



## Can Executors get paid?

*Executors are entitled to be reimbursed for the reasonable expenses they incur in administering a deceased's estate, but being paid in addition for the time they spend in the role (Executor's Commission) depends on a number of issues.*

### Executor's Commission

If you're an Executor and also a beneficiary under a Will, it's presumed that the gift left to you as beneficiary is your payment for being Executor. However, the Willmaker can also include a specific provision in their Will for a payment to be made to the Executor for their work in addition to the gift.

If there is no such specific provision in the Will, and there are special circumstances to overturn the presumption, the Executor may be entitled to Executor's Commission, but to be entitled the Executor must make an application to the NSW Supreme Court under Section 86 of the Wills Probate Administration Act (PAA). Section 86 allows commission to be paid to the Executor from the assets of the estate for their "pains and trouble as is just and reasonable".

### Making a Claim for Executor's Commission

To claim Executor's Commission, you must ordinarily lodge an application with the NSW Supreme Court. However, there is no need to get approval from the Court, if all the affected Estate beneficiaries are over the age of 18 and agree that the Executor should be paid an amount by way of commission. The affected beneficiaries are usually the residuary beneficiaries of the estate, being those who are left the remainder of the Estate after the distribution of any specific gifts or bequests contained in the Will.

In the event that the affected beneficiaries don't all agree to provide their consent to the payment of Executor's Commission, or can't agree on the amount of commission that should be paid, then the Court will determine your entitlement to commission. When you lodge an application for Executor's Commission you must also file with the Court the Estate Accounts. This means you must present a breakdown of the Estate assets and liabilities, detailing how you managed the Estate and essentially proving that you dealt with the Estate in accordance with the terms of the Will.

The process of applying for commission usually takes some time, both for the Executor in preparing the relevant documentation and for the Court to consider the application. As this may delay the final distribution of the Estate, and the fact that the legal costs incurred in making the application for commission will be paid from the Estate and thus reduce the residual beneficiaries' share, it will generally be in the interests of all parties if the payment of commission can be resolved without having to apply to the Court.



## What does the Court consider?

The main consideration of the Court will be the “pain” and “trouble” you encountered in administering the Estate. The “pain” aspect refers to the responsibilities and worry of completing the tasks you undertook, while the “trouble” covers the work that you completed. The more complex the Estate and the more difficult it was to finalise it, the more likely the Court will consider your claim a valid one. Other matters that the Court will consider in respect to your application for commission include:

- The size of the Estate;
- Any other benefits you were gifted under the Will;
- Whether you had to deal with any litigation on the Estate, including a challenge to the Will;
- Whether you were prompt and efficient in administering the Estate;
- The amount of work, responsibility and time spent carrying out the wishes of the Will;
- Any problems you encounter in the course of administering the Estate;
- The rights of the beneficiaries and how much your commission may affect their share.

## How much can an Executor receive?

There is no scale set under the PAA about how much commission an Executor can receive and each application for commission will be determined by the matters presented to the Court. However, as a general rule, a 1% to 2% commission on the value of assets is usually granted. The test will ultimately be - what amount is just and reasonable after considering the “pain” and “trouble” you have encountered in the administration of the Estate.

***If you've been appointed as an Executor of a Will and want to know more about applying for Executor's Commission or require assistance to obtain a Grant of Probate of an estate please contact [Lisa Delalis](mailto:Lisa.Delalis@batemanbattersby.com.au) or [John Bateman](mailto:John.Bateman@batemanbattersby.com.au) at our office 02 4731 5899 or email [willsestates@batemanbattersby.com.au](mailto:willsestates@batemanbattersby.com.au).***