

Executor Checklist

The role of an executor is important. Their responsibility is to carry out someone's final wishes as outlined in their Will.

Introduction to the role of Executor

What is an Executor?

An executor is the person or organisation who is responsible for carrying out the Will maker's wishes as set in the Will, after the Will maker has passed away.

State Trustees provides full estate administration for over 1,000 estates each year.

How is an Executor appointed?

The executor(s) is appointed in the Will. This person or organisation is granted formal authority through a process of application to the Supreme Court of Victoria. The outcome of the multistep process is a grant of probate an official order from the court.

The Supreme Court states that currently around 95% of applications are submitted by a trustee company or solicitor.

What is Probate?

Probate, more correctly a grant of probate, is a legal document that certifies that a Will is valid and can be acted upon. It also gives the executor the legal right to administer the estate of the deceased person.

Obligations of an Executor

The executor is responsible for managing and protecting all the assets of the estate until they are distributed to the beneficiaries.

The executor has a duty to avoid conflicts of interest and must act in the best interests of the estate and all of the beneficiaries.

Being an executor comes with legal and compliance obligations. The executor can be held legally liable for incorrect administration, for example, if:

- Something happens to assets that are uninsured
- Administration takes too long
- A distribution goes against the wishes of the Will maker to one beneficiary to the detriment of another

The executor can be sued by the beneficiaries if they fail to administer the estate diligently and correctly. In addition to this, the Australian Taxation Office can hold the executor personally responsible for unpaid tax obligations.

Things for an Executor to consider

Being an executor can be a substantial responsibility and a significant undertaking, depending on the size and complexity of the estate. Administering an estate can take more than a year of constant effort. The nominated executor should consider if they can commit to the role before applying for probate. Once probate has been granted, if the executor feels the process is too difficult or complex, it is not possible to simply opt out.

- Do you have the time to manage all the paperwork required in a timely manner?
- Are you confident you have necessary business, legal and financial experience to create the best outcome for the beneficiaries?
- Will you be able to avoid conflicts of interest and address any likely conflicts?

In most circumstances, where the executor is a person known to the Will maker, he or she does not receive any financial benefit or payment for taking on the role.



How to use State Trustees' Executor Checklist

This checklist can be used to assist you in understanding what it means to be an executor of a deceased estate. On this page, you'll find an introduction to the role and corresponding obligations. Following this, our two page checklist outlines the key responsibilities and tasks an executor needs action.

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When someone passes - what happens next

Here we have provided a detailed list of some of the key tasks the Executor needs to immediately after someone has passed.

Immediate tasks related to the individual

- Arrange funeral/burial/other
- Arrange for death certificate (usually ordered by the funeral director, if not the executor will need to order one)
- Begin protecting the assets (eg arrange appropriate insurance, change locks, take photo/video inventory)
- Locate the original Will (or at least start the process, request from State Trustees Will Bank or other source)
- Stop services where urgently required (eg visiting nursing services, grocery deliveries)



Immediately after someone has passed can be an emotional time. Don't be afraid to ask for support.

The executor is responsible for protecting the assets of the estate until they are distributed to the beneficiaries.

Immediate tasks related to the Estate

- Date of death notifications to: Centrelink, Australian Taxation Office, vehicle registration office, utilities/services, professional service providers, insurers, banks, etc
- Retrieve original Will
- Identify guardian of children (where applicable)
- Consider capacity of surviving spouse/dependents
- Consider validity of Will (eg date, marriage/divorce of deceased, later Will(s), status of nominated executors and/or beneficiaries, obtain Will witness contact details, alternative names)
- Start the plan of action for the estate in light of the Will content (eg what to do with real estate)
- Confirm the requirement for probate
- Consider if probate 're-seals' Will be required for assets held in other States or Territories
- Obtain the death certificate
- Start to keep records (which need to be kept for seven years)



It is important to retrieve the most recent, original Will and maintain the document's integrity.

In most cases verification of the Will, known obtaining a grant of probate, is required.

Executors are responsible for ensuring that assets are not allowed to diminish in value and are not wasted.

Note that some assets such as life insurance, superannuation and jointly held property may not be part of the estate but will require attention.

Probate prerequisites

- Determine appropriate Will and parties
- Identify and prepare an itemised list all assets of the estate
- Obtain valuations at date of death where required
- Identify and prepare an itemised list of all liabilities of the estate
- Confirm Victorian Supreme Court jurisdiction of the estate



Determining all the deceased's assets and liabilities is a key activity.

