

Executor and Trustee

What is an Executor?

An Executor is the person you appoint in your Will to administer your estate on your death. They are also known as your legal personal representative.

Role of your Executor

1. Make funeral arrangements;
2. Identify and collect all of your personally owned assets;
3. Protect assets (eg Insure properties);
4. Apply for a Grant of Probate and attend to legal formalities with a solicitor;
5. Notify your bank, amenity providers and creditors of your death;
6. Notify your beneficiaries of your death;
7. Manage assets, including investments and businesses;
8. Arrange for the preparation of income tax returns and where necessary the reconstruction of Capital Gains Tax records;
9. Deal with any claims against your estate;
10. Discharge all of your debts including income tax;
11. Distribute the balance of your estate to your beneficiaries in accordance with the terms of your Will; and
12. Where trusts are established under the Will, continue the management and administration of those trusts (unless a separate Trustee is appointed).

Who should you appoint as your Executor?

There are three distinct groups who may be

appointed as your Executor:

1. Family and friends;
2. Professionals; lawyers and accountants; or
3. Trustee Companies.

When thinking about who you should appoint as your Executor you should consider the following:

1. Will they charge my estate a fee or commission to act as my Executor?
2. Do they have the time to administer my estate? (as outlined above the Executor role can be quite burdensome)
3. Do they have the business acumen to discharge the duties of an Executor?
4. Are they likely to outlive you?
5. Are they an Australian resident who lives in the same jurisdiction (state) as the bulk of your asset holdings?
6. If you choose to appoint only one person as your Executor then you should consider appointing a substitute Executor for the situations where the initial Executor predeceases you or is unable or unwilling to act.
7. You cannot appoint more than four people as your Executor. Where two or more people are appointed Executor all decisions and acts must be carried out together and unanimously, that is they must act jointly.

What is a Trustee?

A Trustee is the person appointed in your Will to manage and administer any trusts created in accordance with the terms of your Will.

In most cases your Trustee is the same person you appointed as the Executor of your Will.

Role of a Trustee

Upon the completion of the administration of your estate there may be some assets which remain part of your estate as an ongoing trust. These trusts may exist because of the operation



of law (minor beneficiaries have not attained 18) or by choice through the incorporation of testamentary trusts in your Will. Your Trustee is responsible for managing these assets in the best interests of the beneficiaries of the trust.

In carrying out its duties a Trustee must:

1. Follow the terms of the trust. These can be found in the Will (the governing document).
2. Ensure there is an investment strategy in place for the assets of the trust. This strategy must take into account the needs of the beneficiaries, both income and capital beneficiaries.
3. Compile and manage the investments of the trust.
4. Distribute the income and capital of the trust in accordance with the terms of the governing document. In making distributions the Trustee will also have to review income and capital requests from beneficiaries and guardians (where the beneficiary is a minor or has a disability). Where the Trustee has the discretion to pay income and capital they must weigh up the request with reference to the terms of the Will and the intentions of the Willmaker and the needs and circumstances of the beneficiaries.

Who should you appoint as your Trustee?

In deciding who you should appoint as Trustee you should consider the issues identified when appointing an executor as well as the following:

1. The person must have the capability to understand and follow the terms of the trust;
2. Understand the needs of the beneficiaries;
3. Have access to an accounting system which can accurately keep track of the income and

capital of the trust separately;

4. Understand the law governing the management of trusts;
5. Ensure an investment strategy is developed, implemented and maintained.

In many cases the Executor appointed under your Will will continue on as Trustee. However this may not always be appropriate, to determine what is best for your circumstances please consult your solicitor.

Personal or Professional Executor/Trustee?

In deciding whether you appoint a professional or personal friend or family member as your Executor or Trustee the issues you should consider include:

1. Do you wish to pay for the services of a professional Trustee?
2. Is there likelihood that someone will contest your Will?
3. Do you have beneficiaries in conflict?
4. Are your estate assets complex; that is does your estate include trust structures, businesses or private companies?
5. Are you in a second marriage with children from a first marriage? Weighing up each parties needs and interests can be difficult especially if you intend your spouse to benefit from your estate during his/her life time but the assets themselves distributed to your children on his/her death.
6. How do you own your assets? If you do not own many assets in your personal name then the role for your Executor may be minimal, however this is best discussed with your solicitor.

The more complex your personal and financial circumstances are the more appropriate it may be for you to consider the appointment of a professional Trustee, whether that be your solicitor or a Trustee company.

