

Executor Checklist

The role of an Executor is important. It is responsibility to carry out a person's final wishes as set out in their will.

What is an Executor?

An executor is the person or organisation who is responsible for carrying out the will maker's wishes as set in the will, after the will maker has passed away.

How is an Executor Appointed?

The executor(s) is appointed in the will. This person or organisation is granted formal authority through a process of application to the Supreme Court (the application process differs in each state). The outcome of the multistep process is a grant of probate, an official order from the court.

What is Probate?

Probate, more correctly a Grant of Probate, is a legal document that certifies that a will is valid and can be acted upon. It also gives the executor the legal right to administer the estate of the deceased person.

Obligations of an Executor

The executor is responsible for managing and protecting all the assets of the estate until they are distributed to the beneficiaries. The executor has a duty to avoid conflicts of interest and must act in the best interests of the estate and all of the beneficiaries.

Being an executor comes with legal and compliance obligations. The executor can be held legally liable for incorrect administration, for example, if:

- Something happens to assets that are uninsured
- Administration takes too long
- A distribution goes against the wishes of the will maker to one beneficiary to the detriment of another

The executor can be sued by the beneficiaries if they fail to administer the estate diligently and correctly. In addition to this, the Australian Taxation Office can hold the executor personally responsible for unpaid tax obligations.

Things for an Executor to Consider

Being an executor can be a substantial responsibility and a significant undertaking, depending on the size and complexity of the estate. Administering an estate can take more than a year of constant effort. The nominated executor should consider if they can commit to the role before applying for probate. Once probate has been granted, if the executor feels the process is too difficult or complex, it is not possible to simply opt out

- Do you have the time to manage all the paperwork required in a timely manner?
- Are you confident you have necessary business, legal and financial experience to create the best outcome for the beneficiaries?
- Will you be able to avoid conflicts of interest and address any likely conflicts?

In most circumstances, where the executor is a person known to the will maker, he or she does not receive any financial benefit or payment for taking on the role.

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When a person dies, what happens next?

- ✓ Locate the Will
- ✓ Arrange for the transportation of the body and the funeral
- ✓ Protect the assets of the estate, eg taking photos, changing the locks on the house, and taking out valuables insurance
- ✓ Stop any services eg home deliveries of groceries or visits from health professionals
- ✓ Obtain the death certificate from the appropriate State/Territory's Registry of Births, Deaths and Marriages
- ✓ Notify appropriate Government Authorities (eg ATO, Social Services) and Non-Government organisations where the deceased may have an account (eg, phone companies, utilities, insurance companies, Superannuation providers, Banks)
- ✓ Determine the Beneficiaries and ascertain the deceased person's assets and liabilities
- ✓ Assess the value of the deceased person's assets and liabilities
- ✓ Obtain probate if required, ensuring that any assets held interstate/Overseas are properly accounted for
- ✓ Pay the deceased person's debts, income tax, duties and funeral expenses
- ✓ Distribute the assets according to the terms of the Will, including sale of Real Estate
- ✓ Identify whether any testamentary Trust should be established as part of the Estate administration
- ✓ Act in accordance with fiduciary duties (eg ensuring that accurate records are kept for seven years)