

## **What is an executor?**

If you have been named as an executor in someone's will, it means the deceased wanted you to administer his or her estate, perhaps in conjunction with another person.

There can be any number of executors named in a will, though one or two is usually considered sufficient. Your fellow executor could, for instance, be the Solicitor who drew up the will; in this case the Solicitor may charge for services performed in connection with the administration of the deceased's estate, provided the will says so.

If you are the sole executor, you will probably need the assistance of a Solicitor to deal with the duties and obligations of administration.

## **What are an executor's responsibilities?**

In general terms, an executor's duty is to take charge of the deceased's assets and property, see that the funeral and administration expenses as well as debts and taxes are paid and finally to distribute the assets to the beneficiaries in accordance with the will.

You will have to begin by finding out and making a list of everything the deceased owned or was entitled to. The list could include a home, car, money, bank or building society accounts, furniture, household appliances, jewellery, shares and other investments, insurance policies, superannuation, and holiday pay from work. In addition, if the estate is to be divided between a number of beneficiaries, the assets may have to be valued.

Next you will have to apply to the Probate Registry of the Supreme Court for a grant of probate. Probate is an order of the court saying that the will is valid and that the executor has the right to administer the estate.

When applying for probate you will need to complete a number of forms which are prepared by your Solicitor or are available in blank form from a law stationer. You will also need documentary evidence of death, proof of proper signing and attestation of the will, and details of assets and liabilities, among other things.

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## **What if the estate is small?**

Banks and building societies have varying rules which allow access to the deceased's funds without a grant of probate if the estate is very small.

Enquiry should be made of the financial institution concerned to ascertain at what level it will insist on a grant of probate before the executor can deal with the funds.

Where the estate is small, that is less than \$50,000, no court fees are payable if an application for probate is necessary.

## **What do I do after probate is granted?**

Once probate has been granted, the executor must collect the deceased's assets and take steps to pay the funeral and administration expenses and any debts or taxes – including income tax – the deceased owed. In view of possible liability for capital gains tax, it is important to find out the date and cost of acquisition of the deceased's assets.

Funeral expenses are to be paid first and there is a particular order in which any other debts must be paid. After funeral expenses are paid, the executor is entitled to payment of any actual expenses incurred relating to the administration of the estate before other debts are paid.

Once debts have been paid, assets are either distributed according to the terms in the will or they are sold so that money can be divided among the beneficiaries.

As executor you might have to contact financial organisations and companies in which the deceased had money invested in order to realise those assets, and become involved in selling various pieces of the deceased's belongings such as jewellery, a boat or car.

A bank account may need to be opened, in the name of the estate, into which all funds belonging or due to the estate must be deposited and from which debts must be paid.

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## **When and how are the assets distributed?**

When all assets have been identified and, if necessary, sold to raise cash, and all debts have been paid, the remainder of the estate can be distributed to the beneficiaries after the executor has published a notice requiring anybody with a claim against the estate to provide particulars of the claim within a specified period – not less than one month.

The executor must prepare a distribution report and statement for the beneficiaries – given to them when they receive their share of the estate – showing what the assets were, how much money resulted from any sale of assets and what expenses and debts were paid from the proceeds.

Where an executor is applying to the court for commission for his/her administration, detailed accounts have to be filed at the same time with the Probate Registry and all payments and receipts by the executor properly approved.

## **What if there is no will?**

If there is no will there will be no executor.

If you are a relative entitled to the whole or part of the estate of the deceased, you can apply to the Probate Registry of the Supreme Court for letters of administration; once granted, these make you a personal representative of the deceased and you then proceed in much the same way as an executor.

There are rules laid down by law about how assets are to be distributed when there is no will. Briefly, a surviving spouse receives the whole estate if there are no children, or all 'household' belongings plus the first \$200,000 of the estate and half the remainder if there are children. The children divide the other half of the remainder. The spouse may elect to take the matrimonial home as his or her share.

If there is no legal or de facto spouse or direct descendants, the deceased's parents receive the whole estate, otherwise it goes to brothers and sisters or other close blood relatives. If none of these relatives are alive, the estate goes to the Government.

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**Need help with further questions ...?**

We welcome your further enquiries and instructions if you wish ExecutorsHelp to act for you.

We offer experienced legal advice using plain English explanations. By working closely with any financial advisers and providing legal help to family members at often difficult times during bereavement, we aim to give exceptional service to you as Executor or Executrix fulfilling your duties.

Please telephone John Fallins or Julie Ivery on (02) 9235 3160 or email [help@executorshelp.com.au](mailto:help@executorshelp.com.au) if we may be of assistance to you.

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