



# EXECUTOR TOOLKIT

A GUIDE FOR EXECUTORS



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# A GUIDE FOR EXECUTORS

It is a great responsibility to be chosen by a family member or friend to ensure their last wishes are taken care of. The role of executor is one of trust and needs to be carried out with care and honesty. First and foremost, you must act in the best interests of the estate and all the beneficiaries; your own interests must be put aside (which can be difficult if you are also a beneficiary).

## WHAT DOES AN EXECUTOR DO?

The executor is responsible for identifying, locating, managing, and protecting all of the assets of the estate until they are distributed to the beneficiaries. The executor is also responsible for ensuring all of the valid liabilities of the estate are paid from estate funds. Where there is more than one executor, they should consult with each other and agree on a course of action.

Executors should keep full and accurate records of how the estate has been managed and distributed and should provide a summary of the financial transactions for the estate to the beneficiaries. The executor/s is/are responsible for any tax returns to be lodged on behalf of the deceased and the estate.

If a conflict arises, the executor cannot take sides with one or more beneficiaries and should try to mediate a resolution to the conflict.

We've prepared a checklist on pages 4-5 of the steps an executor needs to go through to finalise an estate.

## A BIG JOB FOR ONE PERSON

Rarely does someone undertake the role of executor on their own; they refer to lawyers, accountants, and other professionals to finalise an estate. Sometimes it is too overwhelming to take on the role, especially while grieving a loved one. You can if you wish decide to renounce (give up) the role of executor; it is better if this is done at the earliest possible stage. A special legal document needs to be lodged with the relevant court and the court will allow a substitute executor, if any is named in the Will, to step forward.

If an executor named in the Will does not wish to act, and there is no substitute executor named in the Will, the named executor may authorise a trustee company to assume the responsibilities of administering the estate. This does not require going to Court. The executor would simply sign a document, authorising the trustee company to apply for probate.

## IF A WILL IS CHALLENGED

Sometimes, a person challenges a Will to receive more from the estate. This challenge usually takes the form of legal proceedings.

If the claim for further provision is not settled between the parties, the court may order that the estate assets must be distributed in a way that differs from the Will. In general terms, this happens when the court is satisfied that the will-maker had responsibility to provide for the maintenance and support of the claimant and the will-maker has failed to meet this responsibility.

There are many factors that the court will take into account when considering these types of claims. In general, the courts will look carefully at situations where children or spouses of the will-maker have been left out of the Will or receive unequal or reduced benefits. It is a complicated area of law and each claim is decided on its own merits.

An eligible person wishing to seek further provision must do so within strict time limits that vary from State to State. In Victoria, this is six months from the date probate was granted. If a claimant attempts to make an application after that time, special permission from the court is required.

If the executor distributes the estate without waiting for the challenge period to expire, and a successful claim is made for further provision from the estate within that period, then the executor may be personally liable for any amounts the court awards to the claimant.



### DID YOU KNOW?

It takes an average of 1-2 years to administer and distribute an estate.



## CHECKLIST

TASK	COMPLETE	FURTHER INFORMATION
<b>IMMEDIATE STEPS</b>		
1. Locate and read the Will carefully		Page 8
2. Organise funeral and burial/cremation		Page 8
3. Arrange care for any dependants, including pets		Page 8
4. Obtain death certificate/proof of death		Page 8
5. Contact deceased's employer		Page 8
<b>PREPARE ASSET INVENTORY</b>		
6. Make a list of all of assets		Page 9
7. Ensure all property is secured		Page 9
<b>PROBATE</b>		
8. Prepare application for probate		Page 10
<b>THE 'LITTLE' THINGS (THAT CAN TURN INTO BIG ISSUES)</b>		
9. Identify and locate the beneficiaries		Page 12
10. Redirect mail		Page 12
11. Cancel driver's licence		Page 12
12. Notify Centrelink of death to cancel pension payments		Page 12
13. Claim any medical expenses		Page 12
14. Review insurance/s (Health, Car, Property, Life) and claim any refunds		Page 12
15. Cancel/transfer utilities and essential services		Page 12
16. Cancel memberships and claim refunds		Page 13
17. Cancel social media and other online accounts		Page 13



