

The role of executor of a Will

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Date: **Monday December 6, 2021**

When someone dies leaving a Will, they will have appointed one (or more) executors. An executor is the person responsible for giving effect to your instructions in your Will and any Statement of Wishes, that relate to the distribution of your property and personal belongings.

This blog explains the role of your executor after your death, including their responsibilities and obligations and what you should consider when appointing an executor.

Responsibilities, obligations and rights of an executor

After someone dies, the nominated executor will have the following duties:

- They will need to apply to the Supreme Court of Victoria for a Grant of Probate which confirms the validity of the Will and provides the executor with authority to distribute the assets of your estate. Depending on the requirements of the asset holders, such as banks, a Grant of Probate is sometimes not required for simple or small estates.
- Arranging your funeral, including whether there will be a burial or cremation.
- Ascertaining the assets and liabilities (debts) of the estate. Once the executor has received the Death Certificate, they will need to inquire with the various asset holders, such as banks and share registries, to determine and confirm what accounts and assets the deceased held.
- Collecting assets of the estate and paying the estate liabilities, after the Grant of Probate is obtained.
- Executors should safe keep bank account details and other important documents relating to any mortgages, original Certificates of Title and other important paperwork relating to the estate.

- Ensure that any individual tax returns of the deceased are finalised, as well as tax returns lodged on behalf of the estate. The Australian Taxation Office requires executors to prepare tax returns:
- from the end of the last financial year until the deceased's date of death (this is known as a 'date of death tax return');
- from the date of death until the end of the current financial year;
- and thereafter, until the estate is distributed and no longer receives income.
- Distributing the estate when it is time to do so. Generally, an executor should wait six months from the date of the Grant of Probate before distributing an estate. The time in which your executor distributes your estate can vary depending on the assets and liabilities and whether a claim against your estate has been made.
- Dealing with any claims that are made against your estate, such as a Family Provision Claim. This is where an eligible person who has been left out of your Will seeks a share of your estate. It is important that your executor deals with any potential claims against your estate and seeks legal advice in relation to them.

What should I consider when appointing an executor?

- Whether your nominated executor will be prepared to act gratuitously (without seeking any payment), or whether they will exercise their right to seek remuneration from your estate, known as 'Executors Commission'. Under the *Administration and Probate Act 1958* (Vic), an executor is able to make an application to the Supreme Court for an award of commission for their pain and trouble in managing your estate.
- Whether the interests of your nominated executor may clash with those of the beneficiaries appointed in your Will. Be sure that the executor will not act in his or her own interests in preference to the interests of the beneficiaries of your estate.
- Where your family circumstances are not complicated, or where your spouse or an adult child is the sole beneficiary under your Will, it is recommended that they should be named as executor, unless there is a good reason not to.
- It is advisable to appoint a substitute or 'alternate' executor who will act if your appointed executor is unwell, dies before you or for some other reason is unable to take up the appointment.
- In a blended family situation, you may want to appoint multiple executors such as your current spouse and an adult child of your previous relationship. However, you should only do so if you are confident they can work together respectfully and are comfortable overseeing each other's actions.
- Where you have no obvious executor to appoint, where the estate is significant and there is a range of beneficiaries, or where the beneficiaries are minors or charities, you may consider appointing a trustee company, such as State Trustees. However, it should be noted that trustee companies will charge for their services and in most cases will charge a commission.
- In some circumstances, a family member or friend who is not a beneficiary may be willing to act as executor on a gratuitous basis. It is crucial that they are trusted and considered capable and able to carry out executorial duties.

Other information about executors and their appointment

- In Victoria, an executor can be removed by the Supreme Court under the *Administration and Probate Act 1958* (Vic), if they are considered unfit for their role, or have not administered the estate properly.

- Where you die intestate (that is, you die leaving no Will) or you haven't nominated an executor in your Will, or for some reason, the executor you nominate will not or cannot act or is not otherwise suitable for the position, the Supreme Court will appoint an 'administrator' to administer your estate. This person will most likely be the beneficiary entitled to the largest portion of the estate in your Will, although this is subject to the court's discretion.

How a Wills and Estates lawyer can help

We can assist if you are named as an executor of an estate and you need to obtain a Grant of Probate or a family member has indicated they intend to contest the Will.

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