

Duties of an executor

This infosheet may help you if you are interested in being made an executor or if you are an executor and want to know more about what is required of you.

What is an executor?

An executor is the person named in a will to carry out the wishes of a person after they die. They organise to collect the assets of the deceased, pay the debts and distribute the property as set out in the deceased's will.

Does an executor need legal advice?

Executing a will may be complicated. It may be a good idea to get advice from a lawyer. Fees for this will be paid from the deceased's estate.

What does an executor do?

The executor is responsible for:

1. Notifying all beneficiaries named in the will.
2. Managing the estate, including:
 - Protecting any business interests
 - Safeguarding any income
 - Investing surplus funds
 - Collecting any valuables
 - Insuring 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
 - Debts owing.

4. Obtaining authority to administer the deceased's estate by applying for probate or 'Letters of Administration' (if necessary).
5. Completing income tax returns:
 - Obtaining clearance from the Australian Tax Office.
6. Paying all debts owing:
 - You may need to sell some assets from the estate to pay those debts.
7. Establishing trusts.
8. Dividing the estate:
 - Preparing statements for each of the beneficiaries
 - Distributing cash and or assets to beneficiaries (or holding them on trust) according to the provisions in the will.

What are the executor's duties about funeral arrangements?

If the will includes instructions about funeral arrangements or organ donation, the executor needs to make the necessary 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 Communities [Bereavement Assistance Program](#) may be able to assist. It can be

contacted on 1800 854 925 (free call). Applications can be made through their local office.

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
- was a 'tenant 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.

If there is more than one executor, any or all of them may apply.

Where there is only a small amount of property involved it may not be necessary to seek a grant of probate. Banks, for example, have rules about transferring funds to an executor in this situation.

How do I apply for a grant of probate?

Firstly, you should read the [Before you apply section](#) on the Supreme Court of WA website. As executor, you may apply in person or get a lawyer to do the work. If the circumstances around the application are not complex you can apply online on the [Probate Wizard](#) on the Supreme Court website and then download the forms, or buy the forms from a Citizens Advice Bureau office. Read these forms carefully and complete them according to the instructions.

The application can be posted, or delivered in person by the executor, or a lawyer acting for the executor, to the Probate Office. If you post it, you should use registered post and keep a copy of all the documents you send.

You must pay the prescribed fee at the time of filing the application.

If the application for probate is successful, you, as executor, get a document saying you can carry out the terms of the will.

For more information on probate, visit the [Supreme Court website](#). You can contact the Probate Office at the Supreme Court of WA on (08) 9421 5333 between 9.00 am – 4.00 pm Monday to Friday.

Is there a set time for an executor to finish their duties?

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.

When do the deceased's creditors get paid?

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.

What if the deceased had more debts than assets?

If the deceased had more debts than assets, that is, they were insolvent, the estate will be dealt with in the same way as for the estate of a person declared bankrupt.

Insolvent estates can be administered under the *Bankruptcy Act 1966* (Cth). If administration occurs under the *Bankruptcy Act 1966* (Cth), the executor plays no part in the administration of the insolvent estate. A trustee would administer the estate in bankruptcy.

Get legal advice if the estate is insolvent. For more information see the [Australian Financial Security Authority](#) website under the heading Part XI.


Where can I get more information?


- Contact the [Public Trustee WA](#) on 1300 746 116 for assistance with deceased administration.

- Contact the Citizens Advice Bureau on (08) 9221 5711 for assistance with drafting probate documents. A fee is payable. A probate kit for simple probate can also be purchased.
- Contact the Law Society of WA on (08) 9324 8600 for a referral to a lawyer who specialises in this area or [use the find a lawyer tool on its website](#).
- For information about probate visit the website of the Supreme Court of Western Australia at:

www.supremecourt.wa.gov.au/w/wills_probate.aspx.

LEGAL AID WA CONTACTS

 **Infoline:** 1300 650 579

 **Legal Yarn:** 1800 319 803 (for First Nations callers)

 **Website/InfoChat:** www.legalaid.wa.gov.au

Interpreting and relay services to help you contact us:

 **Translating & Interpreting Service:** 131 450

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CMS: 1380175v2