

Personal Liability of Executor

An Executor or Executrix obtains the NSW Supreme Court's authority to administer a deceased estate by obtaining a Grant of Probate.

There is no obligation on the part of an Executor to discharge any of the deceased's debts as at the date of death from his own personal funds. The Executor has the responsibility of collecting the deceased's assets and then proceeding to pay the funeral and administration expenses, debts and taxes including income tax owed by the deceased. Any debts and taxes are paid out of estate funds.

In general however an Executor is personally liable for any contract entered into after the date of death. This requires particular care if the deceased's estate comprises a business to be carried on or realised.

There are no death duties payable in New South Wales. However an Executor does have taxation responsibilities in regard to the deceased's estate. These may include lodging trust tax returns and paying tax on behalf of certain beneficiaries. It is important to note that where a person incurs any tax liability in his role as Executor this is distinctly separate from his own personal tax liability.

An Executor cannot distribute the income or assets of a deceased estate until debts and taxes are clarified and probate granted. Then after debts and taxes have been paid the assets are distributed according to the willmaker's wishes as set out in the Will. At times certain assets may need to be sold so that money can be realised and divided between beneficiaries. An Executor may be liable for failure to carry out the terms of the Will. The U.S. case of the world famous violinist, the late Isaac Stern, highlights this. His children sued the former Executor of their father's estate for more than \$2million. They did not contest their father's Will but claimed the former Executor had improperly calculated the value of the estate, paid himself huge fees, failed to pay off a debt and omitted many personal items their father owned from the estate inventory including family photos and his rare violins which were sold.

By law the Executor is required to administer the estate with care and in a timely and responsible manner. The Executor will be personally liable if he pursues activities which make the estate insolvent. Partial distribution of income or assets to beneficiaries can only

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be made if the Executor is positive the remainder of the estate will be adequate to cover any outstanding liabilities.

An Executor should be aware that if notice has been received of a debt, which is not disputed, and he proceeds to distribute the estate without paying it then he is in breach of his duty and becomes personally liable to the creditor. The Wills, Probate & Administration Act gives protection to an Executor by requiring details of claims against the estate to be notified to the Executor. After the time limit expires the Executor can proceed to distribute. There is no personal liability attached to claims without notice.

At ExecutorsHelp we provide extensive legal services to enable Executors to:

- be fully aware of their duties
- receive prompt co-operation with estate's accountants
- collect assets and discharge debts
- distribute income and assets
- competently administer estates

The information contained in this article is provided by way of information only and not intended to be legal advice. You should always obtain individual legal advice.

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