

GUIDE FOR AN EXECUTOR OF AN ESTATE

Step 1: Locating and reading the will

If you are unsure as to whether the deceased left a will, a good place to start would be a thorough search of the deceased's personal papers. You could also get in touch with the deceased's solicitor or a trustee corporation to confirm whether a will did exist. You could also try the deceased's bank, as most banks offer safe custody facilities.

Once you have the will, the first thing you should do is examine it for any marks or other defects. Some examples of obvious defects include paper clip marks, pin-holes, holes left by staples that have been removed. Other things to look out for are any unauthenticated alterations, additions or deletions to the will itself, or if the will hasn't been signed or dated properly.

Step 2: Making the funeral arrangements

You might notice that the will provides specific funeral directions. This direction is not a legally enforceable one, but it does create a moral obligation, which you should carry out if possible. If there is any dispute regarding funeral arrangements, you as the executor have the final say.

Funeral expenses are a "first charge" from the estate and should be paid as soon as possible. Any reasonable funeral expenses that you incur are recoverable from the estate if and when sufficient funds become available.

Step 3: Conferring with family and others

A common myth is that an executor needs to hold a "formal reading of the will", as you often see happen in movies. This needn't take place, but you should give copies of the will to all beneficiaries. Strictly speaking, beneficiaries who have been left cash legacies or specific gifts only need to be advised of their particular gift. Nevertheless, it is still good practice to provide all beneficiaries of a copy of the will.

It is advisable to hold off on handing out copies of the will until after probate has been granted. That way, you can be sure that the will has been duly authenticated.

Step 4: Determining beneficial interests

You might notice that the will might nominate beneficiaries by class, such as "all of my children". If this is the case, any child born after the date the will was made but before the death of the deceased is to be included in that class, along with any child fathered by the deceased but unborn as at the date of death.

You may be wondering why certain gifts have been given on the provision that the beneficiary survives the deceased by 30 days. This is a common mechanism used in will-drafting, to prevent "quick succession" – that is, it prevents a scenario where the estate passes to a beneficiary, but if that beneficiary then dies a short time following the deceased, then the estate must pass again according to that beneficiary's will. Such a scenario would prove quite costly in terms of estate administration costs.

You should be aware of the circumstances in which a gift will fail – for example, where the beneficiary does not survive the deceased and there is no substitution provision or if the subject of the gift didn't actually belong to the deceased at the time of death.

It is advisable to keep the beneficiaries up to date with:

- when you have made an application for probate or letters of administration, and when the application is granted. A “grant of probate” will be given to you if you were the nominated executor of the deceased’s will. “Letters of administration” will be granted if the deceased died without a will, and you were the deceased’s nearest kin.
- when you are in a position to pay any cash legacies or hand over any specific gifts. You should not do so until you are sure that all debts, funeral and testamentary expenses have either been paid or can be paid from the estate.
- when you have completed the administration.

Step 5: Protecting the estate’s assets

Bear in mind that if the deceased was living alone, it may be necessary to vacate the premises fairly quickly, otherwise rent or fees will continue to accrue. A good idea would be to gather all items of value (such as watches, jewellery, artworks) and store them securely until their eventual sale. If the property is going to be left vacant for some time, you might like to notify the local police station, and also check with the insurance company whether there will be additional premiums in order to continue the insurance cover.

Remember to cancel any existing policy on an estate asset once it has been formally handed over, transferred or sold. This is because the insurable interests passes on to the new owner, who should be advised to take out his or her own insurance.

Step 6: Determining assets and liabilities

You will need to determine the assets and liabilities of the deceased’s estate. In order to determine this, you will need details of the following:

- Original will
- Cheque books, passbooks, credit cards
- Life insurance and superannuation policy documents
- Investment certificates of evidence of ownership for shares, bonds, debentures, etc
- Title deeds for real estate
- Details of mortgages, unsecured borrowings or other loans
- Registration papers for motor vehicles, boats, etc
- Current drivers licence
- Medicare card
- Pension cards
- Insurance policies on house, household contents
- Past accounts for council and water rates, electricity, gas and telephone services
- Any outstanding accounts, including hospital and medical
- Copies of income tax returns and assessment notices

Step 7: Applying for probate or letters of administration

The main reason why you need to apply for probate is that some banks or other institutions will not release the deceased’s assets without sighting of the grant of probate. As a rule of thumb, bank accounts in the deceased’s name with balances less than \$10,000.00 will generally be released without the need for sighting a grant of probate.

Note that as well as the court filing fees, you will need to pay from the estate advertising costs once probate is granted, as well as the cost of the death certificate.

Step 8: Administration procedures

Any loose cash you find in the deceased's wallet or lying around the home, as well as any unbanked cheques in favour of the deceased, can be used to open an estate trust account. Any proceeds of any accounts you subsequently close can be placed in this account.

Some other administration procedures you can attend to include:

- Requesting a manually prepared group certificate from the deceased's employer to enable preparation of the date of death income tax return;
- Distribution of household furniture and personal effects to residuary beneficiaries at agreed values, with cash adjustments made to equalise their respective entitlements if necessary;
- Attending to the transmission of any motor vehicles into your name as executor, then proceeding to transfer the vehicle to the specified beneficiary;
- Attending to the transmission of any of the deceased's shareholdings into your name as executor, then proceeding to transfer the shareholdings to the specified beneficiary. Note that such transfers are generally exempt from stamp duty. Also note that if probate has been granted in a State or Territory other than where the securities are registered, a statement as prescribed under s 1091 of the Corporations Law must be lodged with the share registry;
- Attending to the transmission of any of the deceased's real estate in accordance with the will. Where property passes to a beneficiary who does not intend to occupy the premises as his or her principal place of residence, you will need to establish a cost base for future Capital Gains Tax purposes. If the property is to be sold via the estate, you will need to transmit the property into your name as executor before you can sign a valid contract of sale;

You should note that any life insurance policies owned by the deceased will be paid out by the life insurance company in accordance with the policy (and therefore outside of the estate), where a beneficiary has been nominated.

With regards to superannuation, it is the superannuation fund trustees, and not you as the executor, who will determine who is to receive the superannuation fund death benefits. Where the deceased did not nominate a beneficiary under their policy or made a non-binding nomination, the trustee will use their discretion to determine who receives the proceeds of the fund. Where the deceased made a binding death benefit nomination, the trustee must adhere to that nomination, provided the nominee is a dependant. You will also need to be aware of the taxation issues surrounding payment of a death benefit (for instance, payment to a dependant will not be taxed, whereas payment to a child over 18 not financially dependent on the deceased at the time of death will be taxed).

Step 9: Final checklist

As a guide, here is a final checklist for you to assist your administration:

- Collect and bank all cash assets
- Hand over any items bequeathed by the will
- Transfer any assets not realised or sold
- Register death in relation to any jointly-owned assets
- Pay all outstanding debts, including income tax assessments
- Pay any legacies, with interest where necessary
- Make any refunds (if something has been overpaid)
- Recover all out-of-pocket expenses incurred by you in the administration process
- Make any cash adjustments to equalise residuary beneficiary entitlements
- Determine any tax liability in relation to the estate