

Key considerations before accepting the role of executor in NSW

Author: Chris Alfonso
Email: chris@ealawyers.com.au
Date: Sunday January 18, 2026

Being named as the executor of a Will can feel both a privilege and a heavy responsibility. Executors are responsible for managing and finalising the estate of the deceased in accordance with the Will and the law, and with that role come significant duties under the law.

Before you accept that appointment, it is important to understand what the role of executor involves and what risks it carries. Obtaining legal advice before you start acting can save you significant time, stress and personal exposure. If you have already started to act, you may not be able to simply stop acting and let someone else take over.

This is especially important if you are not a beneficiary under the Will, there are more liabilities than assets in the estate, or if you suspect there may be disputes among family members or others.

Duties of an executor

An executor is the person or persons appointed under a Will to administer the estate of the deceased. They are responsible for ensuring the deceased's wishes are carried out according to the Will.

The role of executor involves:

- making funeral arrangements and decisions around the disposal of the body;
- identifying and securing the assets of the estate;

- usually, obtaining a Grant of Probate from the court;
- paying debts, liabilities and taxes of the estate;
- distributing the estate to beneficiaries in accordance with the Will;
- representing the estate in dealings with banks, government agencies, and in some cases, the courts;
- keeping proper records and acting in the best interests of the estate.

In practical terms, the executor steps into the shoes of the deceased for the purpose of handling their legal and financial affairs after death.

Do I have to accept the role of executor?

No. Just because you have been named as an executor does not mean that you are legally required to accept the role.

If you do not wish to act or you are unable to act, you can renounce the role before taking any steps in the administration of the estate. However, once you start acting as executor (for example, by dealing with assets or making funeral arrangements on behalf of the estate), you may be seen to have already accepted the role, and it may not be possible to step back without the Court's intervention.

This is why it is important to obtain legal advice **before** you take any action on the estate. Taking a moment to understand what the role will involve, how complex the estate is, and whether you are prepared to take on the responsibility may help you to make an informed decision.

Why you should obtain legal advice before accepting the role of executor

Risk of personal liability

Executors owe duties to the beneficiaries of the estate and must act in accordance with the law and in the best interests of the estate.

If errors occur, such as distributing assets too early, failing to pay debts, or not dealing properly with tax obligations, you could be held personally liable for losses suffered by the estate or to pay any outstanding debts of the estate.

Legal advice can help you understand these risks and how to avoid them.

CALL A WILLS &ESTATES LAWYER FOR ADVICE: 02 9997 2111

If you are not a beneficiary, duties can be significant

A person can be appointed as executor even though they are not a beneficiary of an estate.

If you are not a beneficiary of the Will, you may have no financial interest in the estate but still bear the full responsibility of administering it. This can be burdensome, especially if the estate is complex or if there are disputes.

An executor may be entitled to be paid executor's commission for their pains and troubles in acting (if permitted by the Court, beneficiaries or under the Will), but this is not typically financially rewarding. You can read more about this in our earlier blog, "Does an executor of a Will get paid?"

Potential disputes

Disputes among beneficiaries, or claims by people left out of the Will (for example, through a family provision claim), can create additional burdens for executors and make administering the estate stressful and complicated.

Executors represent the estate and are typically responsible for defending the estate from any claims. This can become costly and time-intensive. You can read more about this in our earlier blog, "Defending a Will against a Family Provision Claim in New South Wales".

If you suspect there may be disagreement, for example, where the Will excludes a family member, or provides unequally between children, obtaining early advice can help you to understand and plan for how to handle the situation.

CALL A WILLS &ESTATES LAWYER FOR ADVICE: 02 9997 2111

Common challenges executors face

Even the most straightforward estate can have unexpected complications. Executors may encounter:

- complex assets: including businesses, trusts, or overseas property.
- family provision claims: where a person eligible under the law seeks provision from the estate on the basis that they were not adequately provided for in the Will.
- conflicts between executors: where more than one executor is appointed, but they cannot agree on key decisions.
- beneficiary disputes: disagreements over the meaning of the Will, timing of distributions, value or treatment of specific assets.

These challenges can significantly increase the time and cost involved in administration of the estate.

What if I don't want to act as an executor?

If, after receiving advice, you decide not to proceed as executor, you can usually renounce your role by signing a formal renunciation.

If there are other executors named in the Will, they may be able to continue without you.

It is usually important to make that decision early, before you have started to act, as doing so later can complicate matters and may require a court application.

Support available for executors

Many executors feel daunted by the role, but you do not have to manage it alone.

Executors can obtain professional help, including legal, accounting and financial advice, and the costs of this are generally paid from the estate, provided they are reasonably incurred. An executor cannot delegate all responsibilities to professionals and expect the estate to pay, but a lawyer who is engaged by an executor to perform legal work required by the estate will typically be paid from the estate.

How can a Wills &Estates lawyer help

If you have been appointed as executor of an estate, take a moment to decide whether you are prepared to act before accepting the role.

If you have been appointed as an executor and are unsure what to do next, at E&A Lawyers, our experienced team can guide you through your options and help you start the process with clarity and confidence. We regularly assist executors in understanding their role, applying for probate, managing disputes, and guiding them through the administration process from start to finish.

Contact us to discuss your situation and ensure you make an informed decision before accepting the role.

Contacting E&A Lawyers

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

02 9997 2111

info@ealawyers.com.au

This article 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 E&A Lawyers.