

Executor of a deceased estate?

An executor is one or more persons named in a will who the deceased wishes to administer his or her estate. Generally an executor takes charge of the deceased's assets and property and ensures that all outstanding debts, charges and taxes are paid before distributing the net assets to the beneficiaries of the will. The duties of an executor can include auditing the deceased's assets, valuation of those assets and application to the Probate Registry of the Supreme Court for a grant of probate.

Probate is an order of the court saying that the will is valid and that the executor has the right to administer the estate. When applying for probate certain documents need to be completed and documentary evidence provided to the court; such as evidence of death, proof of proper attestation of the will, and details of assets and liabilities.

Named as executor?

If you have been named as an executor in someone's will it means the deceased person wanted you to administer his or her estate.

There can be one or more executors for a will. If you know that someone intends appointing you as executor, discuss the matter fully with them including the whereabouts of the will and other important papers. Executors are obliged to contact the beneficiaries of an estate and inform them of their entitlement. Beneficiaries can request to see a copy of the will but do not have an entitlement to see it. Executors can themselves be beneficiaries under a will.

Costs

Executors are entitled to claim costs and expenses incurred in administering an estate and should always keep a record of moneys received and paid out. If the will does not provide for payment to the executors, they can apply to the Supreme Court to recover their costs and to be paid a fee.

Functions

Usually a person is appointed both executor and trustee but the functions of each are different.

An executor's function is to look after the deceased person's assets, to pay any debts, and to distribute assets to the people named in the will.

A trustee's function is to manage money, investments or assets on a continuing basis for the benefit of certain beneficiaries in accordance with the wishes of the deceased.

Duties

The first duty of an executor is to locate the will and find out the precise nature of the duties and powers set out in it. A will is usually kept with the deceased person's papers, the bank, or with their solicitor. Having found the will, an executor should consult the deceased person's solicitor or his or her own solicitor to discuss the administration of the estate.

The deceased may have left income of the estate to someone for life where, after that person's death, the capital of the estate is to go to children. A trustee will have a continuing obligation to invest the capital fund until the children are grown up. A trustee's powers of investment will depend on the terms of the will and on the provisions of the Trustee Act which specifies authorised investments.

Trustee companies

If the Public Trustee or a trustee company was appointed executor and/or trustee, they can charge a percentage value of the estate for administering the estate and a percentage of any income received by the estate. Rules on this are available from the Public Trust Office.

What if there is no will?

If there is no will there will be no executor. If you are a relative entitled to the whole or part of the estate of the deceased, you can apply to the Probate Division of the [Supreme Court](#) for letters of administration; once granted, these make you a personal representative of the deceased and you then proceed in much the same way as an executor.

There are rules laid down by law about how assets are to be distributed when there is no will. Briefly, a surviving spouse receives the whole estate if there are no children, or all household belongings plus the first \$200,000 of the estate and half the remainder if there are children. In that case the spouse may elect to take the matrimonial home as his or her share. The children divide the other half of the remainder.

If there is no legal or de facto spouse or direct descendants, the deceased's parents receive the whole estate, otherwise it goes to brothers and sisters or other close relatives. If none of these relatives are alive, the estate goes to the Crown.

How will a Solicitor help me?

Your Solicitor can:

- Inform you in detail about the rights and responsibilities of an executor;
- Prepare and help you to complete the forms needed to apply for probate;
- Assist you to identify and collect the deceased's assets;
- Advise you on the possibility of tax liability;

- Advise you about the legal order in which debts must be paid and the remaining assets distributed;
 - Explain the legal order of distribution of the estate in a case where there is no will;
 - Help you draw up the report and statement on the assets for the beneficiaries.
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These brief notes are for your general information. They are not a definitive analysis of the subject and professional legal advice should be taken before any course of action is pursued. Your Solicitors at Barry F. Cosier & Associates can advise you further regarding any matters of this nature.



*50 Main Street Lithgow
Email: info@cosier.com.au
Phone: 02 6352-1599*

Fax: 02 6352 1645

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