

# Executorship

---

Executorship is the name given to the process of administering and distributing the Estate of a deceased person to the beneficiaries of the Will. It is carried out by an Executor.

An Executor can be a person, several persons, or a Trustee Company like Tasmanian Perpetual Trustees.

The Executor is responsible for administering and distributing the property of the deceased. The job of an Executor is substantial, often complex, and they are personally liable for their errors.

## Selecting an Executor

---

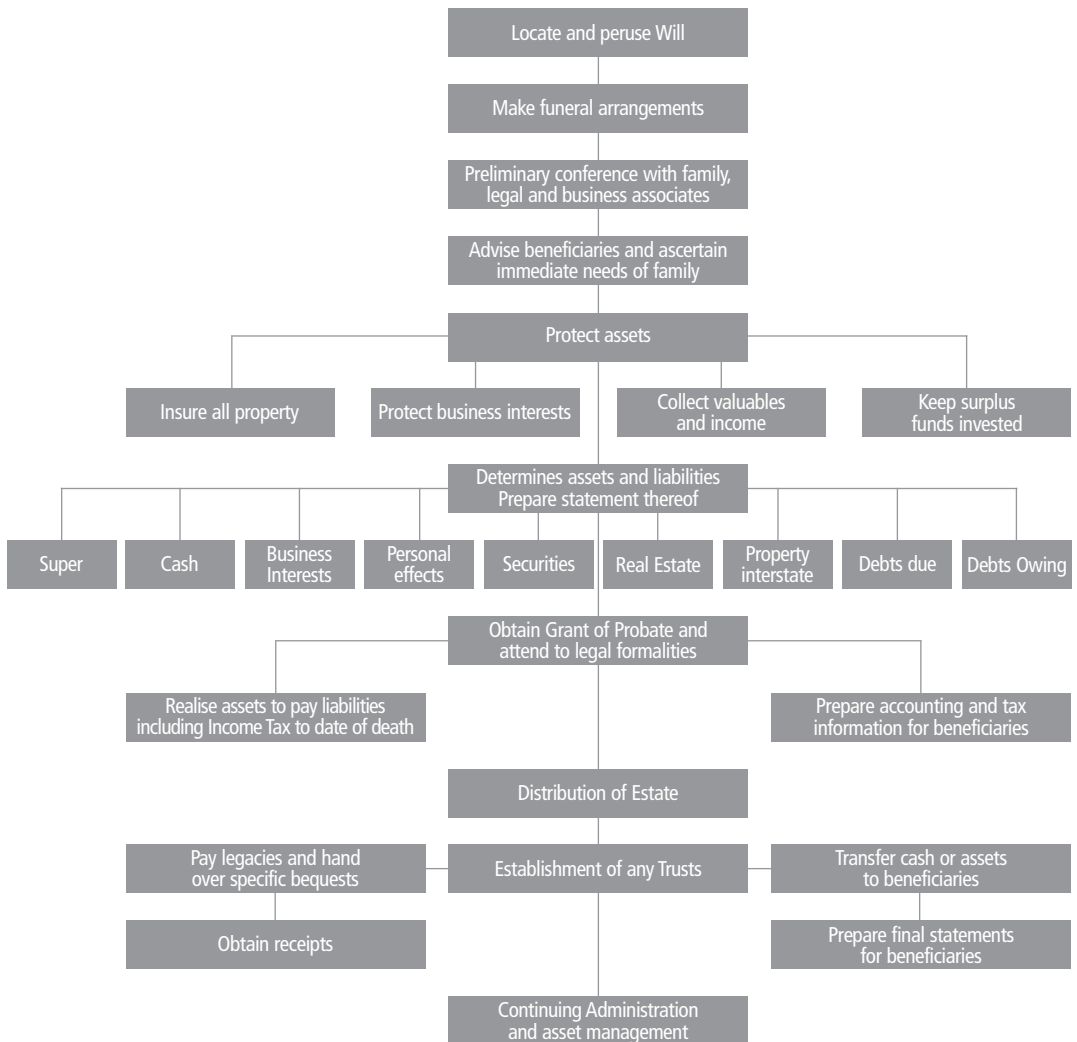
When deciding upon who will be the Executor it is of utmost importance that the welfare of the beneficiaries is paramount and this depends upon the Executor's trustworthiness, business knowledge and acumen, impartiality in handling the Estate, and ability to maintain proper records. The Executor must also be ready, willing and able to carry out promptly and efficiently all the duties of an Executor when the time arrives for them to act.

