

DUTIES OF AN EXECUTOR

The Executor is required to locate the latest version of the deceased's will and then determine the nature of the duties and powers set out in the will. An executor should consult a lawyer to discuss the administration of the deceased's estate.

The Executor should check whether the deceased left any specific instructions in the will regarding the funeral arrangements or the disposal of the body and then arrange the funeral accordingly. Most banks will release funds from the deceased's account for funeral expenses before a Grant of Probate has been obtained.

The Grant of Probate is a court order confirming the validity of the will. Documents must be filed in the office of the Registrar of Probate in the Supreme Court to obtain a grant of probate, and the Registrar will then decide whether the deceased's will is legally valid.

The Executor's next duty is to consolidate the deceased's assets, pay all the deceased's debts and then distribute the balance of the estate according to the directions in the will. The duty to distribute the estate may require continuing obligations if the beneficiaries are young children, as the executor must invest the estate funds until they are old enough to receive their share. Non-residuary beneficiaries are normally required to wait until a Grant of Probate is made. At this time, the will becomes a matter of public record.

The Executor must keep a record of money received and paid out and provide a copy of the will and any other relevant document to any residuary beneficiary named in the will. Residuary beneficiaries are the people who inherit the remainder of the estate after special gifts have been made.

An executor is entitled to claim all expenses incurred in administering the estate and is usually entitled to an executor's commission. Executors can apply to the Supreme Court for an executor's commission of up to 5 per cent of the estate's value. Sometimes the will authorises commission charges to be taken or the residuary beneficiaries consent to a rate of commission.

There are instances where there is no Executor to manage the estate. For example, the valid will has failed to appoint an executor, the executor has died before the will maker, the executor has become divorced from the will maker or the executor appointed under the will does not want to accept the appointment. In these situations, the court can still grant probate of the will which is called "letters of administration".

This article contains general information only and is not provided as legal advice. Professional advice should be taken before any course of action is pursued, or any information here is relied upon.

For advice about the duties of an Executor contact Sharon McRae, Caroline Symington or Anna Vadaketh on 9890 3321.



701 Station Street, Box Hill, Victoria 3128
Tel : 03 9890 3321 Fax : 03 9898 4266
email : legal@robinsongill.com.au
www.robinsongill.com.au