

NEWSLETTER

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ESTATES—EXECUTORS' DUTIES



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Many people in their Wills appoint their loved ones as their Executors. Unfortunately most people do not actually know what is involved with being an Executor of an Estate and have to learn quickly what their duties are at often what is a traumatic time of their life. Some of the duties involved in being an Executor of an Estate include:

1. Being responsible for organising the burial of the deceased. Although there is no ownership in a deceased body, the Executor is entitled to custody. The manner of burial of the deceased is at the Executor's discretion.
2. Make an inventory of assets. Essentially the Executor needs to establish what assets the deceased owned. This could involve searching through the deceased's papers to establish what bank accounts they may have held, what companies they may have had shares in, finding rates notices to establish what properties were owned etc;
3. The Executor once identifying the assets then has a duty to get the assets in. This may involve organising for payment of any private loans that they may have given, selling any company shares and closing any bank accounts. If so ordered by the Court on application by any 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 has a duty to pay testamentary expenses and debts of the Estate. The Executor has a duty to ascertain what debts were in fact owed by the deceased and make provision for their payment. Funeral expenses are the first priority to be attended to. Generally the person who organises the funeral with the Funeral Director is the person who is liable to have the funeral paid for. 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.
5. The Executor has a duty to keep accounts in regards to all funds that are received in for the Estate and all funds that are paid out. The accounts must incorporate not only the debts that were paid but also any distribution to beneficiaries of the Will or Estate. The accounts must be supported by evidence such as invoices and receipts.
6. The Executor then has a duty to administer the Will or the Estate pursuant to law in terms of paying any gifts or providing any chattels gifted to named parties under the Will and then distributing the residue to the persons named in the Will or the persons pursuant to the Administration Act 1969.
7. The Executor has a duty to seek directions from the Court if they are unsure in regards to administering the Estate. In seeking the directions of the Court, the Executor is in fact protecting 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 party in regards to that decision.

The Executors also have a duty to provide information to the Court if so requested in regards to any claims made pursuant to the Family Protection Act 1955, the Law Reform (Testamentary Promises) Act 1949 and the Property (Relationships) Act 1976.

As noted above people often find themselves having to oblige with these duties when they are dealing with other personal matters. 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.

If you would like any of our previous newsletters or any of the our free booklets on Wills, Family Trusts, Relationship Property of Business Law please email us or visit our website at www.collinsandmay.co.nz

Next Issue: Renovations to the Trust's Property