<b>TASK</b>	<b>COMPLETE</b>	<b>FURTHER INFORMATION</b>
<b>FINANCES</b>		
18. Contact the financial institutions with whom the will-maker held accounts and ask for confirmation of assets/liabilities and the specific requirements for releasing the funds		Page 14
19. Set-up an estate bank account		Page 14
20. Apply for estate tax file number		Page 14
21. Write to share registries to confirm shareholdings and dividends paid		Page 14
22. Investigate if the will-maker had any trust accounts/bonds/property deeds/ interest in a private company in their name		Page 15
23. Contact accountant to confirm financial details and tax return status		Page 15
24. Check if the deceased held any overseas assets		Page 15
25. Write to superannuation fund to notify death and for fund to distribute death benefits		Page 15
26. Cost base reconstruction to consider capital gains issues		Page 15
27. Redeem and collect assets		Page 15
28. Pay debts and liabilities		Page 16
29. Reimburse any party (e.g. executor, family member) who has paid an estate expense from their own funds		Page 16
30. Prepare estate accounts showing all money collected and paid on behalf of the estate, and estate assets		Page 16
31. Collate information to instruct accountant or tax agent to lodge any outstanding tax returns of the will-maker		Page 16
32. Collate information to instruct accountant or tax agent to lodge tax return for the estate		Page 16
33. Distribute estate to beneficiaries in accordance with the Will		Page 17
34. Close the estate bank account once all monies distributed		Page 17
35. Ongoing duties		Page 17



## THINGS TO CONSIDER

### COMPLEX FAMILY DYNAMICS

Administering an estate can often create or renew family conflict. As an executor, you need to communicate with beneficiaries and balance potentially conflicting interests, especially if you are a beneficiary yourself. An unbiased third party can often be an invaluable resource in managing those tensions.

### TIME CONSTRAINTS

Did you know it can take more than a year to administer an estate? Even the simplest estate will take many hours of work over several months. People with busy lives are often challenged to carry out their executor duties in a timely manner.

### NAVIGATING LEGAL AND TAX LAWS

There are a number of technical aspects in the role of executor, such as arranging filing tax returns for the deceased. Rarely does an executor carry out all duties without drawing on the expertise of a solicitor and/or accountant. An independent trustee company is abreast of current laws and regulations and can take away this burden.

### LOCATION AND DISTANCE

The responsibilities of an executor are already high. However, if you are in a different location/jurisdiction to the will-maker and/or beneficiaries, it can make it that little bit more difficult. There will be times when the executor needs to be physically present to complete some tasks, so this will need to be factored into your time and costs.

### FIRST AUSTRALIANS

If the deceased was an Aboriginal or Torres Strait Islander, the executor needs to carefully consider funeral and place of burial sensitivities. The deceased may also have been a caretaker of culturally significant artefacts which may need to be located and returned to the Elders of the community.

## WHERE CAN AN EXECUTOR GET HELP?

Administering an estate can be overwhelming due to the number and complexity of tasks that need to be completed as well as the time it takes to complete those tasks. Executors have a right to seek assistance, while retaining their decision-making authority. In our experience, it is very rare for an executor to settle an estate completely on their own. There are three main sources of assistance:

There are three main sources of assistance:

