
DUTIES OF AN EXECUTOR



Level 3, 104 Frome Street
ADELAIDE SA 5000
Tel: (08) 8415 5000
Fax (08) 8415 5099

WHAT IS AN EXECUTOR

An executor is a person or a trustee company who has been especially chosen by the deceased person, to take control of his or her assets, to pay all debts and to distribute the balance of the assets to the beneficiaries. They are named in the will and must act impartially. An executor can also be a beneficiary.

WHAT ARE THE DUTIES OF AN EXECUTOR?

An executor has complete personal and legal responsibility for all matters involving the estate. Although every estate is different, the executor's duties include:

- Making sure that appropriate funeral arrangements have been made.
- Ensuring that the last will of the deceased has been located.
- Protecting and insuring assets.
- Securing valuables and property.
- Informing all beneficiaries of their entitlements.
- Confirming all financial details (including debts) of the estate.
- Applying for a Grant of Probate (if necessary)
- Collecting the assets of the estate.
- Selling assets and property (if required).
- Preparing a final tax return on behalf of the deceased person (if necessary).
- Paying all debts of the estate.
- Distributing the assets to the beneficiaries.
- Issuing financial statements of account to the beneficiaries.

WHAT IS PROBATE?

A Grant of Probate is the official document issued by the Supreme Court, which confirms that:

- The will is the last will of the deceased person.
- It is a valid legal document.
- The executor named in the will is authorised to administer the estate.
- All assets and liabilities of the deceased have been disclosed to the Court.

The Grant of Probate gives the executor the necessary legal authority to take control of the estate assets. It must be produced for all dealings with government and financial institutions, companies, share registries and others with an interest in the estate assets. However for some small estates with no real estate, it may be possible for the estate to be administered without a Grant of Probate. It is up to the financial institutions concerned as to whether they will require a Grant of Probate. An application is made to the Court by the executor. Most executors seek legal assistance in the preparation of these documents.

WHEN DOES DISTRIBUTION TAKE PLACE?

An Executor is able to distribute the estate according to the terms of the will after a Grant of Probate and after assets have been "collected". This may involve selling assets, closing accounts or making inventories of furniture. Legacies must be paid first, specific bequests handed over and cash or assets can be transferred to the beneficiaries named in the will. The executor should also inform your beneficiaries of any Capital Gains Tax liability that may commence as a result of receiving a share in

the estate. If there is a dispute between beneficiaries as to who gets what asset, the executor has the final decision which is binding on all beneficiaries.

WHAT IS A TRUSTEE?

When an executor completes the administration of an estate and there is an ongoing interest, he or she becomes a Trustee and continues to administer the estate until it can be distributed. An example is where beneficiaries of a will are infants and payment is deferred until they reach 18 years (or older). Other situations requiring trusteeship occur when there is life interest in a property or a charitable fund or testamentary trust is set up.

One responsibility of a Trustee is to invest the trust monies. The Trustee Act clearly defines the areas where investments are permitted and gives the legal framework for the ongoing responsibilities of Trustees. A Trustee must act prudently when investing monies and regularly review the investments.

Because the Trustee is often required to manage assets over a long period, the need to seek financial advice is essential. It may also be wise to have a “substitute” executor/trustee named in the will to take over if the trustee dies before the assets can be distributed.

HOW TO GET ADVICE?

Executors should seek initial advice to find out the extent of their obligations in the circumstances, the requirements for handling the assets of the estate and the legal formalities to be completed. Following that advice executors can undertake some or all of the role themselves or seek the ongoing advice or assistance from their solicitor. All solicitors charges are based on time spent and do not depend on the value of the assets. These costs are an estate expense.

Adelta Legal has been providing specialist estate administration services to executors for many years. Call our office to make an appointment to discuss your situation.

Check our website for further information at www.adelta.com.au