

## Executor responsibilities

### ***What is an executor?***

An executor is the person (or people) named in a will to administer a deceased person's estate.

An individual may appoint up to four executors to act at any one time, although for administrative simplicity, it is usually preferable to appoint at most 2 or 3 executors.

When an individual dies without a valid will, the Court will appoint a person to administer the estate and in that instance, the person is called the 'administrator'.

Executors are generally required to make decisions unanimously, although they may jointly agree to delegate certain decisions to one or more people to implement.

### ***Duties and responsibilities***

The executor has many duties and responsibilities, including:

1. To call in the assets of the estate – this involves writing to all institutions and other third parties where the deceased owned assets to collect those assets;
2. To notify potential beneficiaries and relevant third parties;
3. To act impartially as between beneficiaries;
4. To identify and pay all of the deceased's outstanding debts;
5. To invest the estate funds until they can be distributed to the beneficiaries of the will;
6. To ensure the value of the estate assets is protected – for instance, by ensuring insurance is maintained over the assets where appropriate;
7. To ensure the completion of tax returns for the deceased (for the period up until the date of their death) and the estate;
8. To arrange the required changes to be made to applicable control roles held by the deceased, for example any appointor or principal roles, directorships or shareholdings; and
9. To distribute the assets of the estate in accordance with the deceased's will.

The estate administration process typically takes between 6 and 18 months, but can be significantly longer for more complex estates.

An executor's duty is to ensure proper administration of the estate. Failure to complete any required actions within the relevant timeframes can lead to personal liability for an executor and adverse implications for the estate.

### ***Personal liability***

The executor of an estate can be personally liable in a range of circumstances, including:

1. Where they have acted negligently in relation to the administration of the estate, including if they fail invest the assets of the estate prior to the distribution;
2. Where assets are distributed to the wrong beneficiaries; and
3. In respect of certain tax liabilities, if estate assets have been distributed before those tax liabilities have been identified and paid.

In addition, an executor can be personally liable if they administer the estate in accordance with what they believe to be the last will and testament of the deceased, only for a different (more recent) will to be located.

For this reason, executors will generally lodge the last will and testament with the Court to obtain probate.

Probate is the formal procedure where a Court confirms the validity of the will and the authority of the executor to act on behalf of the estate.

### ***Professional advice***

Executors can obtain professional advice to assist them with the administration of the estate, often including:

1. Advice from a lawyer in relation to obtaining probate and distributing the assets;
2. Advice from an accountant in relation to the tax obligations of the deceased and the estate itself; and
3. Advice from a financial planner in relation to the more appropriate way to invest the estate assets, pending the distributions to the beneficiaries.

The costs of this professional advice are borne out of the estate assets.

For more information about the role of an executor, please contact Clover Law on 0400 503 111 or [patrick@cloverlaw.com.au](mailto:patrick@cloverlaw.com.au).