



What is involved in acting as an executor of an estate?

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So your loved one or friend has passed away and you have just found out that you are appointed their executor. You have no idea what that means and what the role entails. Here is what you need to know about being an executor of an estate.

1. Ordinarily, an executor of an estate must be appointed by the willmaker under their Will. A person appointed as an executor can renounce their appointment before the below process is started and undertaking any executorial duties.
2. As there are no property rights in the willmaker's body, the executor has a "duty of burial". Practically speaking, this means a right to possession of the deceased willmaker's body and a duty to arrange the funeral. In preparation for the funeral, the undertaker/funeral director will register the death and a death certificate will be issued (usually a couple of weeks later).
3. With the last Will of the willmaker and death certificate in hand, an executor of an estate can apply to the Supreme Court of NSW for a grant of probate. A grant of probate ratifies the willmaker's appointment of the executor under their Will. Preparing the application for the grant of probate involves a number of court documents and an inventory of all the assets and liabilities of the willmaker. This will involve a number of investigations by the executor into the assets and liabilities of the willmaker. Some of these assets may need protection (for example, collecting valuables, insuring property, dealing with investments, etc). For this reason, it is not uncommon for the executor to seek the assistance of a legal professional to ensure the documents are prepared correctly and the estate is properly administered. Executors have a duty to get in the assets of the estate and distribute the assets to the persons entitled. An executor of an estate is a 'trustee role', meaning that an executor has strict obligations and duties to fulfil.
4. During this time, an executor of an estate should be alert to the immediate needs of the willmaker's family. For example, does the family have an alternate source of income and/or access to sufficient funds? Ordinarily, a bank account in the willmaker's sole name will be frozen until a grant of probate has been obtained. However, a "joint" bank account passes to the surviving joint bank account holder(s) by operation of law (i.e not the deceased's Will), so there may, in fact, be funds available. Also, in our experience, where the deceased willmaker had a bank account in their own name, most financial institutions will allow for a funeral invoice in the

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own name, most financial institutions will allow for a funeral invoice in the account holder's name to be paid for upon production of the funeral invoice (thereby effectively 'unfreezing' the account for this particular transaction).

5. Once a grant of probate has been obtained, the executor can then administer the willmaker's estate in accordance with their Will. This will, firstly, involve repaying all of the debts and liabilities of the willmaker. This may also require assets to be 'realised' to do so. It is important for the executor to keep in mind particular gifts in the Will, and also potential capital gains tax implications of these. Thereafter, the surplus of the willmaker's estate can be distributed to the beneficiaries in accordance with the Will. Distribution of the assets may involve the preparation and registration of a number of documents that are unique to different types of assets (e.g. land, shares, etc).

6. Following the willmaker's Will may require an executor of an estate to have a further "caretaking role". For example, an executor may be appointed the trustee of a life interest or trust, which is to be managed and administered on behalf of a specific beneficiary. This role may continue beyond administration of the willmaker's estate.

7. The executor is also be required to lodge tax returns on behalf of the willmaker and the estate, unless insufficient income is earned.

8. If the executor owned assets located outside of New South Wales, then it may be necessary to apply to the Court where the asset is located. This is called obtaining a "re-seal" of the grant of probate. Again, this may require legal documents to be prepared and the assistance of a legal professional. However, assets in that location will likely not otherwise be able to be dealt with.

9. If a person makes a claim for provision against the Willmaker's estate, or the Willmaker was engaged in legal proceedings at the time of their death (for example, family law proceedings or a dispute), then an executor of an estate may need to be engaged in legal proceedings, which may cause the estate to take longer than anticipated to distribute to the beneficiaries.

If you have been appointed an executor of an estate please do not hesitate to contact our [Wills and Estates team](#).

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