



AN EXECUTOR'S DUTIES

1. The first steps

After a person has died, the first duties of an executor are to arrange the funeral and to secure the assets. The executor will usually ask a family member to assist with the funeral preparations, but the executor does need to keep track of the expenses associated with the funeral. The expenses need to be reasonable in light of the size of the estate, as there needs to be sufficient funds remaining in the estate to pay all other creditors.

After the funeral is over, the executor needs to gather information about the assets of the estate for the purposes of applying to the Supreme Court for a Grant of Probate of the Will. Probate is confirmation that the last Will is valid. The executor's authority derives from the Will, not the Probate, so it is possible for the executor to act as executor before Probate is granted, but it is likely that the executor will not be able to administer all of the assets until after the grant has issued out of the Supreme Court.

The application for Probate will need to include all movable and immovable property held by the deceased in his or her own name as well as the deceased's own liabilities, together with market value of those assets and liabilities. Immovable property includes land and buildings, whilst moveable property includes motor vehicles, shares and bank accounts are considered movable. Joint assets are not included in the statement of assets and liabilities.

To accompany the application, the bare minimum documents the executor will need are as follows:

- The original Will and original codicils to the Will (if any);
- The original death certificate;
- A motion paper;
- The executor's affidavit in support of the application with all relevant details required by the Supreme Court; and
- A cheque for the Court fee.

2. Administering the estate

After the Grant of Probate issues, the executor is then in a position to administer any assets that could not be administered without the Grant.

Because the executor is a trustee, he or she is under onerous duties towards the beneficiaries (known as fiduciary duties), so the executor must retain detailed records of what he or she does in the administration of the estate. Reasonable expenses incurred on behalf of the estate to administer the estate such as the costs of selling assets are satisfied out of the estate. The executor will need to account to the beneficiaries for all of the estate's funds.



An executor must “get in” the assets. That is, the executor must secure the assets in order to protect them. It is essential for the executor to insure those assets that should be insured, eg motor vehicles and houses.

There is no Inheritance Tax in Australia, but the executor is under an obligation to file tax returns with the Australian Taxation Office as the deceased or the deceased’s estate may be liable for tax which will be paid out of the estate.

Once the assets are collected, it is the obligation of the executor to pay all liabilities of the estate out of the estate. Unless the executor is 100% certain of the liabilities, the executor should advertise for creditors to come forward under section 63 of the Trustees Act.

The executor might be forced to sell estate assets to pay liabilities. If assets are sold, the executor should sell them at market value.

Once liabilities are paid and assuming there are no challenges to the Will within 6 months of the Grant of Probate, the executor should distribute the net assets to the beneficiaries in accordance with the Will.

3. When legal advice should be sought

Whenever an executor is unsure about how to deal with an estate, the executor should obtain advice from a lawyer who is experienced in the area. Murfett Legal has one of the most experienced estate planning and estate administration teams in Western Australia and is ready to assist executors to understand their duties.

For further information contact Murfett Legal by telephone on +61 8 9388 3100, via our website at www.murfett.com.au or email one of the following directors:

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