

Tasks for the executor after probate is granted

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If you are the executor of a Will in Victoria, you may need to apply for probate in the Supreme Court of Victoria. Probate is the process of the Court confirming that the Will is valid and the executor may distribute the assets of the deceased estate. Once probate is granted, the executor needs to attend to several steps before distributing the assets as outlined in the Will of the deceased. This blog takes a closer look at the various tasks required of the executer after probate is granted.

General management requirements of the executor of a deceased estate

Once the executor has obtained probate of the estate, collected the assets and paid the debts of the deceased, they hold the net assets on trust for the beneficiaries under the Will and become trustees of the estate. Their role as trustee is then to distribute those assets in accordance with the Will.

Generally, an estate should be distributed within a year of the deceased's death, however, it is important that it is distributed appropriately to prevent scrutiny of the actions of the executor or claims made against them for maladministration.

You can learn more about probate and a general overview of executor duties in our earlier blogs:

- A guide to probate in Victoria
- The role of executor of a Will

Probate has been granted – tasks for the executor

The following steps should be taken by the executor prior to distributing the estate.

Collect the assets of the deceased estate

It is the executor's responsibility to identify and call in (i.e. collect) all assets of the deceased estate so that they are available to be distributed to the beneficiaries at the appropriate time.

This may include:

- collecting the bank accounts of the deceased;
- arranging for shares in the name of the deceased to be transferred to the estate; and
- transferring title of any real property the deceased owned to the estate.

Executors should invest bank accounts or other funds in an interest-bearing bank account so that the funds earn interest prior to distribution. Executors have been criticised for allowing monetary assets of the estate to "waste" if the funds are left in an ordinary account.

Pay the deceased's expenses and debts

Generally, one of the first duties of the executor is to pay the expenses and debts (liabilities) owed by the deceased. These are to be paid from the estate assets and include things like funeral and testamentary expenses.

This step is generally necessary where there are any liabilities, regardless of how simple or complex the estate may be.

Generally, after the debts are paid, the remaining funds and assets are then to be held and preserved for the beneficiaries until the executor is ready to distribute the estate.

Pay tax obligations of the deceased

Any tax obligations of the deceased and the estate should also be finalised before the assets of the estate can be distributed. This includes:

- Notifying the Australian Tax Office ('ATO') of the deceased's death. It can take up to 28 days for the ATO to update the deceased's records once the notification of death has been received;
- Lodging a Date of Death tax return for the deceased with the ATO;
- Claiming any credit amounts that may be due to the deceased or their estate; and
- Paying any remaining tax liabilities of the deceased and the estate. If the estate generates income prior to the final administration, it may also be necessary to obtain a Tax File Number for the estate itself.

Where a deceased person has failed to do their tax return for a number of years prior to their death, the executor will also need to bring their affairs up to date before lodging a final tax return.

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Creditors notice

An executor should lodge a notice to creditors under section 33 of the *Trustee Act 1958* (Vic). This is a notice which calls for all creditors to bring claims within the time specified in the notice.

Once the time period - usually three months – ends, the executor can distribute the estate without being personally liable to creditors. If notice of a claim by a creditor is received, the executor cannot distribute in the face of that claim until it has been resolved.

Keep beneficiaries informed

Often, the terms of the Will and family dynamics will govern the extent of contact between the executor and the beneficiaries.

It is prudent for an executor to ensure that the beneficiaries of the estate are provided with information as to how the administration of the estate is going once probate is granted. Whilst an executor does not need to account to beneficiaries constantly, the executor should keep them informed of significant matters.

Beneficiaries may put pressure on the executor to get hold of their funds or distribution once probate of the estate is granted, however it is important that the executor ensures they have fulfilled all their duties and obligations, that they administer the estate appropriately and leave no matters undone.

It is also important that an executor waits six months from the Grant of Probate before distributing the estate in case the Will is contested. Beneficiaries cannot compel distribution of the estate until one year from the date of death, however after that time the executor needs to show good reason for failing to do so.

Distribute the assets

At the appropriate time, the executor must distribute the relevant gifts and assets to the beneficiaries in the Will. This may be a straightforward process, where gifts are easily identifiable, and the beneficiaries are in agreement.

However, when beneficiaries are not in agreement, the executor will need to either sell or retain the assets according to the specific wording of the Will.

In certain circumstances, an executor should consider the wishes of the beneficiaries in conjunction with any tax implications or creditor requirements when determining the ultimate distribution of the estate assets. Discussions may need to be had between the executor and beneficiaries as to whether assets are to be sold and the cash divided or whether certain assets are to be transferred to certain beneficiaries.

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Who might require a certified copy of the Grant of Probate?

Generally, most organisations and asset holders (for example, banks and other financial institutions) will require a certified copy of the Grant of Probate before they will transfer assets of the deceased to the executor. This is to ensure that they are transferring any interest of the deceased to the appropriately authorised person.

Where a person dies with bank accounts with only limited funds, or limited assets, often banks and insurance companies will allow dealings to take place on the basis they receive only a certified copy of the death certificate and the Will.

It is likely that the following organisations will require a certified copy of the Grant of Probate in order to deal with the executor and/or transfer assets of the deceased estate:

- Financial institutions;
- Share registries;
- The ATO;
- Insurance companies;
- Superannuation funds; and
- Land Titles Office Victoria or other land registries for properties held interstate.

Contesting a Will – time limits to make a Family Provision Claim

An executor should wait at least six months from the date of the Grant of Probate before distributing the estate, even if all debts and liabilities have been paid. This is because an eligible person has six months from the date of the Grant of Probate to bring a Family Provision Claim against the estate and challenge the distribution of the estate as set out in the Will.

If a Family Provision Claim is made prior to the six-month time limitation and the executor has already distributed some or all of the estate, the executor may be personally responsible for paying any award made by the Court in favour of the claimant.

It is therefore **imperative** that an executor obtains legal advice in relation to any Family Provision Claim that has or may arise prior to distributing the estate.

Get help from a deceased estates lawyer

The steps to be taken by an executor once probate has been granted and prior to distributing the assets of a deceased estate can seem complex and overwhelming. If you are an executor of a Will and need to apply for probate, the deceased estates team at Smith Family Law can provide assistance with your application, as well as assisting you to manage and navigate your role as an executor.

Contacting Smith Family Law

03 8625 8957

info@smithfamilylaw.com.au

Further reading

You may find these articles useful and helpful as an executor or a beneficiary of a Will:

- What happens when executors do not agree?
- How to remove an executor of a Will
- Does the executor of a Will get paid?
- The risks of DIY probate
- How long does probate take in Victoria?

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.