

Deceased Estates

A guide to administering
deceased estates





Acting as an executor of an estate can be a rewarding task but it can also be a complex and stressful one if not handled appropriately.

01

Administering a deceased estate

We appreciate that this may be a very challenging time for you and it may be difficult to know where to start when dealing with the estate of a loved one.

Therefore, this guide has been designed to provide some preliminary information about what's involved when administering a deceased estate (including your duties as an executor), answer some frequently asked questions and provide a checklist of organisations that you should consider informing.

When you are ready, we can arrange a time to go over what's involved in more detail, and how we can help.

The roles and duties of an executor

The primary role of an executor is to 'stand in the shoes' of the deceased person who has entrusted them with this responsibility, to ascertain and protect the assets of the estate and to carry out the terms of the Will in the best interests of the beneficiaries.

Upon a person's death, some of the immediate duties of an executor can include:

- Arranging the funeral;
- Preserving and protecting assets, including keeping assets insured and secure (eg consider whether you need to change the locks on a property or relocate a motor vehicle);
- Notifying relevant organisations and individuals of the deceased's death (see our checklist attached);
- Receiving the death certificate of the deceased.

Upon obtaining the death certificate is typically the best time to meet with us to discuss what is required of you as executor to administer the estate. However, this typically includes the following duties, which we can assist you with:

- Obtaining a grant of probate (also known as a grant of representation) if necessary (we will be able to advise you if this is required or not);
- Notifying beneficiaries of the will;
- Ascertaining and calling in the deceased person's assets, including any debts that might be owing to the deceased;
- Realising assets (for example, calling in bank accounts and selling real estate and, shares);
- Arranging payment of the deceased's expenses and liabilities;
- Avoiding any conflict between your own interests and those of the estate, and taking all reasonable steps to maximise the value of the estate;
- Keeping accurate accounts and records (and accounting to beneficiaries when necessary);

- In consultation with an accountant, finalising the taxation affairs of the deceased and their estate;
- Potentially, dealing with other interests on behalf of the deceased (for instance, family trusts or superannuation);
- Dealing with any disputes in relation to the estate; and
- Attending to distributions to beneficiaries.

Executors are required to act with all reasonable care and due diligence. An executor who breaches their duties (even accidentally) can potentially be personally liable to the beneficiaries, so it is important to ensure that you obtain appropriate professional advice along the way.

Estate Administration Process

As the term ‘administration’ suggests, the estate administration process can involve a lot of paperwork!

A general rule is that an estate should be finalised and distributed within one year of the deceased’s death. This is known as the ‘executor’s year’. However, estates can often take over 12 months to finalise properly.

The stages of a deceased estate can be roughly broken down into 3 stages:

1. Obtaining a Grant of Probate (usually 2 - 3 months)

As an executor, you take your authority from the Will itself; however, you will typically require a ‘grant of probate’ before you can administer the Estate. This is the formal document issued by the Supreme Court that proves that the Will is the final, valid Will. Asset holders (eg banks) will usually require this document before they recognise your authority as executor and allow you to deal with the deceased’s assets.

Before you can make this application, you will require the death certificate and need to have identified all assets and liabilities of the Estate.

In the case of a small estate, it may be possible to administer the estate without obtaining a grant of probate.

2. Administration of the estate (usually 6 - 7 months)

Once probate is obtained, you can start dealing with the assets of the estate in accordance with the Will. This will usually involve ‘calling in’ assets to an estate bank account (which is typically the lawyer’s trust account) or selling assets.

This is also the period of time in which any disputes relating to the Will or the estate will need to be dealt with, and the tax affairs of the Estate finalised.

There are a number of measures you should take as an executor to ensure your exposure to personal liability is minimised and that the administration runs smoothly.

3. Finalising the estate (usually 1 - 2 months)

Once you have dealt with all assets of the Estate, and finalised all claims, debts and liabilities (including tax), you are in a position to distribute the estate.

This could include paying money or transferring assets to the beneficiaries, in accordance with the terms of the Will.

You are also entitled as an executor to have certain beneficiaries ‘sign off’ on the estate accounts, before they receive their entitlement.

Also, an executor is not automatically entitled to payment for acting as executor, even though the role can be extremely time-consuming. However, payment (called ‘executors’ commission’) can be made in the following situations:

- where the will authorises payment;
- where the Court authorises payment; or
- where all affected beneficiaries provide their informed consent.

How we can assist you

Dealing with the estate of someone who has passed can be complex and time consuming. If it’s not done correctly, it can result in personal liability for the executor.

However, whilst executors must retain decision making authority, they have the right to seek professional assistance. It is rare for an executor to deal with an estate completely on their own, with the vast majority of probate applications being prepared by law firms and trustee companies.

At Moores, we take the time to discuss all aspects of the deceased, their Will (if any) and their assets and plan with you to achieve your objectives, in accordance with your duties.

Moores Agreed Pricing (MAP)

In order to provide certainty to you as to the costs involved, we use an agreed pricing model, where the price for a defined scope of work is fixed. This is not an estimate, and there are no hourly rates that can vary the costs.

Once we have thoroughly discussed all aspects of the estate with you, we can provide you with a proposed scope of work and fixed price to give you certainty.

This will typically include some pricing options for you to consider, depending on the level of assistance you would like us to have.

02

Frequently Asked Questions

We've answered the most common questions we hear when working with our clients to help you gain a better understanding of what's involved.

What is an Estate?

An estate is all of the assets and liabilities that a person owned in their own name at their death. There are some assets that do not typically form part of person's estate after their death, including:

- Property owned jointly with another person (as joint tenants);
- Superannuation;
- Life insurance; or
- Assets held in a family trust.

Who pays for the funeral?