1. A Solicitor can prepare and lodge the application for probate with the relevant Supreme Court. They can handle many of the aspects of administering an estate, however, will normally refer taxation and accounting work to other professionals. If the estate includes any real estate which needs to be sold, a property lawyer or conveyancer will need to be engaged for conveyancing services. Most of the legwork and running around is done by the executor, with the solicitor handling the legal aspects and correspondence.
  - a. Fees are charged either as an hourly rate or as a package for executor services, with additional fees for items like court fees, application fees and similar.
2. An Accountant can lodge tax returns on behalf of the will-maker and estate. They do not handle other aspects of estate administration, and would refer this work to other professionals. Most of the paperwork sorting is done by the executor.
  - a. Fees are charged either as an hourly rate or as a package for tax returns, with additional fees for any outsourced work.
  - b. The reconstruction of cost base records is often completed by an accountant. These fees are commonly charged by the hour.
3. A Trustee company – such as Equity Trustees – generally covers all aspects of the administration process, taking care of both legal and taxation requirements. They are your ‘one-stop-shop’ with expertise employed directly. Administering estates since 1888, we provide the experience to ensure steps occur in the correct order with input and coordination from in-house experts, and in a timely manner to avoid pressure from beneficiaries to finalise the estate. Trustee companies also remain up-to-date with any regulatory changes.
  - a. Fees are charged as a percentage of the estate’s final value, plus disbursements.
  - b. Income commission is charged on income collected by the trustee company during the estate administration.
  - c. Separate fees are charged for the preparation of income tax returns.

## WHO DO EXECUTORS COMMONLY DEAL WITH?

Beneficiaries, lawyers, accountants, Australian Tax Office (ATO), Centrelink, government departments such as Veterans’ Affairs, banks, investment companies, insurance companies, stockbrokers, auctioneers and valuers, real estate agents and other business partners.

## HOW CAN EQUITY TRUSTEES HELP?

Equity Trustees has been helping families through the estate management process since 1888. As a licensed trustee company Equity Trustees is held to a higher standard than an individual executor. We are your ‘one-stop-shop’ to provide executor and trustee services and support you through the administration of a loved one’s estate.

## HOW MUCH WILL IT COST?

Each estate is unique, with different complexities and time required to complete. Our fees are based on a percentage of the estate’s value, and the income received. In the long run, you may ultimately save money for the estate and beneficiaries, thanks to the experience and expertise your estate manager will provide. When you factor in your own time and costs, especially if dealing with a complex estate or difficult beneficiaries, the advantages become even clearer. Factor in the peace of mind we provide with our experience and expertise, knowing that your family members could be relieved of any liability.

# STEPS TO MANAGE AN ESTATE

## 1. LOCATE AND READ THE WILL CAREFULLY

The Will may have been kept with personal paperwork in the will-maker's home, in a bank's safe deposit box (to which you will need to gain access), with a lawyer, or somewhere else.

### **When someone dies without a Will**

If someone dies without a Will, it's legally known as dying "intestate" and a court will appoint someone to administer the estate. The person entitled to the greatest benefit from the estate can apply to the court to be appointed as the estate's administrator and they undertake the same duties as an executor.

Contrary to common belief, in some situations, the deceased's spouse or partner does not inherit everything if there is no Will. Each State has its own inheritance framework.

## 2. ORGANISE FUNERAL AND BURIAL/CREMATION

As executor, one of your first duties is to assist with the arrangement and the payment for the funeral. Some people have prearranged their own funerals or left detailed instructions in their Will or with family members. If there were no instructions, the executor should get family input on decisions about funeral and burial/cremation arrangements.

Once the executor has contacted the funeral home, the funeral director will guide much of the planning. You will need to consider:

- **Obituary announcement** – what details do the family want announced?
- **The service** – religious or memorial service, eulogies, readings, what music to include, open or closed casket, flowers, burial or cremation, where will the remains be interred?

## 3. ARRANGE CARE FOR ANY DEPENDANTS AND PETS

If there are dependent children and the Will was prepared carefully, it should specify who the Will-maker wishes to take care of any offspring. The dependants may live in the will-maker's home, so the executor needs to undertake an inventory of the deceased's assets sooner rather than later (see point #6).

Care also needs to be arranged for any pets. There have been cases where the beloved pet is the major beneficiary of an estate and will need temporary care until the estate is completed.

As executor, you need to ensure the family's immediate needs are met. Bills will need to be paid and money available for daily expenses – if accounts cannot be accessed for a certain time, the executor is responsible for notifying creditors of the estimated timing of estate funds becoming available. Once the death certificate or funeral invoice has been received, the executor may be able to arrange for the funeral expenses to be paid from the deceased's bank account.

