

Duties of an Executor



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An executor is the person named in a Will to carry out the wishes of a person after they die. They organise to collect the assets of the deceased, pay the debts and distribute the property as set out in the deceased's Will. **The executor has a number of duties to carry out in their role as executor, these being to:**

Arrange the funeral – the family will usually assist with the funeral preparations.

Locate the Will - the executor needs to locate the original Will and should immediately contact the beneficiaries and any relevant business associates.

Secure the assets - it is important for the executor to ensure that all assets including property and investments are safe and arrange insurance protection when needed. The immediate needs of the beneficiaries must also be assessed to ensure that they do not suffer any unnecessary financial hardship.

Value the estate - the executor must identify and account for all assets and liabilities at the date of death. Each item then requires written confirmation from banks, financial institutions, insurance companies, share registers, titles office and creditors etc as to the value of each asset and/or liability at the date of death. The value of assets must be ascertained, often by obtaining valuations from licenced valuers or estimates from recognised sources.

Obtain authority to administer the estate - before an estate can be administered, the executor may need to apply to the Supreme Court for authority to deal with the deceased's

estate. This is referred to as obtaining 'probate of the Will'. Probate is confirmation that the last Will is valid. The executor's authority derives from the Will, not the Probate, so it is possible for the executor to act as executor before Probate is granted, but it is likely that the executor will not be able to administer all of the assets until after the grant has issued by the Supreme Court.

Gather in the assets of the estate – once authority from the Supreme Court has been obtained, the executor needs to gather in the assets of the estate. This may involve selling some or all of the assets. It is prudent that the executor obtains the consent of the beneficiaries to any sale of the assets before such sale occurs. If assets are sold, the executor should ensure they sell them at market value.

Defend the Will of the deceased where litigation is commenced against the estate – an executor must not make distributions to beneficiaries until he or she is sure that there is no likelihood of a claim being made for a share of the estate. In Western Australia, the law provides that an eligible person (being a spouse, child (including step-child) or dependant (a person who was wholly or substantially maintained or supported by the deceased at the time of death) can make a claim for a share or a more adequate share of the estate. This claim is known as a family provision application.

The executor's responsibility is to put the case for upholding the terms of the Will. The claim must be brought within 6 months of the date that Probate is granted by the Supreme Court otherwise the right to make a claim lapses unless the Court determines that special circumstances exist to permit the claim being lodged outside of time.

Pay all debts - creditors, funeral expenses, income tax, fees for administering the estate and out-of-pocket expenses must all be paid. This often requires the executor to sell some assets. Beneficiaries may choose to provide funds to cover these expenses so as to keep part or all of the assets of the estate intact. The executor will be personally liable for the liabilities of the estate if the executor distributes all the estate before all liabilities of the estate have been paid. Unless the executor is certain as to all of the liabilities of the estate, the executor should advertise for creditors to make a claim within a specific time period (usually 30 days) under section 63 of the Trustees Act 1963 before distributing the estate.

Complete income tax returns - before an estate can be distributed, it is necessary to obtain a clearance from the Australian Taxation Office. This means that the executor will have to give details of all income earned during the current financial year and past years, if the deceased failed to lodge a return. In many cases, the calculation of capital gains tax is involved.

Divide the estate - When all debts have been paid including any tax liability and the executor is satisfied that there are no claims against the estate, the executor is then free to distribute the remaining assets to the beneficiaries in accordance with the directions set out in the Will.

Establish trusts - executors are responsible for setting up trusts for beneficiaries if there are specific instructions for a trust in the Will. Such trusts may need ongoing administration, often over many years.

For more information about executor duties or wills and estate planning, contact Lotus Legal.

For more information or to discuss how we may be able to assist you, contact our legal team on (08) 9305 9529



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