

MANAGING A DECEASED ESTATE



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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 will charge for services performed in connection with the administration of the deceased's estate.

If you are the sole executor, you will probably need the assistance of a solicitor to deal with the legalities of administration.

Will I be paid for being an executor?

You are entitled to apply to the Supreme Court for a commission for your work as executor. But if you are named also as a beneficiary in the will the bequest will be presumed to be payment for your administration unless there are circumstances or something in the will to invalidate that presumption. This presumption can often be overcome but legal advice should be obtained.

If you do not want to be an executor (even if you earlier agreed to be one) you can renounce the executorship by signing a 'renunciation' and filing it with the Probate Registry of the Supreme Court.

What are an executor's responsibilities?

In general terms, an executor's duty is to take care of the deceased's assets and property, see that debts and taxes are paid and finally to distribute the assets to the beneficiaries of 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 in bank or building society accounts, furniture, household appliances, jewellery, shares and other investments, insurances policies, superannuation, and holiday pay from work. In addition, if there 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 a certificate issued by 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 legal documents. You will also have to produce documentary evidence of death and of proper attestation of the will, and details of assets and liabilities, among other things.

Small estates

If an estate is very small, less than approximately \$20,000, there may be no need to apply for probate. However, you may need probate in any case if money of the

estate is held by a bank or building society which allows access to the funds only if the executor has probate.

Joint Assets

Joint assets pass by operation of law to the survivor and do not form part of the estate.

Superannuation

The trustee of the superannuation fund determines who will receive any superannuation. Superannuation usually does not form part of the estate unless the trustee decides to pay it to the estate.

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 any debts or taxes – including income tax – the deceased owed.

Funeral expenses are to be paid first and there is a particular order in which any other debts must be paid. Legal advice is required to ensure that the proper assets/beneficiaries bear the burden of these liabilities. After funeral expenses are paid, the executor is entitled to claim any expenses 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 will have to be opened, in the name of the estate, into which all funds owed to the estate must be deposited and from which debts must be paid.

Distributing the assets

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.

The executor must prepare a 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 they raised and what expenses and debts were paid from the proceeds.

Finally, the estate is wound up. This involves drawing up accounts – showing money paid into the estate and money paid out – which are sometimes required to be lodged with the Probate Registry.

What if there is no will?

If there is no will there will be no executors. If you are a close relative of the deceased, you can apply to the Probate Division of the Supreme Court for letters of administration; once granted, these make you a personal representative of the deceased and you then proceed in a similar 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 all household belongings plus the first \$200,000 of the estate and half of the remainder if there are children. The children divide the other half of the remainder. 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 relatives. If none of these is alive, the estate goes to the Crown. These rules are detailed and complex and legal advice should be obtained.

How can a solicitor help me?

A solicitor can:-

1. Inform you in detail about the rights and responsibilities of an executor
2. Help you to obtain and complete the legal documents needed to apply for probate
3. Assist you to identify and collect the deceased's assets
4. Advise you about the legal order in which debts must be paid and the remaining assets distributed
5. Explain the legal order of distribution of the estate in a case where there is no will
6. Help you draw up the report and statement on the assets for the beneficiaries.
7. Deal with any claims on the estate.