

Duties of an Executor: A Fact Sheet

Who is an executor?

The executor is a person that the will-maker has nominated to be in charge of the administration of the will-maker's estate following their death. The executor carries out the instructions set out in the Will, and is the legal personal representative of a deceased person.

What are the duties of an executor?

- Obtain the last Will of the deceased and organise the funeral or cremation.
- Notify the deceased's beneficiaries and business associates of the death.
- Look after the estate (e.g. make sure that all the deceased's assets are secure and arrange insurance protection where required).
- Arrange for the deceased's property and business investments that need managing to be managed.
- Value the estate as at the date of death.
- Obtain authority (apply for probate) to administer the estate. Get legal advice.
- Assume control of all the assets of the estate.
- Complete any necessary income tax returns. Get tax advice.
- Pay in this order:
 - funeral expenses;
 - any tax debt; and then
 - creditors, legal fees and any fees for administering the estate and obtaining probate, out of pocket expenses, etc.
- Prepare a final statement and transfer cash and assets to the beneficiaries (as per the Will), keeping appropriate records.
- Establish a trust if a beneficiary is under 18 years of age or mentally incapable or there are specific instructions to this effect in the Will. Note that many trusts will need ongoing administration over several years. Get legal advice.

What if more than one executor is appointed?

All the executors named in the Will can apply for probate. If only one executor wishes to apply for probate, the other executor(s) may renounce their duties or reserve their right to apply for probate at a later date. Get legal advice.

If I have been appointed as the executor must I make an application for probate?

You are under no legal obligation to do so. If you do not want to act as an executor you need to renounce your appointment as executor. If you do not want to act as executor and a substitute executor is named in the Will, the substitute executor can take on all the duties. If the Will does not name another executor, get legal advice.

Should there be a reading of the Will?

There is no requirement for this. The executor can arrange a meeting with family members of the deceased and beneficiaries named in the Will and explain the provisions there. Alternatively, it may be more practical to send a copy to anyone with a legitimate interest. It is not a legal requirement that a beneficiary be provided with a copy of the Will.

Can I be held personally responsible for what I do as an executor?

You are responsible for any loss which the estate incurs from your unauthorised or negligent acts.

Can an executor distribute the assets of the deceased contrary to the instructions in the Will?

No, the executor must follow the terms of the Will. To change the manner in which the assets are to be distributed, court action may be required. If all the beneficiaries agree, the terms of the Will can be altered by means of a Deed of Family Arrangement. Get legal advice.

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Must the executor get legal advice, and if so who pays for the advice?

It is advisable to get legal advice. The cost of legal assistance is a debt of the estate and should come out of the estate once probate has been granted.

What is an Application for Probate?

This is an application made by the executor to the Supreme Court of Western Australia. The executor must satisfy the Supreme Court of the following:

- that the Will is the last Will of the deceased, and there is no later Will;
- that when signing the Will the deceased was at least 18 years of age, was of sound mind and not subject to undue influence; and
- that the Will was signed in the manner required by law.

The application is made by way of an affidavit and the original Will is lodged with the Supreme Court. If the application is successful the Supreme Court gives the executor a document called a Grant of Probate which entitles the executor to proceed with carrying out the terms of the Will. Get legal advice.

When can I apply for probate?

You have to wait at least 14 days after the death of the will-maker before applying for probate.

Is there a set time for an executor to finish their duties?

The general rule is the executor must act within a reasonable time. A reasonable time is usually one year from the date of death.

Are there any circumstances when probate is not required?

If all assets are held in joint names a probate application is not required. If the deceased has made a nomination for their superannuation funds, and that is the only asset of the deceased, probate may not be required. If the estate is less than \$10,000.00 you may not have to apply for probate. Get legal advice.

What if the executor is delaying applying for probate?

The beneficiaries may complain to the Supreme Court. This is the only right a beneficiary has until the assets are distributed. A beneficiary does not own any property until the executor distributes the estate.

Can executors get paid?

Sometimes in the Will the will-maker may set out how much an executor is to be paid. The executor is not entitled to a commission unless all the beneficiaries agree or an application is made to the Supreme Court. The executor may recover from the estate any reasonable out of pocket expenses incurred whilst administering the estate.

Can the assets be dealt with as soon as probate is obtained?

The executor can deal with the assets as soon as the Grant of Probate is received. In many cases, however, an executor cannot safely distribute the assets until six (6) months have elapsed from the granting of probate. This is because, in some cases, members of the family may challenge the Will by applying to the Supreme Court of Western Australia.

Need Legal Advice?

Contact Citizens Advice Bureau to make a low-cost appointment at our Perth office, or for details of how to make an appointment at your nearest branch or by telephone.

(08) 9221 5711 (Lines open Mon-Fri 9:30am-4:00pm) **Level 1, 25 Barrack Street, Perth WA 6000**

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