## 4. OBTAIN DEATH CERTIFICATE/PROOF OF DEATH

The relevant State or Territory Registry of Births, Deaths and Marriage issues the death certificate to the informant.

You will need several original, certified copies of the proof of death to provide to organisations as you administer the estate. By obtaining multiple certified copies early, it will help avoid delays as you administer the estate.

## 5. CONTACT THE DECEASED'S EMPLOYER

If the deceased was still working at the time of death, the employer's human resources department will confirm whether there are entitlements to any payments, such as final salary, bonuses, holiday or long-service pay. This information is relevant for the final individual tax return (see point #29).

# PREPARE ASSET INVENTORY

## 6. MAKE A LIST OF ALL OF ASSETS

Making an inventory of the estate's assets is one of the most significant tasks you will undertake as executor. Taking video or photos of assets may assist in the recording process.

The market value of each asset (including real estate, shareholdings, jewellery, artwork, vehicles), needs to be determined as at the date of death. You will also need the asset cost to calculate capital gains/loss to be reported on the relevant tax return. In the case of real estate, ask for a property valuation from a licensed practising valuer.

You will need to refer to the Will to determine whether assets are to be transferred to a particular beneficiary or sold. This can be a sensitive issue for discussion between beneficiaries. As executor, if nothing was specified in the Will it is your decision if any assets should be sold and the proceeds paid to the estate for distribution to the beneficiaries.

Consider this CGT case study, which shows \$1m of assets across different asset classes do not equal the same inheritance.

### CASE STUDY

Mrs Jones has two adult children named as her beneficiaries, with assets of a rental property worth \$1m and a share portfolio, also worth \$1m. Let's assume there's \$100k of estate income p.a. and the beneficiaries will dispose of the assets after 12 months.

There are four options available to us:

1. Sell both the property and shares within the estate and split earnings equally
2. Beneficiary A takes the property, Beneficiary B takes the portfolio
3. Sell the property within the estate and split the portfolio based on value
4. Sell the property within the estate and split the portfolio based on value + CGT liability

	OPTION 1: SELL EVERYTHING	OPTION 2: PROPERTY/ SHARES	OPTION 3: SPLIT BASED ON \$ VALUE	OPTION 4: SPLIT BASED ON VALUE & CGT
Opening value	\$1,813,018	\$2,000,000	\$1,925,518	1,925,518
Capital Gain triggered *	\$375,000	\$375,000	\$375,000	\$375,000
Tax Payable (Beneficiary A)	-	\$55,882	\$26,632	\$46,132
Tax Payable (Beneficiary B)	-	\$116,632	\$67,632	\$46,132
Tax Payable (Estate)	\$186,982	-	\$74,482	\$74,482
Inheritance Beneficiary A	\$906,509	\$944,118	\$936,127	\$916,627
Inheritance Beneficiary B	\$906,509	\$883,368	\$895,127	\$916,627

\*discounted CGT

## 7. ENSURE ALL PROPERTY IS SECURED

Change locks on buildings if necessary, move vehicles to secure location if no garage, and store valuable household items securely.

If the property is unoccupied, as executor you are responsible for any damage that could happen until the property is sold/transferred. This makes it vital for the executor to arrange or confirm adequate insurance cover.

If the deceased was living in a rented property, notify the property manager and arrange for the bond to be returned.

# PROBATE

## 8. AS AN EXECUTOR, YOU ARE RESPONSIBLE FOR APPLYING FOR PROBATE, WHICH SHOULD BE OBTAINED AS SOON AS POSSIBLE

A grant of probate is a court order confirming who has died, who is authorised to administer the estate, and which document is the last Will of the deceased. Once obtained, the grant of probate allows organisations, such as banks, to accept instructions from the executor regarding the asset.

An application for probate requires the preparation and filing of various documents with the relevant Court. For example: in Victoria the probate application includes:

- a copy of the death certificate;
- the original Will;
- a statement of assets and liabilities with appropriate valuations. This often takes some time to prepare as information needs to be obtained from the banks, companies in which the Will-maker held shares, superannuation funds (etc.). It can take some time to receive a response from all of these institutions. Formal valuations of real estate or antique items may be necessary;
- an affidavit (formal Court document) by the executor setting out background information about the deceased, the Will and the financial position of the estate. An affidavit is signed in the presence of an authorised witness.

