

What is an Executor?

The Executor of your estate is the person or persons named in your Will who are entrusted with the job of carrying out your instructions. The Executor must ensure that your assets are gathered in and distributed to your named beneficiaries after your debts are paid.

What rules apply to administering an estate?

During the period of administration, an estate is a trust and is therefore governed by the rules of the *Trusts Act* as well as the *Succession Act*. An Executor must also comply with the terms of the Will and any other documents effecting estate assets, such as contracts the deceased may have entered into prior to death, and company constitutions. An Executor may also have to consider family trust deeds or self-managed superannuation fund deeds. It is possible that an Executor will need to complete and file a final income taxation return for the deceased person and, in some circumstances, an income taxation return will be required for the estate itself.

What is Probate?

Probate is the official process of “proving” a Will and involves making an application to the Supreme Court of Queensland after publishing a series of advertisements of your intention to file and swearing an affidavit in relation to the Will for filing with the Court.

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"I didn't take it with me; I had it delivered."

It is not compulsory to obtain a Grant of Probate in Queensland. Usually, one will only be sought by an Executor in the following circumstances:

1. If the Executor is doubtful that the Will to be administered is the last Will of the deceased person;
2. If there are concerns that someone will challenge the validity of the Will or otherwise make a claim against the estate; or
3. If a third party requires to in order for the Executor to deal with estate assets.

Banks, financial institutions, insurance companies and share registries will request the Executor to produce a Grant of Probate before the Executor can withdraw the money, claim the insurance or transfer shares, for example, if the value of the assets are over a set value. This value varies from institution to institution but is usually around \$50,000.

What if there is no Will?

If there is no Will, the laws of intestacy decide who gets the deceased person's estate. In some cases, this may be the Queensland Government.

The person entitled to be the administrator of the estate (ie, the equivalent of the Executor under a Will) is decided by law. Instead of applying for a Grant of Probate, Letters of Administration are sought.

Can my Executor or Beneficiaries be liable for my debts?

Estates can be insolvent and become bankrupt just like living people. Naming a friend or family member as your Executor or beneficiary does not condemn them to a lifetime of your continued debt. It is not possible to inherit debt under a Will.

Executors, however, personally contract with service providers they use to fulfil their role as executors. Whilst they are entitled to be paid out of the estate assets and it is only if there are insufficient funds in the estate that the Executors will be personally liable for these costs.

It is important to remember that funeral, testamentary and administration expenses have priority over the general debts of the deceased.

Tips for Executors and Administrators

- Present the funeral account to the deceased's bank. The *Banking Act* permits the bank to pay the funeral home's account direct from the deceased's account. The bank is not allowed to reimburse you however so it is important that you do not pay the invoice yourself.
- Any cash gifts made under a Will attract interest if they are not paid within 1 year of the deceased's death.
- You have an obligation to maintain the assets of the estate from loss – this may include insuring assets that the deceased did not bother to insure during his or her own lifetime.
- If a house forming part of the estate will be vacant for a period of 60 days or more, its insurance will be void unless you inform the insurer and take such further steps as the insurer requires to keep the insurance in place.
- Any powers of attorney previously in place have now ended. Do not use them.
- It is against the law to use a deceased person's internet banking or ATM card after they have passed away in all circumstances.
- The bank will freeze a deceased's persons account once the bank learns of the person's passing – give some thought to what direct debits may have been coming out of the account because they will stop.

If you would like to make an appointment with a solicitor from Rapid Legal Solutions' estate planning team to discuss the preparation of your Wills, please contact us on 4755 9100 or enquiries@rapidlegal.com.au

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