

What happens when executors do not agree?

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A Will-maker will commonly appoint more than one person as executor of their Will. At times, co-executors don't see eye to eye and cannot agree or communicate on how to manage a deceased estate. This blog will look at disputes between executors in a Will and how those disputes can be dealt with to enable the application for a Grant of Probate and the administration of the estate to move forward and be finalised.

Often, two or more adult siblings are appointed as executors because the Will-maker wanted to be fair and allow all adult children to have a say in how their estate is managed. However, if two or more executors do not agree (or if one executor is behaving badly), this can have a detrimental impact on the administration of the estate leading to delays, stress to all interested parties and increased costs.

Types of disagreements between executors

In Victoria, executors of a Will need to apply to the Supreme Court of Victoria for a Grant of Probate to enable them to deal with the deceased's estate. Once the grant is made, they will need to administer the estate in accordance with the terms of the Will.

Some examples of common disputes between executors:

1. One executor believes that the other executor, who may have been acting as an attorney pursuant to an Enduring Power of Attorney prior to the Will-maker's death, misappropriated money from the Will-maker's bank account that should have formed part of the estate upon their death.
2. Agreeing on the value of particular assets.

3. If a claim is made against the estate, for instance, by an eligible person claiming the deceased had an obligation to make provision for them in their Will and failed to do so, how the case should be handled.
4. Whether a property should be sold on the open market or whether to allow a beneficiary to purchase it.
5. If a market is experiencing a downturn, one executor may want to hold off on selling property in the hope of achieving a higher sale price.
6. Which real estate agent to appoint to list a property for sale.
7. How to distribute the deceased's personal belongings, such as family heirlooms and jewellery (where those items are not gifted to a specific beneficiary in the Will).

Each executor obtaining independent legal advice

If a solicitor acting for an estate receives mixed instructions from the executors, they will often try to encourage the executors to resolve the dispute themselves and come to a mutual agreement.

If the executors still cannot agree on instructions to provide to the solicitor, they may each need to be represented by independent solicitors.

With independent solicitors acting for the estate and each executor, it can be possible to negotiate a way forward, including participating in a mediation or round table conference to resolve the issues in dispute. The parties can work together with their solicitors to get the probate application or estate administration back on track.

However, where there are two or three sets of solicitors involved, there will also be two or three sets of legal fees, which can be expensive and create more complications.

One executor steps aside before a Grant of Probate is made

If executors consider that they may not be able to act alongside each other, one of the executors can step aside before a Grant of Probate is made.

An executor can renounce his or her position, thereby giving up their role and responsibilities permanently. This can be done by signing a renunciation form that can be included with the probate application.

Alternatively, one executor can make an application for a Grant of Probate with leave reserved to the other executor. This means that the other executor steps aside but can apply to the court to become involved at a later stage if they wish; for example, if they do not like the way the executor who obtained the grant is managing the estate.

Taking the matter to court after Grant of Probate has been made

If executors still cannot reach agreement on a course of action with independent solicitors and a Grant of Probate has already been made to all nominated executors, then the only option may be for a court application to be made.

Executors can apply to the court seeking directions on what needs to be done where there is a deadlock in relation to the administration of the estate.

An executor can also apply to be discharged from their role in order to break a deadlock.

Alternatively, if the executors cannot agree on the estate management and none of the executors wishes to be discharged, one of the executors can apply to the Supreme Court of Victoria for an order to remove the other executor on the basis that that executor is unfit to act. The executor making the application can apply to be the sole executor or an independent administrator can be appointed instead.

Other reasons for an executor to apply to have another executor removed are that the co-executors continuing to act would impede the administration of the estate or there has been a complete breakdown of communication between the executors, leading to delays and extra costs.

The court will not make a decision to remove an executor lightly, as that executor (alongside any other executors) has been chosen by the Will-maker to be their personal representative. However, the court will regard the welfare of the beneficiaries and the protection of their interests in the estate as paramount in determining whether or not to remove an executor.

How to prevent disagreements between executors

Many executor disputes are avoidable and there are things a person can do to minimise the potential for conflict.

When a person is making a Will, they should consider their executors carefully. Whilst it is often a good idea to appoint more than one executor if a Will-maker thinks two siblings might fight or some siblings have fractured relationships, they should consider appointing only one sibling or appointing an independent person such as a friend or other family member.

If a friend or other family member is not an option, a Will-maker may consider appointing an independent trustee company. However, an independent trustee company will charge for their services in managing the estate.

A further option may be to include directions in the Will as to how disputes should be resolved. The Will could, for example:

- direct that where there is a dispute, one of the appointed executors has a casting vote; or
- if there are three executors, a decision be determined by the majority of executors.

How a Wills and Estates lawyer can help

If you want to prepare a Will and you have concerns about how your children or family members will manage, if appointed as co-executors, contact Smith Family Law to discuss the issues you have regarding the appointment of your executors.

If you are an executor of an estate and are struggling to reach agreement with other executors on how things should be done, then contact us. We can ensure your interests are looked after and assist you to resolve the issues in dispute so that the estate can be finalised.

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