The forms required by the court differ from State to State. Each court has its own strict requirements for the documents when applying for probate.

Probate is necessary to confirm the executor has the authority to deal with assets such as real estate and money in bank accounts. In some States, real estate held in the sole name of the Will-maker cannot be transferred unless probate is obtained.

Most banks will not allow the executor to deal with money in the will-maker's bank account(s) where the balance is above a certain amount unless probate has been granted (although banks will allow access to funds in a bank account for the payment of the funeral). There are some estates that are small and do not contain real estate (for example, because it is transferred to a surviving joint proprietor) and in these cases, probate may not be required.

The cost to apply for probate differs from State to State. Most States charge a flat-fee ranging from \$320-\$1500. This lodging fee may need to be paid by the executor, with the executor being reimbursed after estate funds become available.

Many executors engage a solicitor to assist with this step. As outlined on page 7, this will incur extra fees for this service.

## **A) COMMUNICATE WITH BENEFICIARIES**

As probate can take some months to obtain, it's important for the executor to be in regular contact with the beneficiaries (identified and located in point #9). Beneficiaries (as well as the executor) may have lost someone important to them, and while dealing with their grief, are also looking at receiving an inheritance. Set expectations early, outlining how long it will take to obtain probate, the period of time allowed to challenge a Will, and the level of complexity of the estate. Beneficiaries are likely to be family members, so maintaining family harmony should always be top-of-mind.

## **B) EXECUTOR FEES**

As executor you may be able to charge a fee for administering the estate. This is in addition to any reimbursement of expenses paid on behalf of the estate, provided they were appropriate amounts. This fee is payable out of the estate, so by default, it reduces the estate and subsequent payments to beneficiaries, which can upset some beneficiaries.

- The executor may only receive some payment for their work in the following circumstances:
  - if the will-maker sets out in the Will that the executor is entitled to be paid for his or her efforts as executor. The Will can state the rate of payment in terms of a percentage of the total assets and/or income of the estate;
  - where a gift to the executor is included in the Will in lieu of the right to apply to the court for remuneration;
  - if all of the beneficiaries are adults and agree on an amount the executor should be paid from the estate. Beneficiaries should be encouraged to obtain independent legal advice before agreeing to such a request; and
  - if the Court orders that the executor is entitled to be paid.
- The payment to the executor is called a 'commission' and the amount payable varies from State to State. When a court considers whether an executor should be paid a commission it takes into account the work done by the executor as well as the responsibility and time involved, often referred to as 'the pains and trouble'.
- Executors wishing to receive a commission should keep extensive records, such as a diary, of all they have done in their executorial role to justify the commission.
- At Equity Trustees, our fee schedule is available on our website.

The court retains the right to call an executor in to account for their administration of a deceased estate at any time.



# THE 'LITTLE' THINGS (THAT CAN TURN INTO BIG ISSUES)

In some instances, the executor will need to await probate being granted before being able to action some of these items.

## 9. IDENTIFY AND LOCATE THE BENEFICIARIES

Identifying and locating beneficiaries can be simple if the will-maker was part of a nuclear family all living in the same town/city. Today's world could mean blended families, located anywhere. Illegitimate children can come forward and claim an entitlement to inherit from their biological parent, which could involve DNA testing.

## 10. REDIRECT MAIL

Currently, Australia Post will redirect mail for a deceased estate free for up to 12 months. The executor needs to apply in-person at a post office and provide proof of identity as well as a copy of the grant of probate/letter of administration (if available), otherwise the Will. The executor should also check for any post office boxes the deceased may have held and cancel those too.

More and more we are receiving our correspondence by email. Some providers such as Google will allow the account holder to appoint an 'account trustee' to download some of the deceased's account content if the account is unattended for amount of time. This is an emerging area of the law and every provider has different rules for access after the death of the account-holder.

