



Are you an Executor of a Will - What are your duties?

An executor is the person appointed in a Will to carry out the wishes of a person after that person dies. The Executor organises to collect the assets of the deceased, pay any debts and distribute the property to the beneficiaries as sent out in the deceased's Will.

The duties of an Executor include:

1. **Arranging the funeral and burial or cremation of the deceased.** Care should be taken to ensure that the deceased's wishes are carried out, and the Will is checked for specific directions. For example, it is an offence to cremate a person's body if the person left a written direction stating he or she does not wish to be cremated. The costs of the funeral and burial are paid from the Estate before the beneficiaries receive their share. Bank and other financial institutions usually release funds from the estate, which are otherwise tied up, to pay funeral expenses. If the deceased was a member of a health fund or a registered club, funeral benefits may be available.
2. **Locate the Will.** The Executor is required to locate the original Will. If you are not in possession of it, you will need to search amongst the deceased's personal papers, and if not found make searches with the deceased's lawyer, their bank and NSW Trustee and Guardian. When the Will is located, there is no legal requirement that there be a "reading of the Will". However the Executor must allow certain people to inspect, and be given a copy of, the Will. These include any person named in the Will as beneficiary and, a spouse, parent, or other person who would be entitled to a share in the estate if the deceased died without a Will.
3. **Identify the assets and liabilities of the deceased.** Generally assets held in the deceased person's sole name are assets of the estate and are 'frozen' until a Grant of Probate is obtained. Certain assets held by the deceased and another living person jointly will not form part of the estate and may become the sole property of that other living person. An advertisement is to be placed on the Supreme Court website notifying persons claiming an interest in the estate, or who are creditors of the estate, to send their claims to the Executor. The Executor will need to take care and control of the deceased's assets, preserve them and make sure they are insured where necessary. If the assets are wasted due to the Executor's action or inaction, the Executor may be held personally liable.
4. **Obtain Probate.** Probate is an order of the Supreme Court and it officially grants to the Executor the power to administer the estate. The word 'probate' means prove. Amongst other things, it means proving to the Court the death of the deceased, the Will is the last Will, what the assets and liabilities are, and who the beneficiaries are. The grant of the Probate order allows the Executor to unfreeze the assets to administer the Estate of the deceased.
5. **Administer the Estate.** Once Probate has been granted, the Executor has authority to deal with the assets and liabilities of the Estate. This authority includes;
 - to prosecute claims against third parties. For example if the deceased is owed money by a third party or if the deceased's death was a result of negligence;



- to defend the estate against claims;
- sell any estate assets that need to be sold;
- once the estate's assets have been collected, and all claims prosecuted, to pay the debts of the Estate,
- lodge the last tax return for the estate and an income tax return for the estate, if necessary.

6. **Distribute the Estate.** Finally the Executor must distribute the estate in accordance with the Will. This process involves organising the transfer of assets from the deceased to the intended beneficiary.

If you are named as Executor of a Will, you do not have to accept the responsibility. You can renounce your appointment as long as have not done anything that can be interpreted as taking on or assuming the role. If a substitute Executor is named in the Will, they can take on the duties. If no other Executor is named, an interested beneficiary can apply to the Court to be appointed as Administrator.

If you are Executor and also a beneficiary under the Will, the gift to you under the Will is presumed to be your payment for being Executor. However, there could be a specific provision in the Will, or special circumstance to overturn that presumption. If you are not a beneficiary under the Will, then you are entitled to apply to the Supreme Court to be paid a commission for the work you undertake as Executor.

Resources to assist you:

We have prepared the following Guides to assist you to understand and deal with the deceased estate:

- Estate Checklist
- Step By Step Guide for Probate
- Probate and Estate Administration – Commonly asked questions

If you would like a copy of any of our guides, go to the Wills & Estates Section of FAQ's and Guides on the 'Publications' tab on the homepage of our website www.batemanbattersby.com.au.

If you have been appointed as an Executor and require assistance to obtain a grant of probate and administer the estate or have any query regarding an estate, please contact [Lisa Delalis](mailto:lisa.delalis@batemanbattersby.com.au) of our office on 02 4731 5899 or email willsestates@batemanbattersby.com.au.