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Probate and distribution of assets

Prepare probate application

- Advertise the Notification of Intention
- Prepare originating motion affidavit of executor, inventory and any supporting material such as affidavit of capacity or interpreter, such information to include:
 - Deceased information
 - Executor information (for each executor)
 - Will witness details
 - Capacity statements for any parties as required
 - Identify any property owned in another name or names (not held jointly or in trust)
 - Obtain valuations where required (eg real estate, jewellery, art works)
- Arrange for court documents to be sworn or affirmed and prepare exhibits such as certified death certificate and original Will
- Check the court website to ensure no other application or caveat has been lodged and to complete affidavit of searches
- File documents and pay court fee (the executor will not usually have access to estate funds until after the grant of probate)



Probate applications including payment must be lodged in person.

Post probate estate administration

- Determine if real estate to be sold or transferred and list for sale if required
- Sell assets where required (continue to insure, etc, until all sold)
- Manage remaining assets (eg transfer, close accounts)
- Complete date of death tax return
- Pay liabilities (including preparing final tax returns)
- Determine if an estate tax file number is required
- Complete estate tax returns as required (including any CGT for assets or investment property has been sold)
- Manage disputes and conflicts
- Distribute estate to beneficiaries (if within six months of probate, consider legal consequences of testator family maintenance (TFM) claims)
- Ensure safe storage of original documents (eg return Certificates of Title to safe deposit)
- Identify any trusts that should be established as part of estate administration



Trusts are complicated to setup and should be done in conjunction with legal guidance.

The management of trusts may extend for years to come.

It is a legal requirement to store all records relating to the administration of an estate for seven years from date of final distribution.

Final considerations for Executors

Upon the completion of the above, the executor should consider whether or not they need to update their own Will. This is especially important if the deceased had a role. In addition to this, they may want to consider establishing or updating their own power of attorney document(s).

How State Trustees can assist

The role of Executor is a demanding one.

State Trustees can assist in the following three ways.

1

We can be nominated as Executor in your Will

You can be sure that when State Trustees is named as executor in your Will, we'll manage everything professionally and impartially minimising potential conflict. In some cases, you may not have a family member or friend who has the time or the willingness to fulfil the required duties.



For additional peace of mind, store your Will in the free and secure Victorian Will Bank.

2

We can manage the Estate in your place

If you've been nominated as executor but don't believe you have the time or the willingness to fulfil the required duties, or may be in conflict with beneficiaries or considering claims against the estate yourself. You can choose to renounce the role, electing another person or organisation. State Trustees can complete full estate administration on your behalf.



The nominated executor must transfer responsibility before probate. After probate is granted, the executor cannot simply opt out.

3

We can support you in your role as Executor

You may feel honoured to have been nominated as executor in the Will of someone close to you. However, it can also be a huge responsibility - one that comes at a time when you are grieving a personal loss. Let our experts assist you where you're unsure. Executor Assist allows you to select one-off services that State Trustees can deliver while you still maintain the role of executor.



The right help and assistance can make all the difference.

Why consider State Trustees Executor Services



Victoria's leading Estate Administrator

For over 75 years we've administered more estates than anyone else in Victoria. We've built trust and capability so you can be assured you're dealing with the experts.

Our size brings you benefits like discounted real estate fees, immediate insurance of assets, safe custody of valuable personal effects, discounted auction rates for the sale of vehicles, and more.



Experts in dealing with all levels of complexity

Victorians in need of executor services choose State Trustees for many reasons, such as peace of mind, convenience and our expertise.

For peace of mind, you can call upon and trust our experts to provide their skills and knowledge to manage complex assets and financial structures as well as straightforward estates.



Unbiased service

At such a sensitive time, the administration of an estate can sometimes end in an unpleasant experience for those involved. For example, a family member acting as executor may have to deal with disgruntled relatives contesting the Will.

Where there is potential for conflict, be assured that where State Trustees is managing the process completely or assisting you, we will work in the best interests of all parties involved.



Convenient and trusted care

Because we are specialists in estate administration, you can trust that all of our executor services will be performed to the highest standard and from a neutral standpoint.

- Don't waste time liaising with multiple businesses and contacts. Our specialists will take care of all of this - from managing properties, finding beneficiaries and organising probate to preparing and lodging tax returns, plus more.
- Your dedicated estate consultant will be the go-to contact for queries from all people involved, including the beneficiaries of the estate.

If you would like to learn more about the convenience and peace of mind that State Trustees can provide, we're ready to speak with you about full executorship or Executor Assist.

Call us on **03 9667 6444** or **1300 138 672** if outside Melbourne.