## 11. CANCEL DRIVER'S LICENCE AND TRANSFER VEHICLE REGISTRATION FROM DECEASED ESTATE

The executor needs to notify the relevant State authority and provide proof of identity as well as a copy of the grant of probate/letter of administration.

## 12. NOTIFY DEPARTMENT OF HUMAN SERVICES OF DEATH AND CANCEL ANY PAYMENTS

The executor completes the 'advice of death' form from the Department of Human Services website, which will notify Medicare, Centrelink and Child Support agencies of the death. It is advisable to have the deceased's Medicare card number, Centrelink Customer Reference Number and/or Child Support Reference Number on hand to complete this form.

In some circumstances, there may be a bereavement allowance/payment available, so it's important to check eligibility.

## 13. CLAIM ANY MEDICAL EXPENSES

Once Medicare has been notified of the death, the executor is also responsible for arranging any Medicare or private health insurance refunds for medical and dental expenses already paid.

## 14. REVIEW INSURANCE/S (HEALTH, CAR, PROPERTY, LIFE) AND CLAIM ANY REFUNDS

Some insurance will need to be cancelled immediately whereas others will need to remain or be recorded in the name of the executor until the asset is no longer part of the estate.

If a property owned by the deceased is unoccupied, as executor you are responsible for preventing any damage that could happen before the property is sold/transferred. Adequate insurance cover for properties must be in place and retained until the asset is disposed.

In the case of any life insurance, the executor needs to begin the insurance claim. If there is a named beneficiary, the proceeds from the policy will be paid directly to them. If the beneficiary is a minor or person with a disability, there could be considerable delay, as a trust may need to be set up for this person. If this situation arises, as a trustee company with more than 130 years' experience, Equity Trustees can assist with this.

## 15. CANCEL/TRANSFER UTILITIES AND ESSENTIAL SERVICES

If there are dependants or others living in the deceased's home, the electricity/gas/water/internet/landline accounts will need to be transferred to whoever is taking over those accounts. Mobile phone accounts should be cancelled by the executor by providing to the telephone company ID and proof of death documentation.

## 16. CANCEL MEMBERSHIPS/SUBSCRIPTIONS AND CLAIM REFUNDS

Many memberships will cancel when direct debits are no longer paid as bank accounts are frozen or shut down. However, if care is not taken, there could be months of unnecessary payments made before accounts are closed.

Some memberships may be transferred; for others there may be a refund for the unexpired portion of the membership term.

- Consider motoring club, Frequent Flyers and other reward points, gym, football/sporting clubs, magazine subscriptions, pay TV/Netflix, TAB accounts.

## 17. CANCEL SOCIAL MEDIA AND OTHER ONLINE ACCOUNTS

Social media networks usually have procedures in place to deal with the accounts of deceased members. These vary between networks. Facebook accounts can be switched to memorials, Twitter accounts deactivated by a person authorised to act on behalf of the estate, and as mentioned in point #10 Google offers an 'account trustee'. However, none of these is legally binding.

Direct debits linked to a credit card should be cancelled, so unauthorised payments cannot be made (although once credit card accounts are closed, this won't be an issue).

- Consider Amazon, Apple/Google Play, eBay, PayPal, Uber.





## FINANCES

As mentioned in point #4, the executor would be well placed to arrange multiple certified copies of the death certificate at an early stage. This will help greatly with the tasks outlined in this section as most companies and institutions will require written notification including proof of death. Note, if any accounts or assets were held jointly, the surviving joint owner can contact the relevant institution to advise the death and the assets will transfer automatically to the joint owner after proof of death is provided.

### **18. CONTACT THE FINANCIAL INSTITUTIONS WHICH THE WILL-MAKER HELD ACCOUNTS AND ASK FOR CONFIRMATION OF ASSETS/LIABILITIES AND THE SPECIFIC REQUIREMENTS FOR RELEASING THE FUNDS**

- There is no single registry of bank accounts, so this will involve reviewing the deceased's paperwork.
- When a financial institution is notified of a customer's death, the account will be frozen, meaning no withdrawals can be made. As executor, you need to ensure the family's immediate needs can be met (see point #4).
- Any credit cards will need to be cancelled and destroyed. The issuer can also block the cards from further use. (Note if there is a secondary card holder, they will need to be notified the account is no longer active).
- To identify any actual or potential claims against the estate and protect it against any future claims, in some States it is possible to advertise for creditors. This also protects the executor. If advertising for creditors has not been done, you could be personally liable for a creditor's claim that surfaces after the assets have been distributed to the beneficiaries.

