

Fact Sheet: The Executor's Role

Have you been named as an Executor of an Estate? The passing of a loved one is never easy, nor are conversations about Wills and Estates. We are here for you if you need assistance or advice about a Will, Estate, or your duties and role as an Executor. We have prepared a brief outline of some of the most common duties and responsibilities.

What is the role of the Executor?

When someone dies, the Executor of their Estate is responsible for handling their final affairs. The executor is typically named in the deceased's Will or appointed by a court if there is no Will.

What are the key tasks of an Executor?

An Executor's tasks will vary from person to person, but some of the key tasks you may need to perform include:

- Locating the Will;
- Notifying relevant parties of the death;
- Making funeral arrangements;
- Gathering & managing assets;
- Paying outstanding debts & taxes;
- Distributing assets;
- Filing necessary legal documents.

Locate the Will - The first step is to locate the deceased's Will, as it will outline the executor's duties and provide guidance on how to distribute the estate. The Will may be located at the home of the deceased, held by their legal representative, a relative or by the Executor. A legal Will needs to be signed and witnessed to be valid.

Notify relevant parties - You should notify the deceased's family, friends, and relevant organisations of the person's passing. Some organisations may require a copy of the Death Certificate. The Will or the deceased's Advance Care Directive may indicate who should be notified, and how to get in touch with them. Apart from relatives, some of the more common parties who will need to be notified include:

- banks and financial institutions,
- social media providers,
- landlords/property managers if living in a rental property,
- an employer or employees,
- utility providers,
- insurance companies, including health insurance providers,
- Australian Tax Office,
- superannuation fund,
- vehicle, trailer, caravan or boat registration authorities,
- storage unit providers,
- regular care or service providers such as cleaners
- funeral director if a pre-paid funeral is in place

DEFINITIONS

The following are some common words used when we talk about Wills and Estates.

Will - a written legal declaration of a person's wishes regarding the disposal of his or her property or estate after death.

Beneficiary - a person who gains something from the Will.

Probate - is the process of a Court establishing that a Will is valid and represents the final testamentary intentions of the Testator.

Executor - a person or institution appointed by the maker of a Will to carry out the terms of the Will.

Intestate - without a legal Will.

Testate - having made a valid Will before one dies. A person who has died leaving a valid Will.

Testator - a person who has made a will or given a legacy.

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Elise Thomson, Principal Lawyer

Got a dispute?

Unfortunately, there are often occasions where the finalisation of a deceased Estate leads to disputes. This makes the role of an Executor even more difficult. As an official Executor you have the authority to make decisions in accordance with the contents of the Will.

We are often called in to assist when there are disputes about an Estate, and the first advice we give an Executor is to try to take the emotion out of the dispute, which is never easy as families grapple with the grieving process.

Throughout your Executor process we encourage you to record and document all interactions with others in relation to the Estate in case the matter ends up in a legal challenge. These records should include times, names and details of witnesses who may have been present at the time. You may be called to explain why you made certain decisions, so it's also wise to record this information at the time as it may not be clear when you're under pressure in a court battle.

If a dispute arises that can't be resolved amicably and easily, you're best to seek professional legal advice.

Make funeral arrangements – As the Executor, you may need to make funeral arrangements, including deciding on a burial or cremation and handling any associated costs. In many cases the deceased's wishes for a funeral and final resting place are outlined in an Advance Care Directive, and may even be included in a Will, although this is not encouraged. These documents may also indicate whether or not a pre-paid funeral or cemetery plot has already been arranged.

Gather and manage assets - You must identify and gather all of the deceased's assets, including bank accounts, investments, real estate, and personal property. You will also need to manage and protect these assets until they are distributed to beneficiaries. It is recommended that you prepare a list and photograph any personal property. Be mindful that some family members and other associates of the deceased may need or wish to access the deceased's property. This access should be supervised and monitored to ensure personal property is not tampered with until the wishes of the deceased can be identified and fulfilled.

Pay outstanding debts and taxes - You must pay any outstanding debts or taxes owed by the deceased or the Estate, using Estate funds. You will need to ensure you know the financial position of the Estate first. When notifying parties where a financial arrangement exists that the deceased has passed explore conditions of breaking contracts and arrange for final accounts to be issued as a matter of urgency. Ensure you also factor in the expenses associated with funeral arrangements.

Distribute assets - After all debts and taxes are paid, and funeral expenses met, as the Executor, you, can then distribute the remaining assets to the beneficiaries named in the Will, according to the instructions provided.

File necessary legal documents - You will need to file a final tax return for the deceased and any necessary legal documents to close out the estate.

It's important to note that the specific duties of an Executor can vary based on the size and complexity of the estate, as well as local laws and regulations. It can be a challenging and time-consuming process, so it's often recommended that you seek guidance from an Estate lawyer and a financial professional to ensure you fulfilling your obligations correctly.

NEED MORE HELP?

At **Thomson & Associates** we offer a caring and understanding approach to our Will and Estate services. We know it can often be an emotional time, and that no-one wants to consider the prospect of dying.

You can book an appointment directly through:

Website: thomsonandassociates.com.au

Phone: (08) 7082 3728

Email: reception@thomsonandassociates.com.au

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