CHOOSING AN **EXECUTOR**

Estate Planning
that connects
your head and
your heart.

The basic duties of an executor are to collect the assets of the deceased, attend to the payment of any debts, and distribute the remaining estate to the beneficiaries in a timely manner in accordance with the will, or any settlement agreement or order made by the court.

You also have a duty to protect the estate assets and maximise the estate's value for the benefit of the beneficiaries. For example, if there is significant cash held in the estate at any time, you should invest that cash in an interest-bearing account so that the funds at least earn interest before distribution.

An Executor must act reasonably and diligently

An executor has control of money and/or property on behalf of the beneficiaries and as such has a 'fiduciary duty' to act in the best interest of the estate.

If you fail to uphold your duty a beneficiary can make a complaint to the Supreme Court and make orders against you to personally repay any losses and costs.

Choosing the best person for the job

Being the executor of an estate can be stressful, overwhelming and potentially time consuming. It is not a job for the faint of heart.

When choosing your executor it's important to select someone who has the time and capacity to focus on the administrative tasks required to finalise your estate, whilst (hopefully) also grieving your loss.

I firmly believe the best person for the job of executor is a family member, close friend or associate who knows you and who you feel comfortable talking to about your wishes before you die.

LEGALEESE TRANSLATIONS

Testator
The will maker.

Beneficiaries
The people or organisations you have nominated to receive gifts from you after your death.

Fiduciary Duty
The duty to control money and/or property on behalf of the beneficiaries.

Guardian
Person nominated by you to manage the affairs and make decisions on behalf of any minor children, children under the preservation age, or vulnerable people.

DOWNLOAD OUR EXECUTOR CHECKLIST

As the executor of an estate you will be expected to carry out several first steps immediately after the death of the will maker.

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STEP #1
Make funeral arrangements

The executor is responsible for finding out any funeral wishes and making appropriate arrangements.

The costs of the funeral will be payable from the estate if the deceased held a bank account with cash sufficient to cover the funeral costs. Most banks in Australia will pay the funeral expenses on being shown a death certificate and the funeral company invoice.

STEP #2
Taking any emergency steps needed

You may need to take some initial emergency steps like taking care of any minor children and/or pets, securing the deceased's home, nursing home or hospital rooms may need to be cleared, arrangements for businesses to continue trading might need to be made.

You will also be responsible for making sure all assets are appropriately insured (and insurers notified if a property is unoccupied), even if it means paying for the premiums personally. Executors have been held personally liable to pay an estate the value of a house that burned down, because they failed to insure the house.

STEP #3
Obtain and scrutinising a certificate of death

As the executor you are responsible for procuring a death certificate so further steps can be taken to administer the estate. A death certificate is usually ordered by a funeral director with input from the next of kin and can take several weeks to issue.

Once the death certificate is issued it is important to check that the details recorded are correct and accurate. If they are not, steps should be taken to correct any mistakes.

Thinking she was being kind my mum chose all three of her children to be executors. We ended up bickering about every tiny detail of her Estate. Choosing just one of us would have been the kindest thing for everyone.

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