



Your Rights as a Beneficiary

Beneficiaries under a Will usually want to know how much money they are going to receive or be able to identify their interest in an estate. In some cases, they may want information in relation to the overall assets of the estate. This need for information is understandable and many concerns can arise when there is uncooperative or secretive behaviour on the part of the person who is administering the deceased's estate, especially if the beneficiary and the deceased were members of the same family.

It's human nature for a person to be inquisitive and/or mistrustful when information is withheld from them and common complaints made by beneficiaries include:

- The beneficiary has not been provided with a copy of the Will and does not know what they are entitled to; and
- The beneficiary is not being provided with information in relation to the asset and liability position of the estate; and
- The beneficiary is being "kept in the dark" when it comes to information in relation to the estate and its administration.

Fortunately, beneficiaries of estates do have legal rights under the NSW Succession Act 2006 which can be enforced against the Executor or Administrator of an estate. Executors and Administrators also have legal obligations under this Act in respect to both their administration of an estate and their duties to beneficiaries.

Executor's fiduciary obligation

An executor stands in a fiduciary relationship to all beneficiaries of the estate. Fiduciary simply means a relationship of trust. This relationship is central to the rights of beneficiaries and the obligations of executors in estates. The executor has been entrusted with the assets of the estate and the power to administer the estate for the benefit of the estate beneficiaries. The executor must therefore discharge his or her duties with due care and loyalty to the beneficiaries.

Identifying a beneficiary's interest

A beneficiary should be promptly informed of their entitlement under a Will or if there is no Will of their entitlement on the deceased's intestacy (the rules governing the distribution of an estate in the absence of a Will).

When a beneficiary has not been properly informed of their entitlement the law provides beneficiaries with certain rights to access information relating to their entitlement. Those rights include a right to receive a copy of the Will. In New South Wales the law compels a person who has possession or control of a Will of a deceased (and this person does not necessarily have to be an executor) to provide a copy of the Will to any person named or mentioned in the Will, upon request.



Once a beneficiary receives a copy of the Will, they will usually be able to identify their interest in the estate. The beneficiary's right to further information is often dictated by the nature of their interest in the Will. Essentially, there is a distinction between a beneficiary that holds an interest in a specific asset such as a property, jewellery, or a bank account and a beneficiary that holds a residual or remainder interest in the estate.

Seeking information about the estate

A beneficiary's right to information in relation to the operation of an estate is historically steeped in English Law which has continued to inform Australian Law. It has been an accepted legal principle for many years that estate documents "belong" to the beneficiaries and are in a sense the property of the beneficiaries. Access to those documents is an entitlement that should not be denied by the executors.

For a beneficiary to effectively monitor the administration of estate property, it goes without saying the beneficiary needs information regarding the performance of the executor's duties and powers. To this end the law has imposed on executors and trustees a duty to account to beneficiaries. However, the nature of the beneficiary's interest can dictate the extent of information they are entitled to.

A beneficiary that holds an interest in a specific asset has a right to access information in relation to that specific asset but they are not strictly entitled to access information in relation to the other assets of the estate, unless there are special circumstances.

The rights of a beneficiary holding a residual or remainder interest in an estate are much broader. As a residuary beneficiary, the entitlement to access information extends to the ability to access information relating to the management and administration of the estate in its entirety. This access extends to all information about the estate and a right to see estate documents as it is information. As every transaction occurring in the estate will ultimately affect that beneficiary's interest they are entitled to a full accounting of the estate. If information is withheld the beneficiary can approach the Court to compel the executor to provide the relevant information.

Further rights of beneficiaries

Beneficiaries have further rights in estates including the right to be informed of the expected date of distribution and any delays that may arise and to be advised of any litigation against the estate that may affect their entitlement under the Will or intestacy. Beneficiaries who are due to receive a financial legacy are also entitled to receive interest on it if the legacy is not paid within 12 months of the deceased's death.

If you are a beneficiary in a Will and are having problems getting information about your entitlement or have concerns about the manner in which the deceased's estate is being administered please contact [Lisa Delalis](mailto:Lisa.Delalis@batemanbattersby.com.au) or [Ken Gray](mailto:Ken.Gray@batemanbattersby.com.au) of our office 02 4731 5899 or email willsstates@batemanbattersby.com.au.