

InfoSheet:

Responsibilities of an Executor or Administrator

Your role as an executor or administrator

An executor (where there is a will), or administrator (where there is no will), is the person or people responsible for looking after a deceased person's estate. You are legally obliged to act in the interests of the estate, following the deceased's wishes expressed in his or her will and if there is no will, in accordance with the rules that determine who is entitled to the estate.

The following outlines things you might need to do as executor or administrator:

- locate the will
- if no will, determine next of kin
- appoint a solicitor
- the entire estate
- list all assets and liabilities of the deceased
- arrange for Centrelink, Medicare and other authorities to be informed
- collect debts owed to the deceased
- arrange payment of debts from estate assets including the funeral and any memorial costs
- check with deceased's employer for unpaid salary, etc.
- ensure that assets of the deceased remain protected (including insurances)
- arrange for the sale or lease of any real estate owned by the deceased
- arrange for the sale of any motor vehicles owned by the deceased
- dispose of all personal items of the deceased (clothing, furniture, etc.)

- sign all documents for the purpose of making an application to the Supreme Court for a grant of probate or letters of administration (see below)
- sign all documents for the purpose of disposing/transferring/selling of assets
- discuss with beneficiaries what they will receive and how it will be paid to them
- maintain a record of funds received, payments and distribution of funds made

If you have been named executor for a friend or family member please keep in mind that this is your final act of friendship. The deceased trusted you with this responsibility. Please be honoured by that trust as you fulfil your duties as executor.

Applying for a grant of probate or letters of administration

Whether a grant of probate or letters of administration are required depends on the size and nature of the estate and we will discuss this with you. If however the deceased held real estate in his/her sole name, probate or letters of administration will be required.

Grant of probate (where there is a will)

Kells will draw up the application to the court for a grant of probate (the formal process of proving the validity of the will and your appointment as executor). The application will contain the original will, the original death certificate, details of all assets and liabilities and details of who will benefit from the proceeds of the estate.

After your initial instructions, Kells will do the following on your behalf:

- advertise in the local newspaper your intention to apply for a grant of probate
- contact all asset holders in writing for details of the value of the asset as at the date of death and their requirements for release or transfer of the asset
- after 14 days from the date of publication of the ad your application for a grant of probate can be lodged with the Supreme Court provided we have full details of the assets, which usually takes about 4 weeks depending on how quickly we receive a reply from the asset holders. This application needs to be signed by all executors and a court filing fee paid.
- the court filing fee can often be released from an estate bank account, otherwise you will be responsible for this and reimbursed on completion of the estate
- the court usually issues the grant of probate within 3 – 4 weeks (provided there are no discrepancies that need to be clarified)
- an advertisement will then be placed in the local newspaper advising of your intention to distribute the estate assets
- upon receipt of the grant of probate we forward a copy of the grant (together with all other forms and requirements of the asset holder) to each of the asset holders, which authorises them to pay the value of, or transfer, the asset to the estate
- after one calendar month from the date of the ad and on receipt of all assets and payment of all debts (depending on the asset holder this should be completed within 3 – 4 weeks), we will draw up a financial statement and proposed distribution of assets for approval by the executor/s.

Letters of administration (where there is no will)

Kells will draw up the application to the court for a grant of letters of administration (the formal process of proving you are the next of kin of the deceased and your appointment as administrator). The application will contain the original death certificate, proof of your relationship to the deceased, details of all assets and liabilities and details of who will benefit from the proceeds of the estate. The process involved in applying for letters of administration otherwise follows the same process as obtaining a grant of probate.

Other considerations

Kells will provide you with advice and guide you through the process in relation to the following:

Real estate property

The deceased's property can be advertised for sale at any time, however the sale cannot be completed until a grant of probate or letters of administration are available and ownership of the property has been transferred to the executor's or administrator's names at the Department of Lands

Special category of beneficiary

If any beneficiary is under 18 years of age, or mentally incapable or there are specific instructions in the will a trust will need to be established. Such a trust needs ongoing administration often over many years

Large estate or delay in administration

Funds may be invested to earn interest if there is delay in distribution due to size or complexity of the estate

Taxation

Income tax

There are no death duties in Australia, however, the *Income Tax Assessment Act 1997* does tax certain income or capital transactions that occur as a consequence of a person's death. An executor has certain taxation responsibilities on behalf of the deceased person and the deceased estate, including:

- notifying the ATO of the death
- lodging prior year tax returns
- lodging 'date of death' (final) personal tax return if necessary
- applying for an estate tax file number if estate tax returns need to be lodged.

You do not include any of the income of the deceased person or estate in your own personal tax return. If the deceased person did not lodge prior year tax returns, an executor would normally need to determine if they are necessary and, if required, prepare and lodge them. Tax returns may be required if:

- tax has been withheld from the income earned by the deceased person
- the deceased person earned taxable income exceeding the tax-free threshold
- tax has been withheld from interest or dividends because no tax file number was quoted to an investment body
- the deceased had lodged returns in prior years.

If you have determined that a final tax return is not required you would normally need to complete a Non-lodgement advice form and send it to the ATO to formally advise them of the death.

If the deceased person has been lodging tax returns prior to their death a final tax return should be submitted on their behalf. This tax

return is known as the 'date of death return' and should cover the period from the previous 1 July to the date of death. It should include all assessable income derived by the deceased and all the tax-deductible expenses incurred up to the date of death. Funeral expenses are not tax deductible.

Any refunds would normally be sent to you as the executor. Any tax liabilities would be paid out of the deceased's estate. It may be necessary to retain amounts from the estate funds to cover any possible taxation liability.

After the date of death the deceased estate may receive income from various sources. An estate tax return would normally be lodged for the deceased estate if there is tax payable on the income or if tax has been withheld from that income.

A tax file number is required to lodge a deceased estate's tax return. This estate tax file number may be quoted to investment bodies where investments are still held by the deceased estate. It is not appropriate to quote your personal tax file number in such circumstances.

If you expect that there will be a tax liability you may wish to instruct us to retain a portion of the assets of the estate until the assessment has been finalised. Please notify us if this is the case.

Capital gains tax

Capital gains tax is generally payable if the property is not sold within 2 years from the date of death. The disposal of a dwelling acquired from an estate is exempt from capital gains tax if it was the deceased's main residence at the date of death and it has not been used to produce assessable income at that date. If you intend to keep the property then we suggest that you obtain a valuation of the property as at the date of death.

Land tax

Land tax will be payable on the property if it is not sold within one year from the date of death. We remind you that we are not qualified to provide financial or taxation advice and we strongly suggest that you seek the advice of a taxation adviser and/or financial adviser and/or accountant in relation to all financial and taxation matters affecting your role as executor or administrator of the estate.

Contact the Kells Wills, Estate Planning & Trusts Team

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