### **19. SET UP AN ESTATE BANK ACCOUNT**

A bank account 'in the estate of...' will need to be set up for any funds (such as proceeds from the sale of property) to be deposited into and expenses paid from. This account can be at the bank of the executor's choosing. Usually a bank will only allow such an account to be opened after probate is granted.

### **20. APPLY FOR AN ESTATE TAX FILE NUMBER**

There is an online form to complete on the Australian Tax Office website.

### **21. WRITE TO SHARE REGISTRIES TO CONFIRM SHAREHOLDINGS AND DIVIDENDS**

Consider the CGT case study on page 9 in relation to disposal of assets.



## **22. INVESTIGATE IF THE WILL-MAKER HAD ANY TRUST ACCOUNTS/BONDS/PROPERTY/ INTERESTS IN A PRIVATE COMPANY DEEDS IN THEIR NAME**

There is no single place to check; the executor should contact leading banks and financial institutions if they suspect the will-maker had any such accounts or assets.

You should check with the deceased's accountant as to any interest in a private company. An ASIC search will also tell you if the deceased was a director of any private company. You will need to list the shares as an asset and appoint a new director to take over the deceased's position in the company.

## **23. LOCATE AND CONTACT THE WILL-MAKER'S ACCOUNTANT TO CONFIRM TAXATION DETAILS, INCLUDING WHEN LAST TAX RETURN WAS LODGED**

Apart from tax return information, an accountant often has useful information about assets and income that will assist the executor in administering the estate.

## **24. OVERSEAS ASSETS**

If the deceased held overseas assets you may need to lodge tax returns in the country where the assets are located and the estate may be charged inheritance tax. You will probably need to engage a lawyer in that country to assist with the tax, to arrange for the closing of any bank accounts and sale or transfer of assets. You will probably also need to obtain a reseal of the Australian grant of probate, or, if the country does not have a reciprocal arrangement with Australia you will need to obtain a fresh grant of probate in the relevant country.

## **24. WRITE TO SUPERANNUATION FUND/S TO NOTIFY DEATH AND FOR FUNDS TO DISTRIBUTE DEATH BENEFITS TO BENEFICIARIES**

Check if life insurance cover was held by the deceased as a member of a superannuation fund and proceed as per point #14. Life insurance cover often is held in addition to the deceased member's accumulated balance of employer and employee super contributions.

In all cases the trustee of the superannuation fund will decide who is to receive the death benefit, subject to any valid binding death benefit nomination signed by the deceased member.

## **26. COST BASE RECONSTRUCTION**

Cost base information must be ascertained before the executor decides to sell or transfer estate assets. If any estate asset is transferred to a beneficiary, the beneficiary will need to know the cost base information for that asset.

## 27. REDEEM AND COLLECT ASSETS

Do not distribute yet, but know you will have enough money to cover any debts and liabilities (see point #29). Wait for the expiry of the challenge period and defend the Will against a challenge if it arises as mentioned on page 3.

## 28. PAY DEBTS AND LIABILITIES



### NOTE

Debts and liabilities must be paid before any distributions to beneficiaries. Even if the will-maker left a particular asset to a beneficiary, if the estate has insufficient cash to cover all debts, estate assets will need to be sold or redeemed to the extent required to pay all liabilities.

Once estate funds are available and it is clear the estate is solvent, the executor can begin settling any creditor claims against the estate. The executor should keep complete and accurate records of all transactions.

If there are more liabilities in the estate than assets, then the estate is insolvent. In this situation, the executor must seek professional advice before going ahead, as legislation dictates how an insolvent estate is to be administered.

