

DUTIES OF AN EXECUTOR OF A WILL

When a person dies there is the obvious trauma and grieving that will follow such a difficult experience.

If the deceased has left a Will an executor will be appointed to be the deceased's personal representative in administering the deceased's estate.

Traditionally the executor's duties are summarised as follows:

1. to reduce the estate of the deceased into possession. This means the executor must arrange for the assets of the deceased to come into the control of the executor.
2. to pay the debts of the deceased
3. to distribute the residue of the estate after payment of all expenses, to those who are entitled as beneficiaries under the Will
4. to ensure that all of the assets are properly secured and insured. Insurance companies and other institutions should be advised of the passing of the deceased. It would be wise for an executor to obtain a valuation of assets
5. to ascertain if the deceased had any life insurance policies
6. to ascertain if the deceased had any interest in businesses, and appoint management to those businesses.
7. to organise the taxation affairs of the deceased and the deceased's estate. The executor should seek accounting advice.
8. to keep records – the executor should keep very detailed records of all dealings with the estate.
9. to the distribution of the estate – the executor should contact all beneficiaries to advise of there interests in the Will.

The Funeral

The first duty of the executor is to arrange the funeral. If there is any dispute over the funeral arrangements the executor and the members of the deceased's family should consult a solicitor to determine their rights and obligations, as the legal position can become quite complicated.

Whoever arranges the funeral is entitled to reimbursement of the expenses out the estate of the deceased in priority to all other claims against the estate

It is important that the arrangements for the funeral are appropriate baring in mind the estate of the deceased.

Administration of Estate

The executor should attend to the following as soon as possible after the deceased has passed away:

1. Obtain a copy of the deceased's death certificate;
2. Obtain a copy of the last Will of the deceased;
3. Open a bank account in the name of the deceased's estate;
4. Ascertain all of the assets and liabilities of the deceased. There may need to be consultation with the deceased's accountant, legal representatives and financial advisors to fully ascertain the extent of the deceased's estate
5. Children of the deceased. If the deceased has appointed guardians for orphaned children, arrangements will need to be made by the executor for the welfare of the children
6. Pets – arrangements may also need to be made for pets of the deceased
7. Making applications to the court for a grant of probate or representation. Specific legal advice should be sought in relation to the appropriate application that should be made. As to whether a grant of probate or grant of representation is required.
8. Dealing with the assets of the estate. Once the assets of the estate of the deceased have been ascertained the executor will then determine whether the assets are to be distributed directly to the beneficiaries, or are to be sold and the proceeds distributed. Again legal advice should be sought before any assets are dealt with

Commission

The executors should also be aware that they may have a right to apply for commission from the estate of the deceased. The executor should seek legal advice before any such claim is made.

The solicitors at Ferguson Cannon are experienced in estate administration and have specialised systems in dealing with estate administration and obtaining probate. Please contact Byron Cannon, Director on (07) 5443 6600 or e-mail byron@fclawyers.com.au if you require any assistance.