



Executor duties when dealing with property of a deceased estate

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Date: Sunday January 5, 2025

In NSW, an executor of an estate has several responsibilities when handling the real estate of the deceased. Beyond simply selling the property, they must carefully manage it to protect its value and comply with the legal requirements imposed on them as the executor.

This blog provides an outline of some of the key matters that an executor needs to consider when managing real estate left by the deceased.

Securing the property after someone dies

Once someone has passed away, the executor should take immediate steps to secure the property and protect it from potential risks such as theft or vandalism.

- **Change the locks:** If necessary, change the locks and secure windows and doors to protect the property and its contents.
- **Remove valuables:** If the property will be left vacant, consider whether any valuables or other personal belongings that need safeguarding may need to be moved to a more secure location.
- **Regularly inspect the property:** It is advisable to continue regular checks and inspections to monitor the property and ensure that it has not been tampered with. If the executor does not live locally to the property, consider whether a neighbour can assist in keeping an eye on the property.

Maintain the property in the leadup to probate being granted

Any real property should be regularly maintained, including garden and lawn care, cleaning, and minor repairs. This can assist in preserving the property's value and avoid attracting attention due to a lack of cleanliness.

This includes ensuring that the expenses relating to the property are paid and kept up to date. The types of expenses may include council rates, strata levies and water rates. The liability of the expenses may depend on how the property is addressed under the terms of the Will, but if it is not [specifically gifted](#), then the outstanding expenses for the property are typically part of the estate's liabilities.

If payment cannot be made immediately, then the creditor should be proactively contacted to advise them of the circumstances and request that they waive any late payment charges.

For utilities such as electricity, gas, telephone and internet services, the executor should consider whether these services are to be continued or cancelled. It may be necessary to contact the service providers and advise them of the situation and cancel the services where appropriate.

Insure property of a deceased estate before probate is granted

It is essential for the executor to ensure that the property is adequately insured. Insurance should either be maintained or obtained to protect the estate from potential financial losses due to unforeseen events like fire, flood, or theft.

The executor should contact the deceased's insurance provider to inform them of the situation and ensure the property has adequate coverage under the estate's name. The executor may also need to update the insurance policy or purchase additional coverage to address any risks associated with the property remaining vacant until it can be administered.

Contact the mortgagee (if any)

If there is a mortgage on the property, the executor should contact the mortgagee to inform them of the owner's death and advise them of the circumstances. If funds are available, then the executor should consider whether the mortgage payments can continue to be made or whether the mortgage can be discharged.

In cases where estate funds are not immediately accessible to continue mortgage payments or to discharge the mortgage, then appeals should be made to the mortgagee to delay expectations of payment until such time as a Grant of Probate can be obtained and funds of the estate redeemed.

Manage rental income (if applicable)

If property of a deceased estate was rented out prior to death and the tenant remains in the property, then it may be necessary to consider who is entitled to the rental income. The entitlement to income will typically depend on the contents of the Will.

In any event, the executor should continue to collect rental payments and keep a record of all income and expenses to be included in the estate's financial accounts.

If the executor decides to rent the property out while managing the estate, this option requires careful planning, including giving consideration to the following.

Timing of renting out property of a deceased estate

Generally, the executor can commence renting the property out on behalf of the estate immediately, but they should consider the implications on a proposed (future) sale of the property or administration of the estate as it can impact or delay such actions.

Entitlement to rental income and expenses

As noted above, the contents of the Will can impact who is entitled to any rental income or liable for expenses related to renting the property. This must be considered prior to any decision to rent a property out on behalf of the estate.

Additional expenses

In certain circumstances, [land tax](#) may become payable if the property is rented out for a period of time. The consequences of the decision to rent the property should be considered before doing so.

Prepare for sale or transfer of property of a deceased estate

Executors must either sell the property or transfer it to beneficiaries according to the Will or estate plan. The executor must consider the terms of the Will carefully and may make this decision in consultation with the beneficiaries.

If the decision is made to sell the property, the executor should [consider the timing of the sale](#).

If a beneficiary is inheriting the property or the decision is made to transmit the property to the beneficiaries of the estate, then the executor will need to arrange for the title of the property to be transmitted to the beneficiaries through NSW Land Registry Services. The title can only be transmitted following receipt of a Grant of Probate. The executor should also consider whether a valuation is necessary and the potential tax consequences.

Arrange for property valuation

It is not always essential for a formal valuation to be obtained, as distinct from an appraisal from a real estate agent, but the executors or a beneficiary of a gift of real estate should consider whether a valuation should be obtained for tax purposes.

An executor should consider obtaining a valuation for the property from a registered valuer if:

- The Will requires that they obtain a valuation;

- Calculations of tax are required to balance provision among beneficiaries; and
- There is any dispute or disagreement among beneficiaries as to the value of the property, particularly where the value of the property can affect the distribution from the estate to the beneficiaries.

If the property is specifically gifted to a beneficiary under a Will, then that beneficiary should consider obtaining a valuation if it is necessary to establish a cost base for the calculation of capital gains tax in the future.

Handle Capital Gains Tax (CGT) and other taxes

Real estate transactions often have tax implications, and executors need to consider or account for any tax liabilities when selling or transferring property. Executors should consider potential tax liabilities associated with the property, including:

Capital Gains Tax (CGT)

If the property wasn't the deceased's primary residence, it might attract CGT when sold, or it should be considered if the asset is being transmitted to a beneficiary. If the property was the deceased's principal place of residence, then the property may remain exempt from CGT if sold and the sale completed within two years from date of death.

Income tax

If the property is rented out during the probate process, any income received may be subject to tax.

Transfer duty

If the property is being transferred to some but not all beneficiaries or otherwise is not being transferred in accordance with the terms of the Will, then the transaction may be subject to transfer duty.

Land tax

If the property was not the deceased's principal place of residence as at date of death, then land tax may need to be considered. If the property was the deceased's principal place of residence as at date of death, then the property may remain exempt from land tax for up to two years.

Professional advisors can assist in advising as to the executor's tax obligations and plan accordingly.

Get help from a probate lawyer

Handling real estate as part of a deceased estate in NSW is a key responsibility of an executor. To ensure they fulfil their duties effectively and the estate is managed smoothly and respectfully for all involved, advice from an experienced deceased estates lawyer should be sought.

For executors facing complex estates or potential disputes, working with legal professionals can provide guidance and peace of mind through the process.

E&A Lawyers have a dedicated and experienced estates team who can help you. For more information or to arrange a consultation with a lawyer, you can call or email us.

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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