
Executors of Estates

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Traps and liability issues for Executors of Estates

You are appointed as Executor of an Estate. You appreciate the confidence expressed in you, and you are more than happy to help your relative or friend.

It can't be that hard, can it?

What is often not appreciated is the responsibility that comes with being the Executor of an estate and that an Executor can be personally liable if the legal requirements are not performed properly.

The basic requirements are:

Executor's role. An Executor is required to uphold the deceased's Will and put into effect the deceased's wishes as expressed in the will. This usually requires the Executor to obtain a Grant of Probate from the Supreme Court. The Grant proves to the rest of the world the Executors power to deal with the deceased's assets

An Executor has a strict duty to properly and effectively administer the deceased's Estate. An Executor can be personally liable for a breach of that duty. Executors must act impartially and prudently.

Assets. The Executor needs to disclose full details of the assets of the Estate in his or her application for Probate. This includes assets held jointly. The Executor needs to consider how to deal with all assets including those in other jurisdictions (that is, outside NSW).

Liabilities. Executors must ensure that all proper liabilities are paid. Liabilities that need to be considered include any possible contingent liabilities, for example, personal guarantees that may have been given by the deceased. Claims against the deceased's assets must be investigated and if there is doubt about a claim, the Executor must deal with this carefully and prudently. Any taxation issues also need to be dealt with.

Claims and litigation. It is not uncommon for Estates to be the subject of litigation, especially in these times where there considerable wealth may be in the estate. Litigation can arise regarding disputes as to validity of Wills, and also from people defined as "eligible persons" who can seek to claim a share or an Estate because of their relationship with the deceased. Again, an Executor must deal with any such claims carefully and prudently.

Distributions. The Executor must ensure the nett assets are distributed in accordance with the deceased's will. This may involve selling assets to allow cash payments or it may involve transferring assets directly to beneficiaries. There may be taxation issues that arise depending on the way assets are to be transferred.



Timing. Executor must not make distributions without taking into account the relevant time limits for possible claims (and there are several relevant time limits). If an Executor distributes incorrectly, an Executor can be personally liable

Costs. Testamentary expenses including costs properly incurred by an Executor are payable from the estate assets. Expenses that are not incurred reasonably cannot be claimed. Unless a commission is sought by an Executor (which usually involves a Court process) an Executor cannot claim for his or her time and trouble.

What to do A prudent Executor will seek appropriate professional advice and part of that advice is to enable the Executor to perform all duties properly and to ensure that as a result the Executor's own personal position is quarantined from any potential liability.

If you require assistance with any issue to do with Wills and Estate Planning please do not hesitate to contact one of our specialist lawyers at Matthews Folbigg