



Does an executor of a Will get paid?

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Executor's commission is said to be compensation for the "pain and trouble" that an executor goes through in carrying out the administration of a deceased estate. Depending on the size of the estate, the duties of an executor can range from relatively straightforward through to somewhat complex. This leads us to the question, "does an executor get paid for administering a deceased estate?"

More on what is involved in [acting as an executor and administering the estate is available here](#).

Executor's commission by Court Order

If the Will does not provide any basis for a commission to be paid, then the executor is able to apply to the Supreme Court of NSW for an order for payment. This is a formal application made to the Court.

An affidavit needs to be filed with the application and it needs to outline the work that has been done by the executor.

A full accounting for all:

- the assets of the estate which have been sold or transferred;
- the income received by the estate; and
- the expenses paid from the estate funds.

must also be done.

The accounting includes providing evidence supporting the amounts received by the estate and the amounts paid.

How much does an Executor get paid if there is a Court Order?

The Court has the discretion to award an amount of money from the estate as commission. Lindsay J in *Gowing (2014 NSWSC 247)* indicated that the Court commonly bases the commission as follows:

- between 0.25% and 2.5% of the gross value of the realisation of assets of the estate (that is, the sale proceeds for any home, investment property and shares, the proceeds from closing bank accounts and the proceeds of selling chattels);
- between 1% and 5% of the gross income collected by the estate; and
- between 0.25% and 2% of the value of assets transferred *in specie* (that is, transferred without any money changing hands) to a beneficiary.

In addition to determining an amount to be paid as commission, the Court will usually order that the estate pay the costs of applying for commission. This may be several thousand dollars.

The alternative to all of that process, depending upon the dynamics within the group of beneficiaries, is to negotiate with the beneficiaries as to an amount to be paid to the executor without the need to apply to the Court for an order. If an agreement can be reached then this is usually recorded in a Deed outlining what has been agreed, so that there is a clear record.

Executor's commission provided for in the Will

Provision may be made within the Will for the payment of an amount to the executor.

The Will might provide a set dollar value such as \$10,000, or it might provide that it be a percentage of the value of the estate assets.

Either way, the Will should also make it clear as to whether the amount allowed for the executor is a gift but only if the executor carries out that role, or whether it is a gift irrespective of whether the person acts as the executor. If it is a gift without a requirement to act as the executor, then the Will might also provide how much should be paid as executor's commission in addition to that gift.

Executor is also a beneficiary

Where the executor is also receiving a substantial benefit under the Will, then the right to claim commission as well as the benefit may be limited.

If there is nothing in the Will dealing with commission, then the executor would need to apply to the Court but the Court would take into account the fact that the executor was receiving a substantial benefit. The Court may determine not to provide commission in addition to the substantial benefit.

Can two executors claim commission?

If there is nothing provided in the Will, then the executors should seek an order from the Court, for commission (or negotiate with the beneficiaries to agree upon a sum to be paid). The Court would not determine how the commission is divided between the executors. It will be up to the executors to work that out between themselves.

A lawyer as executor

Where a lawyer is the executor of a deceased estate, the lawyer will usually have provision in the Will to be able to claim their professional costs for carrying out the legal work, as well as having a right to apply for commission.

The legal work would encompass the application for the [Grant of Probate](#) and dealing with any transfer of title of real estate. The Court will take into account the extent that the lawyer is paid for legal work as distinct from non-legal work. Commission is then determined having regard to the extent of non-legal work (such as closing bank accounts or transferring shares to beneficiaries), which the lawyer needs to carry out for proper administration of the estate.

Should I include provision in my Will for executor's commission?

This really depends upon who it is you have appointed as executor, their relationship to you (whether as a friend or professional adviser) and their entitlement to a gift under your Will. Not all Wills would need to specifically allow for executor's commission.

Get help from a Wills and Estates lawyer

At E&A Lawyers, we're highly experienced in Wills & Estate Planning. We can assist you in drafting your Will, including advice on how you might deal with executor's commission should you wish to add it to your Will.

We can also assist if you've been appointed executor in a Will and you're experiencing some issues or simply need guidance in administering a deceased estate.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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