## 29. PAY EXPENSE REIMBURSEMENTS

Once estate funds are available, the executor arranges reimbursement of any estate expenses that have already been paid by a family member or the executor.

## 30. PREPARE ESTATE ACCOUNTS SHOWING ALL MONEY COLLECTED AND PAID ON BEHALF OF THE ESTATE

An executor must keep detailed records and receipts of any monies or assets collected and paid on behalf of the estate.

## 31. COLLATE INFORMATION TO LODGE ANY OUTSTANDING TAX RETURNS OF THE WILL-MAKER (THIS COULD INCLUDE MULTIPLE YEARS OF TAX RETURNS, IF THE DECEASED HADN'T LODGED ON TIME).

Remember to factor in any calculation of any capital gain arising from any asset transaction that occurred before the date of death.

### **32. ARRANGE TO LODGE TAX RETURN FOR THE ESTATE**

Having obtained an estate tax file number, an accountant/registered tax agent should be engaged by the executor to prepare the necessary estate tax return(s).

### **33. DISTRIBUTE ESTATE TO BENEFICIARIES IN ACCORDANCE WITH THE TERMS OF THE WILL**

If assets were held jointly, they automatically transfer to the surviving joint owner. Some assets may have been specified in the Will to pass to a particular beneficiary. In the case of property, it may be possible to transfer the land to a beneficiary, or to sell and distribute the proceeds via the estate – the beneficiary/s need to be consulted especially where there are tax consequences.

It is advisable to obtain a receipt from the beneficiary confirming they have received the asset.

In some cases, beneficiaries may need financial advice about what to do with their inheritance – Equity Trustees can provide this advice to them – Equity Trustees can also provide tax advice, often reducing the tax payable.

### **34. CLOSE THE ESTATE BANK ACCOUNT ONCE ALL MONIES ARE DISTRIBUTED**

After all debts have been paid, taxation matters have been finalised, and estate funds distributed to beneficiaries, the executor can close the estate bank account.

### **35. ONGOING DUTIES**

If a trust is established by the Will, unless otherwise specified, the Executor will automatically become the trustee of any ongoing trusts.

An example of this is when a minor is a beneficiary under the will, however given their age, cannot receive the distribution. Its then the executor's responsibility to conduct the trust until the age of entitlement specified in the Will.

This role is often one that executors are unaware of and can lead to additional work beyond the administration of the estate.



# GLOSSARY

## BENEFICIARY

A beneficiary is any person or entity (e.g. a charity) that receives a gift or benefit from a person's estate.

## ESTATE

An estate is all of the assets and liabilities of a person after her or his death. There are some assets that do not form part of the will-maker's estate after his or her death. The most common examples are:

- Property owned jointly with another person (not as tenants in common). In this instance, the surviving joint owner becomes the sole owner automatically on the death of the other joint owner
- Superannuation and life insurance proceeds that are paid directly from the fund to a superannuation/life insurance beneficiary (and not to the estate)
- Undistributed assets in a family trust of which the deceased was a discretionary beneficiary.

## EXECUTOR

An executor is a person who has been appointed in a Will to administer the will-maker's estate and carry out the will-maker's wishes set out in the Will after she or he has died. They are described as the deceased person's "legal representative".

## PROBATE

The legal process whereby a Will is confirmed as the last Will of the deceased and the executor is confirmed as the deceased person's legal personal representative.

## FOR FURTHER INFORMATION

Call Equity Trustees on 1300 133 472 or visit [eqt.com.au](http://eqt.com.au)



## ABOUT US

Equity Trustees was established in 1888 for the purpose of providing independent and impartial trustee and executor services to help families throughout Australia protect their wealth. As one of Australia's largest and oldest listed independent trustees, we offer a diverse range of services to individuals, families and corporate clients including asset management, financial advice, estate planning and philanthropic services.

In 2022, Australian Executor Trustees (AET) joined the Equity Trustees group of companies, expanding our network of offices into all major cities, and the capability of our specialist teams. Together we share a deep commitment to our purpose of helping people take care of the future.

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