

Duties of an Executor

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

Who Is My Executor?

Your Executor is the person whom you appoint in your Will to deal with your Estate after your death. See our separate Information Handout on *Choosing An Executor*. Although you may name one or more Executors in your Will, it is only after the Supreme Court has made an Order granting Probate to your Executor/s that he/she/they will have the legal right to act as your Executor/s.

What Are the Responsibilities of My Executor?

The first responsibility of your Executor is to locate your final Will and contact your beneficiaries. Because many of our clients review and change their Wills every few years, it is important that it is actually the last Will which is lodged with the Supreme Court with the Application for Probate. In this regard, we suggest that you inform your Executor of where your last Will is located and where a copy of it can be obtained.

The Executor would also usually handle the funeral arrangements in consultation with your family members. Often, your funeral will be arranged well before Probate is granted and before your Executor is officially appointed by the Grant of Probate. However, many of our clients spell out in their Wills the funeral arrangements they wish to have. We therefore recommend that, if your Executor has not read a copy of your Will, he/she obtains a copy as soon as possible after your death to check if you have specified whether you want to be buried or cremated, and whether you have set out any wishes with regard to your funeral.



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The next responsibility of your Executor is to obtain the information required to obtain a Grant of Probate so that he/she can be appointed to deal with your Estate as soon as possible. This will involve the Executor obtaining full details of all your assets and liabilities, so that a statement of assets and liabilities can be prepared and lodged with the application for a Grant of Probate.

It is also advisable for your Executor to see your Solicitor as soon as possible after your death, both to check if the Solicitor is holding the original or a copy of your latest Will, and to seek the Solicitor's assistance in applying for a Grant of Probate and advice as to the duties and responsibilities of acting as an Executor.

Once your Solicitor has prepared all of the necessary documents and the Court has appointed your Executor, it is your Executor's responsibility to inform the beneficiaries of your Will of your wishes, and then to carry out those wishes.

To carry out your wishes, your Executor may be required to:-

1. Close bank accounts
2. Notify relevant authorities of the fact of your death eg. Centrelink etc
3. Transfer the ownership of assets to your beneficiaries
4. Pay debts
5. Collect the proceeds of insurance policies or superannuation
6. Protect the assets of your estate
7. Sell all or some of your assets
8. Locate beneficiaries
9. Deal with any claims against your Estate
10. Arrange the preparation of tax returns, including a tax return to the date of your death and then a tax return or tax returns during the period from the date of your death until the last of your assets are distributed

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11. Act as trustee for any trusts created by your Will
12. Arrange for money to be made available for the support of any infant beneficiaries
13. Manage the investment of your assets until your Estate is finalised.

How Long Will It Take To Finalise My Estate?

Your Estate may be dealt with in as little as six months from the date of your death. However, where your Will creates a trust and/or where beneficiaries will not become entitled to legal ownership of any of your assets in your Estate until a certain event occurs (such as a child turning 18 years old) and or where life interest over a property is granted, it may take years to deal with your Estate.

In addition, a prudent Executor should hold off from distributing all of the assets of your Estate until he/she is satisfied that there are no outstanding liabilities and no likelihood of any claims being made against your Estate, and this may sometime take some time. These claims may include claims for professional negligence against a Doctor, Accountant or Solicitor, claims arising out of any business being conducted by you, and claims by someone who believes that you either did not provide for them, or did not provide adequately for them in your Will, when you have a legal obligation to do so. These claims can be made under the Inheritance Act 1972 by a spouse, a de facto spouse, or a child (including an adult child).

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