

Supreme Court of NSW 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 particular circumstances of the minor's entitlement, the nature of the assets and the procedure and timeline under which this protocol will be satisfied, including for the sale of any real estate. If assets are to be transferred to NSW Trustee in specie the administrator must attend to the transmission of assets into NSW Trustee's name;

- (3) The undertaking is to state a date which is approved by the Court, when the funds will be deposited with NSW Trustee (“the agreed date”). In the usual case this date should be within four months of the grant. If real estate needs to be sold or other delays are likely the agreed date should be within six months of the grant. Any application for an agreed date beyond four months should be accompanied by an affidavit setting out the reasons for the anticipated delay;
- (4) The applicant is to serve a copy of the undertaking which has been sealed by the Court, personally or by post on NSW Trustee at Level 6, 160 Marsden Street, Parramatta, Attention of Client Establishment, and file an affidavit of service with the Court. Upon receipt of the affidavit of service and compliance with any requirements of the NSW Trustee, 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) If the funds have not been deposited by the due date the Registrar may list the case before the Court and the administrator will be required to show cause as to why the grant should not be revoked and an order made for the administrator to account for their administration of the estate;
- (7) 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
- (8) See information on creating a trust with NSW TG at:
<http://www.tag.nsw.gov.au/trusts-landing.html>
- (9) The funds may be released to the minor upon application by them, when they reach the age of 18 years. If it is deemed that the minor is unable to give a good discharge, the funds will remain in trust.

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) The detail of the minor(s) who are the subject of this undertaking are:
 - a. [Name of minor] of [address], the subject of this protocol is:
 - i. [relationship of minor to the deceased eg child or beneficiary under the will dated [date]];

- ii. entitled under [intestacy or will dated [date]] to a share in the deceased's estate;
 - iii. share comprises [state the share as a fraction or percentage or the terms of the legacy under the will];
 - iv. share will be valued at [\$amount].
 - v. was born on [date of birth]
 - vi. [parent or guardian] is [name of parent or guardian] and their current address and contact details are [address, email and telephone number].
 - vii. [Describe any known capacity issues of the minor];
- b. Repeat for each minor.

(3) Further details regarding the estate assets [# delete if not applicable]:

- a. Statement of assets and liabilities and estimated value:
 - i.
- b. Details of the fraction of the estate, or the specific assets, comprising each minor's share:
 - i.
- c. Proposed payment arrangements (ie in specie or cash):
 - i.
- d. I confirm that I will publish an online Notice of Intention to Distribute the Estate pursuant to s 93 of the *Succession Act 2006* and that I will provide a copy of the notice upon payment of the trust monies to NSW TG
- e. I confirm that all estate and trustee taxes will be fully paid or adequate reserves held by the administrator prior to payment of the trust to NSW TG
- f. I confirm that the estate trustee tax file number will be provided to NSW TG at the time funds are paid to NSW TG:
- g. # A report outlining the condition of any real property that the administrator requests NSW TG to retain in specie is attached
- h. # I confirm that all capital gains tax details will be provided to NSW TG for relevant assets transferred in specie.

(4) 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;

(5) 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 [state 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.

(6) 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;

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

(8) I understand that, in the event that I do not comply with this undertaking, the Registrar may list this matter before the Court 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.

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: _____