All people have the right to choose who will be their Executor. This right is one of the most important choices when making a Will. Some choose to name a family member or friend as their Executor or to make use of the knowledge and skills of professionals and have an experienced Trustee Company like Tasmanian Perpetual Trustees, as their Executor.

# Duties of an Executor

Some of the various duties of an Executor are listed on the following pages. Not all Estates will require all of these steps. The main duties of an Executor are the duty of care, the duty to act personally, and the duty to act in the best interests of all beneficiaries.

**This section provides a broad overview of the steps an Executor such as Tasmanian Perpetual Trustees undertakes in administering an Estate.**



# The process for preparing the Estate for Administration

## Stage 1

- Locate and examine the Will of the deceased.
- If necessary, make funeral arrangements. Whilst this is an Executor's responsibility, the family usually attends to these details.
- Assist to provide for beneficiaries immediate or emergency, personal requirements.
- If necessary, obtain advice to fully understand the terms of the Will and any special instructions. Also, consult with other advisers familiar with the affairs of the deceased in order to obtain information concerning the financial situation of the deceased.

## Stage 2

- Become familiar with the deceased's assets and business interests and take all necessary steps to protect property. If a private business is involved, take steps to arrange for suitable management, if necessary.
- Take an inventory and custody of cash, securities, jewellery etc. and other documents and records of value, from the residence and place of business of the deceased.
- Contact banks and other financial institutions to confirm details of securities held in safe custody, loans, and loan guarantees outstanding. Obtain current statements.
- Ascertain the particulars and adequacy of all personal and business insurance policies, including amount, benefits, terms and beneficiaries.
- Determine benefits, if any, due under government or corporate pensions or superannuation.
- Obtain details of any outstanding salary, death benefits, deferred profit sharing, medical, group life, or health insurance or any other possible amounts due arising from the deceased's employment.
- If the deceased's residence is now vacant, arrange for its protection and supervision, and specific insurance requirements for extended unoccupancy cover. Search the title to all real estate in which the deceased had an interest.

## Stage 3

- Inspect and have valued any real estate.
- Check leases, mortgages and statutory outgoings such as rates and land tax.
- Determine values of all investments and arrange for collection of future income payments.
- Determine the deceased's interest in any other estates or trusts.
- Determine any liabilities.

## Stage 4

- Prepare a detailed inventory of assets and liabilities as at date of death.
- Determine whether or not to apply for probate. This application requires production of the original Will, Death Certificate, Assets and Liabilities Statement, Affidavit of Executor and, in some cases, such as for poorly executed Wills, affidavits from the witnesses.
- Prepare final income tax return(s) for assessment.

With Probate formalities now dealt with, the Executor is in a position to administer the Estate, that is:

- to deal with the assets,
- settle the liabilities and income tax,
- pay legacies,
- satisfy general and specific bequests and gifts of real estate,
- make the final distribution,
- prepare final accounts to distribute estate,
- set up any ongoing trusts.

# Administering the Estate

---

Dealing with the assets:

- **Cash** - When authorised, close bank and investment accounts. Whenever feasible, invest part or all of cash balances until needed.
- **Investments** - Remove from the safety deposit box and take possession. Register in the Executor's name. Review to determine in consultation with beneficiaries which should be held and which (if any) are specifically bequeathed in the Will and which should be sold. Sell investments and securities as determined, to pay tax and other liabilities, as well as to provide cash for any bequests. Review regularly while the Estate continues.
- **Real Estate** - Arrange sale or transfer to beneficiaries as the Will requires or as circumstances permit.

- **Insurance, Superannuation and Annuities** - Submit necessary claim forms and supporting documents to life insurance companies and/or Trustees and collect proceeds of life insurance, superannuation and annuity policies. Arrange for cancellation or transfer of general insurance on assets as they are transferred or sold.
- **Household and Personal Possessions** - Deliver to the beneficiaries all household goods, jewellery and other personal possessions that have been bequeathed. Arrange for the removal and sale of the balance of these assets, usually through an auctioneer.
- **Private Business** - Arrange for, participate in continuation and competent management of the business. Alternatively, arrange for its sale, winding up or transfer under the business succession agreement.
- **Other Assets** - Deal with any other assets as required by necessity or by the Will.

