



MackeyWales

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DUTIES OF AN EXECUTOR

WHAT IS AN EXECUTOR?

An executor is appointed by the Testator of a Will to administer the Testator's estate in the event of their death. It is the role of the Executor to ensure that the deceased's estate is administered in strict accordance with the terms of the deceased's will. A female executor is sometimes referred to as an Executrix.

The Executor effectively steps into the shoes of the deceased person to wind up the deceased person's personal affairs.

HOW MANY EXECUTORS CAN I APPOINT?

You can appoint a maximum of four Executors. However, one to two is a good, workable number.

WHO SHOULD BE MY EXECUTORS?

Your Executor(s) should be someone you trust implicitly and is good with financial decisions. It is also helpful if they live near you.

SOME COMMON TERMS YOU MAY NEED TO KNOW

Administrator:	The Supreme Court may appoint an Administrator under Letters of Administration to administer an estate where, for example, the Executors are unwilling or unable to act or no Executors are appointed under the Will, or no will has been made.
Beneficiaries:	People who are to benefit from a portion of the assets of the estate. They are named in the Will. If there is no Will, then they are determined by the law of intestacy and you should seek legal advice.
Estate:	When a person dies, their property and assets are called their "estate". The deceased's estate is held by the Executor/Trustee or Administrator of a Will on trust until the assets can be distributed in accordance with the terms of the Will.

Built on reputation

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Estate Trust Account:	An account established by the Executor(s) or Administrator(s) of an estate to receive funds and the proceeds of sale of assets identified as part of the estate.
Grant of Probate:	An official document issued by the Supreme Court to the Executor named in the Will, enabling the Executor to effect the terms of the Will. Until probate is granted by the Court, an Executor may not have legal authority to collect monies, pay debts or distribute assets of the estate.
Intestacy:	When a person dies and either does not have a Will or leaves a Will but that Will does not effectively distribute all of their property. There are Intestacy Rules that determine who are the beneficiaries of an intestate estate.
Will:	A legal document that sets out a person's directions for the administration and disposal of their estate after their death.

DUTIES OF AN EXECUTOR

The duties of an Executor may include:

- Locating the last Will of the deceased.
- Notifying all necessary persons of the death of the deceased. This may include amongst others, family and friends, the Electoral Roll office, the Australian Taxation Office, Medicare and other Government Agencies, insurance and utility companies, for example.
- Identifying, locating and notifying beneficiaries.
- Dealing with general matters such as cancelling phone/internet account, turning off electricity etc.
- Checking about organ donation and following wishes of deceased if possible;
- Taking care of funeral arrangements. It is the duty of the Executor to ensure that the funeral is carried out according to the wishes of the deceased.
- Applying for a death certificate.
- Applying to the Supreme Court for a Grant of Probate of the Will.
- Consulting with a lawyer and other professionals, for example accountants and financial advisors.
- Locating and identifying all property and interests belonging to the deceased such as:
 - Money in hand or house or business;
 - Money in the bank;
 - Building Society and/or credit union accounts;
 - Debentures and secured and/or unsecured notes;
 - Monies due to the deceased under a mortgage, bill of sale or promissory note;

- Motor vehicles;
- Real estate and Crown leaseholds, including any rents being received;
- Water allocations;
- Life insurance;
- Superannuation policies;
- Wages and other benefits due to the deceased as an employee;
- Partnership interests;
- Livestock, crops and farming implements;
- Furniture, crockery, books, pictures, watches, trinkets, jewellery, etc;
- Any interest the deceased may have in another deceased estate;
- Stock in trade, goodwill
- Shares;
- Medicare refunds;
- Private health insurance funeral contributions;
- Department of Veterans Affairs funeral contributions;
- Insurance.

It is the Executor's role to take care of and manage all of the deceased's property and interests during the period between death and the distribution of the estate.

- Investing monies if appropriate on behalf of the estate.
- Ascertaining and paying all debts and liabilities from the deceased's estate. This may include:
 - Funeral expenses;
 - Secured debts such as mortgages;
 - All taxes and other government fees and charges;
 - Credit card or store card accounts;
 - Debts under a hire purchase agreement;
 - Medical and hospital accounts;
 - Legal fees;
 - Litigation in which the deceased was involved at the time of death.

The executor may sell assets of the estate to meet these costs, however should obtain accounting advice as to any capital gains tax implications from the sale of estate assets.

- Complying with any taxation obligations on behalf of the estate. Some of these responsibilities include:
 - Arranging for the preparation and lodgement of prior-year tax returns on behalf of the deceased;
 - Applying for a tax file number for the deceased estate if income is generated and a return needs to be lodged;
 - Arranging for the preparation and lodgement of tax returns for the deceased estate, if necessary;
 - Paying tax on behalf of certain beneficiaries.*
- Making maintenance distributions to dependents prior to the completion of the estate.
- Distributing the estate in accordance with the Will after all debts have been paid. This may include:-

- transferring property to the beneficiaries of the estate;
 - paying out specific legacies; and
 - distributing personal effects.
- Establishing trusts for beneficiaries who have not yet reached 18 years, are mentally incapable or there are specific instructions to do so in the Will.
 - Being required by the court to produce a full inventory of the estate and/or an account of the administration of the estate.

It should be noted that Executors can be held liable for waste of the estate assets.

As you can see the Executor's role is a very important one with much responsibility. We urge Executors to seek legal advice at the outset of the administration for direction and advice.