



Registered TM 1227576

## *Dean R. Love & Associates*

Barristers & Solicitors  
DRL Legal Pty Ltd (ACN 123 034 846)

FAMILY LAW – CIVIL LAW – CRIMINAL LAW

ABN 34 123 034 846

**Perth Office:**  
1<sup>st</sup> Floor, 231 Adelaide Terrace  
PERTH WA 6000

**Postal:**  
PO Box 3263  
PERTH WA 6832

Tel: (08) 9218 9993  
Fx: (08) 9218 9557  
[enquiries@drlegal.com.au](mailto:enquiries@drlegal.com.au)  
[www.drlegal.com.au](http://www.drlegal.com.au)

## DUTIES OF AN EXECUTOR

**An Executor is the person named in a will to carry out the wishes of a person after they die. An Executor must carry out their duties:**

- Responsibly;
- within a reasonable time; *and*
- according to the terms of the will.

**An Executor's duties include:**

- sorting out the deceased's assets;
- paying the debts; *and*
- distributing the estate to the beneficiaries according to the terms of the will.

**The executor may also make arrangements for burial or cremation of the deceased's body.**

## What does an Executor do?

The executor is responsible for:

1. Notifying all beneficiaries named in the will
2. Managing the estate
  - Protect any business interests
  - Safeguard any income
  - Invest surplus funds
  - Collect any valuables

- Insure all property
3. Valuing the estate and keeping a list of those valuations
    - Cash
    - Business interests
    - Personal effects
    - Securities
    - Real estate
    - Sale of property
    - Debts due
    - Debs owing
  4. Obtaining authority to administer the deceased's estate
    - Apply for Probate or Letters of Administration (if necessary).
  5. Completing Income Tax returns
    - Obtain clearance from the Australian Tax Office
  6. Paying all debts owing
    - Sell sufficient assets, if necessary, to pay any liabilities
  7. Establish Trusts
  8. Dividing the estate
    - Prepare statements for each of the beneficiaries
    - Distribute cash and or assets to beneficiaries according to the provisions in the will

If the will includes instructions about funeral arrangements or organ donation, the Executor needs to make the necessary arrangements.

## **Executor's duties in relation to funeral arrangements**

The Executor should try to keep in mind the wishes, if any, of the deceased person, what the estate is and how much it is worth.

If the estate does not have enough assets to cover the funeral costs, the surviving members of the deceased's family who authorised the funeral arrangements would be responsible for the costs.

If there are no funds and family members do not wish to take on the funeral arrangements, the Department of Community Development may be able to assist. (Telephone 9222 2591 or 9222 2711.)

## **What is a Grant of Probate?**

You may need to apply for a Grant of Probate if the deceased:

- held bank accounts, shares, real estate or other such assets in their name; *or*
- were 'tenants in common' in real estate with another party.

A Grant of Probate is permission from the Supreme Court for an Executor to carry out the terms of a deceased's will.

To get a grant of Probate, you need to satisfy the Court that:

- the will is valid;
- there are no later wills;
- the deceased was over the age of 18, of sound mind and was not subjected to undue influence when signing the Will; *and*
- the will was signed in the manner required by law.

You cannot apply for a Grant of Probate until 14 days after death.

Any or all of the executors named in the will may apply.

## **Applying for a Grant of Probate**

An Executor may apply in person or appoint a solicitor or Trustee Company to act on their behalf.

The application consists of the following forms: a Motion, Affidavit and Statement of Assets and Liabilities. These forms can be bought from some stationers. Read the forms carefully. Complete them following the instructions.

The original will and certified copy of the Death Certificate also needs to be lodged with the court. The application should be lodged by;

- the Executor in person (or by one of the Executors, if there is more than one); *or*
- A legal practitioner acting on an Executor's behalf

It should be lodged at the Probate Registry, 14<sup>th</sup> Floor, 111 St Georges Terrace, Perth between 9.00 a.m. and 4.00 p.m., Monday to Friday. There is a fee payable.

The application may be posted if the Executor lives more than a 30 kilometre radius from Perth.

If the application is successful, the Executor gets a document saying they can carry out the terms of the will.

**Note:** Where there is only a small amount of property involved a Grant of Probate may not be necessary. Banks for example, have rules about transferring funds to an Executor.

### **An Executor must perform their duties responsibly and within a reasonable time**

Generally, 12 months is a reasonable time in which to finalise the estate and distribute assets.

A beneficiary may complain to the Supreme Court if they believe an Executor is not acting responsibly and within a reasonable time. This is the only right a beneficiary has before the distribution of the estate. A beneficiary does not own any property until the executor distributes the estate.

### **Payment of debts**

Creditors must wait until all the assets of the estate have been collected before they get paid. The deceased's estate is liable for reasonable funeral expenses. These must be paid before making payment to any creditors.

### **Insolvent estates**

If the deceased has more debts than assets, the estate will be dealt with in the same way as for the state of a person declared bankrupt. A trustee would administer the estate in bankruptcy. The Executor plays no part in the administration of an insolvent estate.

## **Does an Executor have to act?**

A person named as Executor does not have to accept the responsibility, if a person refuses to act as Executor, any substitute Executor named in the will can take on all the duties. If no other Executor is named, you can apply to the court to appoint an administrator.

## **Payment of Executors**

The will may say how much the Executor is to be paid for administering the estate. Fees for this will be paid from the deceased's estate. The Public Trustee or private trustee companies charge a percentage of the estate for their fee.

There will not always be provision for the Executor to be paid. The Executor is, however, entitled to claim reasonable costs incurred in administering the estate from the estate funds. Executing a will may be complicated and you should seek legal advice.

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