeceased Pepper, Thor will be entitled to obtain probate of Pepper’s Will.

However, if Tony obtained probate of Pepper’s Will as sole Executor, the chain of representation gives authority to the Executor of Tony’s Estate, i.e. Peter, to step into Tony’s shoes and complete the administration of Pepper’s Estate.

Situation B: Pepper dies without leaving a Will. Her husband, Tony, successfully applies for letters of administration in her Estate and is appointed as Administrator by the court. Tony has a Will, appointing his friend, Peter, as the Executor of his Estate.

1. Who administers Pepper’s Estate if Tony dies before completing his duty as Administrator?

In this instance, the chain of representation does not apply. Peter is not entitled to administer Pepper’s Estate solely on the basis that he is the Executor of Tony’s Estate.

² Probate and Administration Act 1959, s 12(3)
³ Probate and Administration Act 1959, s 12(1)



Instead, one of the beneficiaries of Pepper's Estate will have to apply to the High Court of Malaya to obtain a grant of letters of administration *de bonis non* ("of goods not administered") in Pepper's Estate.

2. Who are the beneficiaries of Pepper's Estate and are they equally entitled to apply for grant of letters of administration *de bonis non*?

Because Pepper died without leaving a Will, the beneficiaries of her Estate are limited to those recognised under the Distribution Act 1958. This would be Pepper's spouse, issue (child, grandchild, great-grandchild) and/or parent(s).⁴

Under the laws on intestate succession, entitlement to obtain grant of letters of representation *de bonis non* would be based on a predetermined order of priority, beginning with the spouse, issues, parents, siblings, issues of siblings, grandparents and lastly, the uncles or aunts.⁵

Conclusion

The administration of the Estate of a deceased is not always an easy job. Depending on the value of the Estate, the number of beneficiaries and the web of relationships, the process of administration as well as the duration required for completion of administration may vary.

Over time, beneficiaries may lose track of who is in charge of estate administration and whether the torch has been passed from one individual to another. If you find yourself confused or curious about the status of administration of an Estate (to which you are a beneficiary), it may be prudent to engage lawyers for further advice.

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⁴ Distribution Act 1958, s 6. If there is no surviving spouse, issue or parent, then the sibling(s) or grandparent(s) or aunt and uncle or great-grandparent(s) or great-granduncle and great-grandaunt may be entitled to the estate.

⁵ G Raman, *Probate and Administration in Singapore and Malaysia* (LexisNexis Singapore, 3rd Ed)

