

What is an executor of a will?

An executor is the person appointed by a will maker to administer the estate when they die. An executor's role involves making sure the deceased's debts are paid and their assets and possessions are collected and distributed according to the terms of the will.

Caution on who you appoint as executor

Administering an estate is rarely straightforward or easy. Choosing an executor is almost as important as the will itself. There are many tasks to perform, including looking after investments and taxation, as well as finding and proving all potential beneficiaries. It can therefore be a time-consuming exercise. It can also be emotionally draining where there are family disputes, legal claims on the estate or overly-demanding beneficiaries.

Importantly, if the executor makes a mistake in administering the estate, they can be held liable for the financial loss.

While being appointed as someone's executor can be an honour, they may not have the time, expertise or inclination to perform the duties of an executor. Many people who are nominated as executor of a will do not know what is required of them.

For this reason, some people appoint a solicitor or a trustee company to act as their executor, or they suggest to their executor that they ask a trustee company to assist them in their executorial duties.

Are executors paid for their time?

Executors are usually only paid if this is specified in the will. Executors have the right to apply to the Supreme Court for payment, however the court generally does not award payment if the executor is also a beneficiary under the will.

Can a person decline the appointment as an executor?

If the nominated person does not wish to be an executor, they can renounce the appointment by applying to the Supreme Court. They should do this before they start administering the estate, because the renunciation may not be granted if they've completed even some of the executor's duties.

What are the executor's first steps?

Typically the executor first needs to locate the will to ensure that any wishes regarding the deceased's funeral are carried out.

The executor may also need to release money from the deceased's bank account to pay for the funeral.

Another important task is to make an inventory of all estate liabilities and assets, and ensure those assets are secure, insured as appropriate, and protected from theft, damage and any form of deterioration.

Where there is potential for family disputes, it may be prudent to change the locks on the family home, and to store valuable items like jewellery in a safety deposit box.

The immediate needs of the beneficiaries must also be assessed to ensure they do not suffer any unnecessary financial hardship.

The executor must apply to the Supreme Court to be granted authority to administer the estate. This is known as obtaining 'probate of the will'.

How to minimise personal liability when acting as an executor

The executor could be personally liable if the estate suffers financial loss due to their actions (or lack of action). Here are a few tips to help minimise that from happening:

- Do everything possible to protect the estate assets from damage or theft.
- If the deceased owned a business, take immediate action to maintain the business activities. The executor should also ensure that they facilitate the sale or winding up of the business – if that is a requirement in the will – as soon as practicable.
- Ensure all taxes are paid prior to distributing the estate. If taxes are still to be paid after distribution, the executor has no legal right to ask the beneficiaries to pay them. The executor will be personally liable.
- In most States, the executor needs to correctly advertise for claims on the estate, so that potential claimants are given adequate notice. If a genuine claimant comes forward after distribution, the executor could be personally liable for that debt being paid if not done properly.
- Ensure all tasks are completed in a reasonable time. If they are not, and the estate suffers a financial loss as a result, the executor could be personally liable.

What are the other executorial duties?

Some of the other important duties of an executor include:

- **Determine the beneficiaries** – if the will bequeaths assets to non-specified people, such as ‘my children’, the executor will need to identify all of the people who fit into that category. This may not be as simple as it sounds if there is a blended family, a family rift or family living overseas.
- **Value the estate** – the executor must seek valuations on all estate assets, including valuations from licensed valuers or estimates from recognised sources where the value of an asset isn’t readily available.
- **Advertise for claims** – in most States, the executor has to give notice of death to all potential claimants against the estate, such as creditors and beneficiaries. This requirement can be satisfied by placing advertisements in newspapers and government gazettes. If a claim is received, the executor needs to decide whether or not to pay it.
- **Lodge tax returns** – before an estate can be distributed, clearance from the Australian Taxation Office must be given. This means the executor has to lodge a tax return for the deceased for the current financial year, and past years if the deceased failed to lodge a return.

The estate itself represents a separate tax paying entity and the executor must apply for its tax file number, and lodge a tax return each year the estate receives income, including capital gains on assets sold by the estate.

Importantly, the executor has a number of strategies they can use to minimise capital gains tax, including selling assets over two financial years (rather than one), distributing assets in specie, and maximising valuations at the time of death. These strategies can make a significant difference to the value of the estate that is eventually distributed to the beneficiaries.

- **Distribute the estate** – once all debts have been paid and specific gifts handed on, the executor may then distribute the remaining assets according to the directions laid out in the will.

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