The cost of the funeral is an estate expense and typically, banks will allow payment from the deceased's accounts, even prior to probate.

Alternatively, if you have no access to a bank account, one or more family members may wish to pay for the funeral and seek reimbursement from the estate.

Do I need to act as an executor?

Executors appointed under a will are not required to act. However, once you start dealing with the estate, you cannot then resign as an executor without the approval of the Supreme Court.

It is therefore important to consider whether you wish to act as an executor before you take any major steps.

If you've been appointed as an executor and do not wish to act, there is the option to either:

- renounce your role, which is a formal step relinquishing your rights as executor; or
- if you have been appointed executor with other people, you could take 'leave reserved', which is a less formal step that allows you to step back in later if you wish.

Does there need to be a reading of the will?

No. There is no need for the Will to be formally read out to all beneficiaries.

But you will need to inform the beneficiaries of their entitlement to the estate. This typically occurs upon obtaining probate and is usually something done by the law firm acting for the executor.

Also, the law in Victoria provides that certain people are entitled to see a copy of a Will, even if they're not a beneficiary. This includes:

- anyone named in the last Will or any earlier Will;
- a spouse or partner of the deceased; and
- any parent, guardian or child of the deceased.

What if I can't find the original Will?

If you know there is an original Will and you cannot find it, then we recommend you contact your lawyer

to seek advice. It is still possible to obtain probate of a copy of the Will in certain circumstances.

What if there is no Will?

Where a person dies without a will, they are said to have died "intestate". In this instance, the rules outlined in the *Administration and Probate Act 1958* will dictate who benefits from the estate.

In this instance, instead of a grant of probate, the Court will appoint an administrator to act on behalf of the estate via an application called a 'grant of letters of administration'. The administrator appointed under a grant of Letters of Administration has the same role and responsibilities as an executor.

What if a Will is challenged?

In certain circumstances, a person may challenge a Will. This can be done for various reasons but it is typically because somebody believes that:

- the final will is not valid (for instance, because the deceased lacked capacity or was subject to 'undue influence') – this type of claim usually arises before a grant of probate and is often referred to as a 'caveat claim';
- they should have received more from the estate – in Victoria, this type of claim should be made within 6 months of the grant of probate and is referred to as a 'family provision claim'.

Whilst it is the executor's role to defend and uphold the Will, it may be in the interests of the estate to 'compromise' the claim and agree to a varied distribution of the estate. Where the parties cannot agree, the Court may order for that to occur.

If you have concerns regarding someone challenging a Will, it is extremely important that you seek advice from a lawyer and that you do not distribute assets of the estate until it is resolved.

What happens to superannuation?

Superannuation is not automatically part of an estate, to be dealt with by a will. If your loved one had superannuation, this will need to be paid out by their superannuation fund as soon as practicable after their death.

Who receives the deceased's superannuation will depend on whether they made a binding death benefit nomination with their fund setting out how they wished their superannuation to be distributed. Depending on the nomination, this may be to one or more of the deceased's dependants, or their estate. Dependants for superannuation purposes include spouses, partners, children, financial dependants of the deceased and persons in an interdependency relationship with the deceased.

Where someone dies without a valid binding death benefit nomination in place, the trustee of the superannuation fund will generally have discretion and decide how to pay the deceased's superannuation as between their dependants and/or their estate. This can often take months to resolve.

There are different rules and processes for external superannuation funds and self-managed superannuation funds.

03

Checklist: Who to notify of a death?

The following checklist has been provided to assist you in identifying and contacting relevant individuals and organisations that you may need to notify of a loved one's death.

DONE?	PERSON OR ORGANISATION	NOTES
	Accountant	
	Aged and community care services	
	Australian Electoral Commission	
	ATO	
	Banks and credit unions	
	Cancel direct debits	
	Centrelink/Department of Human Services	
	Department of Veteran's Affairs	
	Doctor's and the District Nurse (if applicable)	
	Employer	
	Financial Advisor	
	Foreign pension provider (to prevent any overpayment)	
	Frequent flyer programs and loyalty cards	
	Funeral plans and funeral bonds	
	Gardener	
	Home loan provider	
	Insurance providers (eg. car, home and contents, life, health)	
	Internet provider	
	Local council	
	Medicare	
	Pharmacy	
	Post office (consider if you need to redirect mail)	
	Share registries	
	Foxtel/Streaming services (eg. Netflix, Stan, etc.)	
	Superannuation fund	
	Telephone provider	
	Utility providers (eg. gas, water and electricity)	
	VicRoads	

04

If you need to talk to someone

Some helpful contacts to assist you through this challenging time.

The Australian Centre for Grief and Bereavement

Resources, counselling and support groups.
Telephone: 1800 642 066
<https://www.grief.org.au>

Dementia Australia

Support for carers and family members of people who are living with, or have passed away from, dementia.
National Dementia Hotline: 1800 100 500
Carer Gateway: 1800 422 737
<https://www.dementia.org.au>

The Compassionate Friends Victoria

Support for anyone who has lost a sibling, child or grandchild.
24-hour Grief Support Line: 03 9888 4944 or 1300 064 068
<https://www.compassionatefriendsvictoria.org.au/support@compassionatefriendsvictoria.org.au>

First Light Widowed Association

Support for young widows and widowers.
<https://www.firstlight.org.au/about-us/mail@firstlight.org.au>

Lifeline

Telephone: 13 11 14



What you can expect from Moores

With the largest and most accredited wills and estates team in Victoria, we have the experience and know-how to ensure that you're in safe hands from the outset.

Level 1, 5 Burwood Road
Hawthorn Victoria 3122 Australia
T 03 9843 2100
E info@moores.com.au
moores.com.au