

Estate administration

General overview of the duties of executors and administrators

Key points

- Executors and administrators are responsible for calling in the assets of the estate and ensuring all liabilities are paid, including tax
- It is important that executors and administrators act in the best interests of beneficiaries and complete their role properly
- Executors and administrators may be entitled to receive payment or a commission for the work they do in administering the estate

1. An executor is a person named in a Will whom the deceased person appointed to administer their estate. The Will may name more than one person to act jointly or as a substitute executor if a person is unwilling or unable to act.
2. An administrator is the person appointed by the court to administer the deceased person's estate where the deceased did not have a Will, no executor is appointed, or the appointed executors do not or cannot act.
3. Executors and administrators are both commonly referred to as a legal personal representative (**LPR**).

What are your duties?

4. The LPR's duties include (but are not limited to):
 - (a) acting in the best interests of the beneficiaries, and avoiding a conflict with their own personal interests
 - (b) exercising care and diligence
 - (c) protecting (with insurance) the deceased's assets and obtaining valuations for assets
 - (d) where appropriate, applying to the Supreme Court for a grant of probate (if there is a Will) or a grant of letters of administration (if there is no Will)
 - (e) contacting the beneficiaries of the estate to advise of their entitlements and providing information about the estate (if requested)
 - (f) maintaining and collecting the deceased's assets
 - (g) maximising the estate where possible (for example, renting out properties or investing estate funds)
 - (h) paying any debts and liabilities, and maintaining an accurate record of the estate accounts (which must be produced on request)
 - (i) maintaining a statement of assets and liabilities and providing to beneficiaries on request
 - (j) defending the estate where litigation is commenced against the estate
 - (k) obtaining advice and attending to any tax matter of the deceased or the estate
 - (l) possibly dealing with the deceased's assets or interests that fall outside of the estate (superannuation, family trusts etc.)
 - (m) distributing the estate to the beneficiaries on completion of the estate administration (after waiting for the expiry of time periods during which a claim can be made against the estate).
5. An LPR who breaches their duties may be personally liable for any loss to the beneficiaries of the estate. Importantly, there are special liability issues for executors who take over the running of a business owned by the deceased. You should ensure you obtain appropriate legal advice in these circumstances.

Do I have to accept an appointment?

6. You do not have to accept an appointment as an executor or administrator. Instead, you can choose to renounce your position. Usually you can only renounce your position if you have not already participated in the administration of the estate.

Do I get paid?

7. This will depend on the terms of the Will. You may also be able to make a claim for commission for your time and trouble in acting as an executor or administrator. A claim for commission will either need to be agreed to by the beneficiaries or by the court.

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