

I'M THE EXECUTOR  
*what happens now?*

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Being asked to be someone's Executor of their Will sounds prestigious and important. It can also be quite overwhelming when put on the spot and the pressure to accept can leave you saying yes to the role without really knowing just what you are signing up for.

Executorship should not be accepted lightly – depending on the complexity of the Will and the nature of the assets, the job can be a big responsibility and can be very time consuming. Whilst most Estates can be finalised within 6 to 12 months, complex Wills or litigation can extend the finalisation of the Estate for many years!

The first hurdle to jump is understanding exactly what an executor is and what the role entails. Simply put, an Executor is someone appointed under a Will who is responsible for administering a deceased person's Estate. A Willmaker can appoint a person solely, or jointly with one or more people.

### **AS AN EXECUTOR, YOU CAN EXPECT TO BE REQUIRED TO ATTEND THE FOLLOWING:-**

- Organising the deceased's funeral;
- Locating the Will and notifying the beneficiaries;
- Obtaining a Grant of Probate (if required);
- Realising and protecting the assets (including organising insurance should it be required);
- Investing funds whilst the estate is being administered;
- Determining and paying the deceased's outstanding debts and liabilities (including finalising tax returns for the deceased, and the Estate if required);
- Transferring or selling assets;
- Distributing the Estate to the beneficiaries.

If an Estate has debts in excess of its assets (i.e. the Estate is insolvent), the Executor should seek legal advice immediately **BEFORE** to avoid personal liability and to prevent as certain assets (i.e. superannuation) being incorrectly applied to debts of the deceased or the Estate.

Executors should always seek advice from an experienced Estates lawyers to correctly establish what assets fall into the estate and what don't and to ascertain when assets should be distributed to the beneficiaries of the estate to avoid executors being exposed to claims made against them for distributing assets too early! Executors are afforded some legal protections under the Succession Act 1981 (Qld) in certain situations including making proper distributions pursuant to the terms of the Will no earlier than the 6 months anniversary of the deceased's death (on the basis that the Executor did not receive notice of an application for further provision from the Estate). All Executors should seek advice about these protections to avoid personal liability for acting outside of the protections provided to them.



## **I WANT OUT! DO I HAVE TO ACT AS THE EXECUTOR?**

The good news is, you do not HAVE to see out the job as Executor. Saying no and turning down the role is called renouncing your appointment as Executor. If you are appointed jointly with another person and one of you renounces, the other jointly appointed person can continue to act as the sole Executor of the Estate.

It's important that you make the decision to act or renounce quickly as once you start performing acts to administer the estate, it is not always easy to stop part way through (and it will add unnecessary costs to the administration of the Estate as you will need the permission of the Supreme Court to down tools. This is something that is only permitted in rare cases!).

## **I'M APPOINTED AS AN EXECUTOR WITH ANOTHER PERSON BUT WE JUST CAN'T AGREE ON ANYTHING?**

This unfortunately is a common scenario and one which becomes costly for the Estate. If you are appointed as an Executor jointly with another person, decisions and instructions regarding the administration of the Estate must come from those appointed, jointly. A solicitor cannot act for both Executors if they are in dispute, causing one Executor to seek separate legal representation. Depending on the circumstances, it may be the case that the Estate is then forced to pay two sets of legal fees for the advice given to each Executor. This can be a costly for the Estate, and could affect the entitlements gifted to the beneficiaries under the Will.

A Willmaker should take care when appointing one or more people jointly as Executors of their Estate to avoid appointing people who are likely to be in dispute or be unable to make joint decisions.

If you find yourself in a situation where you have been asked to be an Executor or you are an Executor of someone's will and need some advice, you can contact any of our Estate Lawyers.

*Make an appointment today*

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