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Navigating
**Funeral Planning
and Estate
Administration**



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In times of loss and mourning, the complexities of funeral planning and estate administration can seem overwhelming. At Shine Lawyers, we understand the emotional and legal challenges you will be facing.

This guide will provide you with the information, guidance, and support you need during this difficult journey. Our dedicated team is here to help you navigate your loved one's estate matters, ensuring that you can make informed decisions and find peace during this challenging time.



Funeral arrangements

Making funeral arrangements is often an emotionally charged time particularly if final wishes haven't been discussed prior to the passing of a loved one. Problems can arise when multiple family members provide conflicting wishes to the funeral home who need clarity on how to proceed.



Who has the final say?

Funeral wishes outlined in a will aren't usually the ultimate say. The person in charge of the deceased's affairs, known as the executor or administrator, has the final say if there is a dispute over funeral arrangements, such as when and where it takes place, and if the deceased is to be cremated or buried, and the place of interment.

This may come as a surprise to close family members who expected to have the final say.

The executor/administrator has the responsibility to consider family preferences, religious beliefs, cultural practices, and more.

However, when it comes to making funeral plans, the executor/administrator has the final authority. In some cases, it's possible to legally challenge the funeral and burial/cremation arrangements and if a cremation, how the ashes are to be disposed of. However, doing so has strict eligibility criteria and specific time limits to follow.



Who covers funeral expenses?

The deceased's estate, comprising their assets, should cover funeral expenses, including burial or cremation and related costs. If there are sufficient funds in the deceased's bank account, the executor can access them to pay for the funeral.

In cases of inadequate estate funds and no contributing family members, the Government may offer financial aid, like a funeral grant, depending on circumstances. It is however unlikely that this grant will be enough to cover the costs of a funeral.

It's crucial to note that someone paying the funeral expenses on behalf of the estate, such as a family member, is entitled to reimbursement from the estate. For example, if accessing the deceased's bank account is delayed, a family member can temporarily cover the costs and later be repaid by the estate.

Who should the funeral home take instructions from?

The funeral home can take instructions from a family member who is not the executor, for example a surviving partner. If there is a dispute, then the funeral home should take instructions from the legal representative of the deceased, which could be the executor named in the will or the administrator if the person died without a will.

If the deceased did not make a will, the authority to make decisions falls to the potential administrator, usually the deceased's surviving partner or the closest family member. This person is responsible for managing the deceased's assets.

Arranging the funeral is among the initial duties of the executor. Ideally, the deceased will have conveyed their funeral preferences to the executor separately from their non-binding will, whether through a specific plan, a letter, or verbal discussions. While discussing end-of-life matters can be challenging, sharing these details is strongly recommended to avoid future disputes.

In choosing between burial or cremation, the executor/administrator should consider any expressed wishes of the deceased in the will or a funeral plan. It's important to understand though that the executor/administrator isn't legally bound to follow these preferences.



Can you stop someone from attending a funeral?

As with all funeral wishes expressed by the deceased in a will, intentions regarding who may attend their funeral are not legally binding. The person in control of where the funeral is held, usually the funeral director, would have the ultimate legal power to control who can attend or not through issuing a trespass notice.

This would be unusual. What is more common is that a funeral director will work with the family to accommodate everyone, even to the extent of holding 2 funerals.





Who has rights to ashes after cremation?

The ashes instruction sheet does not give the person named in it as the person collecting the ashes any greater power than the executor. If there is any dispute about possession of the ashes or how the ashes are to be disposed of, then the named executor will have the ultimate say. Disposal includes if the ashes should be divided or not, or where the ashes should be interred or scattered.

If a family member disputes the executor's decision, then the family member can apply to the High Court for directions. Or there may be more than one executor and the dispute may be among the executors. The judge will take into account various factors such as the wishes of the deceased, the nature and closeness of the relationship of the deceased with the particular family members and each location chosen for interment/scattering of ashes, customary, cultural or religious practices.



Are funeral wishes in a will legally binding?

The funeral wishes in a will are not legally binding. This means that the executor is not legally bound to follow them and has the final say in the funeral arrangements.

Ideally, their wishes may be able to be carried out, but other factors may come into play. Three major considerations must be addressed:



Cost



Practicality



The law





Estate Disputes and Administration

Losing a family member or loved one is an emotional and challenging experience, especially when it comes to matters of inheritance. Disputes arising from financial assets, property, and the pursuit of a fair share can swiftly become intricate and overwhelming. In such times, turning to an experienced estate disputes lawyer can provide invaluable support.

At Shine Lawyers, we understand the emotional complexities that accompany estate disputes. We are experts in this field, dedicated to helping our clients secure their rightful entitlements and inheritances with compassion and expertise. Our mission is to guide you through these difficult times, ensuring that you receive the assistance and representation you deserve to resolve estate matters effectively.

Shine Lawyers can help you challenge a will if:

1. You are a family member and have been left out of a will, or you believe the will doesn't make adequate provision for you.
2. You are the partner of the deceased and you want to claim a half-share of the relationship property.
3. You can show that the deceased did not have the mental capacity to make a will.
4. There was undue influence on the deceased when making the will.



Shine Lawyers can also help you resolve estate administration issues

This can include challenging the actions of an executor or the failure of the executor to act. Shine Lawyers are experienced with applications to the High Court for orders removing and replacing the executor, for example in situations where:

- an executor is not acting in the best interests of all beneficiaries,
- an executor is not distributing the estate as soon as reasonably and lawfully possible,
- an executor is living in the deceased's property rent-free or for a low rent,
- an executor owes money to the deceased.

Crucially, Shine Lawyers will help you navigate the legal process so your claim does not run out of time. Under wills and estates law, **strict time limits apply**, so it is very important to seek legal advice as soon as possible if you believe you have grounds to contest a will or are experiencing estate administration setbacks.





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How we **can help**

Our expert wills and estate lawyers offer expert legal representation. We listen to our clients' concerns and build an understanding of their unique situation, so we can achieve the best possible outcome for them.

To arrange a confidential, obligation-free discussion, please contact us at:

enquiries@shinelawyers.co.nz or call **0508 744 489**