

THE ROLE OF THE EXECUTOR

Many people appoint their loved ones as their Executors in their Wills. However, most people do not actually know what is involved with being an Executor and have to learn quickly what their responsibilities are at what is already a difficult time of their life.

When a person dies, all of their property is automatically owned by 'the Estate' of that person. The Executor manages this property on the Estate's behalf until it is transferred to the people set out in the deceased's Will.

Some of the duties involved in being an Executor of an Estate include:

1. Organising the burial of the deceased. Although the deceased's next of kin often arranges this, the Executor is technically responsible. If there are any disagreements, legally the manner of burial or cremation of the deceased is at the Executor's discretion.
2. Making a full list of the assets the deceased owned. This could involve searching through the deceased's papers to establish what bank accounts they had, what companies they had shares in, or searching the land register to find what properties were owned.
3. Once the Executor has identified the assets, s/he then has a duty to get the assets in. This may involve calling in any private loans, selling any company shares and closing any bank accounts. If ordered by the Court, upon application by a person interested in the deceased's Estate, an Executor must file an Affidavit to the Court listing all the assets of the Estate.
4. The Executor must pay expenses and debts owed by the Estate. Funeral expenses are the first priority to be attended to. If this person who organised the funeral is not the Executor, then they have the right to ask the Executor for reimbursement. In terms of other debts, the Executor could ascertain what debts exist by searching the deceased's papers and also advertising in the local newspaper. Bills and invoices will also need to be paid.
5. The Executor must keep accounts of all funds that are received for the Estate and all funds that are paid out. The accounts must include not only the debts that were paid but also any payments to beneficiaries of the Will. The accounts must be supported by evidence such as invoices and receipts.
6. The Executor then has a duty to administer the Will by making any specific gifts to people named in the Will and then distributing the residue to the people named in the Will.
7. The Executor should ask their lawyer to seek directions from the High Court if they are unsure about any of the directions in the Will. In seeking the directions of the Court, the Executor protects themselves from any liability in making the wrong decision. If they are following a Court Order then they have full protection from any claim by another person regarding that decision.

The Executor must also provide information to the Court if any legal claims are made against the Estate, such as disputes about a child's share or a promise or debt made by the deceased before they died.

If you are nominated an Executor in someone's Will or if you are currently trying to deal with an Estate and you have queries, please don't hesitate to contact us.