Note: The costs of transferring assets such as stamp duty and/or legal fees may or may not be payable by the recipient, depending on the terms of the Will. It is important to take advice on this point.

## Settling the liabilities

---

- **Debts and Liabilities** - Advertise for creditors and other claims on the Estate. Check all claims and pay valid debts. Some credit cards have a death benefit feature (Executors should investigate this possibility). As funds become available, discharge any bank or private loans, mortgage payable and/or business liabilities.
- **Income Tax** - At death the deceased is generally deemed to have disposed of all property at fair market value at that time. Therefore, in addition to determining regular taxable income relative to the year of death, all the deceased's capital gains or losses (if any) as of the date of death must also be determined. If the surviving spouse or testamentary trust receives the entire Estate, it is possible that no capital gains tax will be payable until that spouse dies. Advice may be required on this point. Prepare an income tax return for the portion of the year to the date of death, and for any previously unassessed period. Pay taxes and obtain final assessment. Prepare income tax returns for the estate annually until wound up, and advise beneficiaries of taxable income, if any, allocated to them and upon which they are liable for income tax.
- **Other Duties or Taxes** - Make a reserve for duties or taxes in respect of foreign jurisdictions and instruct a suitable professional to prepare and file returns. Settle any balances owing and obtain discharges.

# Distributing the Estate

---

The following must be considered by an Executor of an Estate at distribution time:

- Terms of the Will
- Transferring assets directly to beneficiaries
- Payment of legacies
- Hand over of bequests
- Preparation of estate accounts
- Accounting to beneficiaries including taxation information
- Transfer of gifts of real estate
- Ensuring that distributions are equal in value where required
- Cash distributions
- Capital Gains Tax implications
- Providing taxation information including Capital Gains Tax information
- Final distributions

# Power of Attorney

A Power of Attorney is a legal agreement that gives a person or organisation the ability to make decisions and sign documents on another person's behalf. This agreement is represented by documentation that details the agreement to give a specified person, persons or organisation the power to deal with another person's assets and financial affairs whilst they are still alive but unable for any reason to act personally.

## Fact or Fiction?

### **I'll leave them all my debts**

Many people jocularly say that they will leave someone all their debts. Can this be done? Well in a sense, yes it can. There is a general principle that "debt follows the land" and if a property that is mortgaged is specifically left to a beneficiary, unless the Will says otherwise (and they usually do), they have to take the mortgage with the property.

# Client Services:

## Security and peace of mind for those who entrust us with:

- Wills and Estate Planning
- Estate Management and Trust Administration
- Power of Attorney
- Personal Portfolio Management
- Funeral Bonds

## Wealth building opportunities through investments in our:

- Cash Funds
- Mortgage Funds
- Diversified Share Funds
- Superannuation Fund

## Competitive and flexible first mortgage financing for:

- Rural, Commercial and Business purposes

## Professional and confidential services in:

- Financial Planning
- Administration under Guardianship and Administration Orders
- Corporate and Custodial Trustees

## Through our joint venture with Bendigo Bank:

- Tasmanian Banking Services can provide a full range of complementary banking products and services

<b>Burnie</b>	17 Cattley St	P: (03) 6440 8440	F: (03) 6440 8446
<b>Devonport</b>	70 Rooke St Mall	P: (03) 6498 7744	F: (03) 6498 7746
<b>Glenorchy</b>	385A Main Rd	P: (03) 6214 7800	F: (03) 6214 7806
<b>Hobart</b>	29 Murray St	P: (03) 6222 1222	F: (03) 6222 1266
<b>Launceston</b>	23 Paterson St	P: (03) 6348 1111	F: (03) 6348 1166
<b>Rosny</b>	9 Bayfield St	P: (03) 6233 1533	F: (03) 6233 1536
<b>Ulverstone</b>	28A Reibey St	P: (03) 6490 8333	F: (03) 6490 8336

[www.tasmanianperpetual.com.au](http://www.tasmanianperpetual.com.au)

[info@tptl.com.au](mailto:info@tptl.com.au)

Tasmanian Perpetual Trustees Limited ABN 97 009 475 629 Australian Financial Services Licence 234630

24th February 2006



**Tasmanian  
Perpetual  
Trustees**