



THE LAW SOCIETY  
OF NEW SOUTH WALES

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**RIGHTS**

# BEING AN EXECUTOR

## What is an executor?

When someone dies, an executor is the person appointed by the will to administer the estate. Put simply, this involves making sure their debts are paid and that their assets and possessions go where they wanted them to.

Usually, people name just one or two executors in their will, but technically they can name as many executors as they like. To make sure the whole process runs smoothly a lot of people choose to name a solicitor as one of the executors, who may charge a fee for their expertise in administering estates.

If someone has named you sole executor, it's usually still a good idea to consult a solicitor, just to make sure you get it right. After all, administering an estate isn't always straightforward and, as executor, you can be held liable if you get it wrong.

## Do executors get paid?

Generally, you'll only be paid for your time spent as an executor if the will specifically says you should be. That said, you have the right to apply to the Supreme Court for commission regardless of what the will says. The court usually won't award you any payment if you're also a beneficiary under the will.

## Can you get out of being an executor?

If you don't want to be an executor, you can get out of it by signing a formal 'renunciation' and filing it in the Supreme Court of NSW. You should do this as soon as you can, because your renunciation may not be effective if you've completed even some of the executor's duties.

A solicitor can help you do this.

## Your first step as executor

As executor, the first thing you'll need to do is to make a list of everything the deceased owned as well as any payments or assets they were entitled to. This list is known as an inventory of property.

Common assets included in the inventory of property are:

- Home
- Other real estate
- Car
- Money
- Bank accounts
- Furniture
- Household appliances
- Jewellery
- Shares and other investments
- Insurance policies
- Superannuation
- Outstanding work entitlements.

If there's more than one beneficiary under the will, you may need to get some items valued.

## Fees for probate

Usually you'll have to pay a fee when you lodge the Probate forms. But the court makes an exception where an estate is worth less than \$50,000. For small estates, some banks will also let you access the deceased's funds before the court grants Probate. (See the back of this brochure for details on how to apply for Probate.)

Once you've obtained Probate, you can start selling the deceased's assets so that the money can be divided amongst the beneficiaries.

You might also need to contact the banks and companies in which the deceased had money, so that they release any funds.



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## Paying expenses and debts

Once the Supreme Court grants Probate you have to pay the deceased's expenses and debts before you can give away any assets or money. To do this, you'll need to open a bank account in the name of the estate and deposit their money into it – both from bank accounts and the sale of any of their assets. If you have a solicitor, their firm may have a trust account which you can deposit the money into. There is a set order for paying debts, which goes:

- funeral expenses (you can usually pay these even before probate has been granted)
- administration expenses (eg legal costs in obtaining Probate)
- outstanding tax, including income tax and capital gains tax
- other debts.

## Preparing a distribution report

Once you've sold all of the deceased's assets and paid all their debts, you'll need to prepare a report detailing exactly what assets they owned, how much money you received from each asset you sold, and also what debts you paid. This report is called a distribution report.

You must give a copy of the distribution report to each of the beneficiaries when you pay them their share of the estate.

## Distributing the assets

Finally, you can now give the deceased's money and possessions away in line with the will (so long as six months have now passed since the deceased died). Within that time, you can also publish a notice telling anyone with a claim against the estate to notify you of the details within 30 days.

## Applying for probate

Probate is a court order which confirms that the will is valid and that you, and any other executors, have the right to administer the estate. Before you even apply for Probate you'll need to publish your intention to do so on the Supreme Court of NSW's website. You can find instructions on how to do that on the website itself ([www.supremecourt.lawlink.nsw.gov.au](http://www.supremecourt.lawlink.nsw.gov.au)).

Fourteen days later, you can apply for Probate by lodging the right forms at the Probate Registry of the Supreme Court. You'll also need to lodge:

- Proof of death (eg the death certificate)
- The inventory of property
- An executor's affidavit
- The original will.

Your solicitor will have the forms you need.

## How your solicitor can help

Your solicitor can guide you through every stage of your journey as executor, including:

- Informing you of your rights and responsibilities
- Helping you apply for Probate and complete the Probate forms
- Helping you identify and collect the deceased's assets
- Advising you on any potential tax implications
- Advising you on the right order to pay debts and distribute assets
- Assisting you to resolve any claims against the estate
- Helping you draw up a statement of assets and distribution report.

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