

EXECUTOR RESPONSIBILITIES & PROBATE PROCESS EXPLAINED

This guide is designed to provide a clear, structured understanding of the duties, liabilities, and processes involved in being an executor. Always consider consulting legal professionals to navigate complex situations or when in doubt.

Executor Responsibilities and Probate Process Explained

Role of an Executor

Designated by the will-maker, an executor is tasked with managing and executing the administration of the will-maker's estate upon their death. Acting as the legal personal representative of the deceased, the executor's responsibilities include:

1. **Securing the Will and Handling Final Arrangements:** Retrieve the deceased's last will and undertake the organization of the funeral or cremation services.
2. **Notification:** Inform the deceased's beneficiaries and business associates about the death.
3. **Management of the Estate:** Safeguard all assets of the estate and arrange for necessary insurance protections. This involves the continued management of any properties and business investments until decisions are finalized.
4. **Estate Valuation:** Accurately value the estate as of the date of death.
5. **Legal Authority:** Apply for probate to gain the legal right to administer the estate and consult a lawyer for guidance.
6. **Asset Management:** Take control of the estate's assets, prepare any

necessary tax returns, and seek tax guidance.

7. **Payments and Debts:** Ensure payments are made in this order:
 - o Funeral expenses
 - o Tax debts
 - o All creditors, legal and probate fees, and other out-of-pocket expenses
8. **Distribution and Records:** Compile a final statement and distribute the cash and assets to the beneficiaries as directed in the will, while keeping thorough records.
9. **Trust Establishment:** If required by the will or appropriate due to age or capacity of a beneficiary, set up a trust, which may need ongoing management.

More than One Executor Appointed?

When multiple executors are named:

- All named executors are eligible to apply for probate.
- If a sole executor chooses to act, others may renounce their duties or reserve the right to apply later.

EXECUTOR RESPONSIBILITIES & PROBATE PROCESS EXPLAINED

Obligations-Applying for Probate

An executor isn't compelled to apply for probate. If reluctant, an executor can formally renounce their role, allowing a substitute named in the will to take over, or seek legal advice if no alternative is specified.

Will Reading

There is no legal requirement for a formal reading of the will. However, executors can hold meetings to explain its provisions to the deceased's family and the named beneficiaries or distribute copies of the will to interested parties.

Liability of the Executor

Executors are accountable for losses due to unauthorized or negligent actions during the estate administration.

Adherence to the Will

Executors must follow the instructions in the will. Any deviations require a court-approved Deed of Family Arrangement, with benevolent agreements between beneficiaries, or a court order.

Legal Advice and Costs

It's recommended that executors obtain legal advice, the cost of which should be borne by the estate post probate.

Application for Probate Explained

This application involves:

- Establishing the submitted will as the final testament of the deceased.
- Confirming the deceased's age, mental fitness, and autonomy during the will's creation, and adherence to legal signing standards.

Executors must file an affidavit and present the original will to the Supreme Court of Western Australia. Successful applications receive a Grant of Probate.

Timing for Probate Application

Executors must wait at least 14 days post-death to apply for probate.

Completion Timeframe for Executors

Executors are expected to act within a reasonable period, contingent on the complex nature of the estate.

Scenarios Waiving Probate Requirement

Probate may not be needed if:

- Assets held jointly.
- Deceased's only asset is nominated superannuation funds.
- Remaining bank funds are minimal; consult the local bank about specific policies.

EXECUTOR RESPONSIBILITIES & PROBATE PROCESS EXPLAINED

Delay in Applying for Probate

Beneficiaries might need to pursue legal action to either compel the executor to act or request their replacement if significant delays occur.

Payment for Executors

Explicit stipulations in the will decree executor compensation. Otherwise, they may be reimbursed by the estate for reasonable expenses or paid through

beneficiaries' agreement and court direction.

Handling Assets Post-Probate

Once probate is granted, assets are typically distributable after six months, considerate of potential contestations. Executors must duly perform all preliminary duties laid out in probate guidelines.

Need Advice?

Call Perth Probate on **(08) 9227 0604** or at **contact@perthprobate.com.au** or visit **perthprobate.com.au**

This fact sheet is not financial or legal advice. You should consider seeking independent legal advice from one of our experts at Perth Probate. The publisher is not liable for any loss caused, whether due to negligence or otherwise arising from the use of, or reliance on, the information provided directly or indirectly, by this fact sheet.