

# Choosing an executor

## What is an executor?

An executor is the person you choose and name in your will to carry out your wishes after you have died.

## Who can be an executor?

Any adult with **legal capacity** may be an executor. You may choose a relative, a friend or a professional. Your executor may also be a beneficiary in your will.

You may appoint **more than one** executor to work together to administer your estate. You may choose to appoint a **back-up** to act if your preferred executor is unable or unwilling to act or dies before you.

## What factors should I consider?

It is best to appoint an executor who

- you **trust** to carry out your wishes
- is likely to **survive** your death
- has the time and **capacity** to manage legal and financial affairs.

Being an executor can be time-consuming and stressful. While the person you appoint does not need to formally accept, you should speak with them before you sign your will to check they understand their role and responsibilities. They should seek legal advice if they have questions or concerns.

You do not have to give your executor a copy of your will but you should let them know where it is. You may also wish to complete our [End of Life Planning Checklist and Worksheet](#) and store it with your will.

Where possible, you should speak with your loved ones about who you have appointed and why. This may help to avoid disputes down the track.



## Professional services and fees

Many people do not have a friend or relative they feel comfortable appointing as their executor. There are professional services and trustee companies, including the Public Trustee, who may be appointed in these circumstances.

Professional executors will usually charge a **fee** for their services. Non-professional executors such as relatives or friends may seek help from professional services to administer your estate, such as financial advisors, accountants, and lawyers. These fees will come out of your estate.

Executors are entitled to seek reasonable payment from your estate to cover their time and any costs incurred. You may also choose to provide for this in your will by leaving your executor a gift.

## Duties of an executor

The duties of an executor do not come into effect until you have died.

Being an executor may involve:

- **locating** the original version of your **will**
- allowing certain people to **view** and take copies of your will
- organising your **funeral** and burial or cremation
- applying for a certified copy of your **death certificate** from [Births, Deaths and Marriages](#)
- applying to the Supreme Court for **probate** or other **court orders**
- **administering your estate** by distributing your assets in accordance with your will.

Being an executor does **not** involve:

- being required to act if they are now unable or unwilling to act
- personally paying your bills, debts or liabilities if your estate does not cover them.

## What if problems arise?

Court action can be taken against an executor who fails to discharge their duties. This may be where an executor

- takes no steps to administer the estate
- does not follow the directions in the will
- fails to preserve estate assets or causes loss.

The Court may make a range of orders to hold executors to account. This may require an executor to

- pay back to the estate any improper benefit obtained
- compensate anyone who has suffered loss or damage.

Court action to hold an executor to account must be started within **3 years** after becoming aware of the executor's failure to meet their duties.

Seek legal advice before taking court action. Call our **legal helpline** on **1300 366 424** for information and general advice. For personal advice and representation, contact a private lawyer that specialises in wills and estates.

If you have been named as an executor, you may wish to read the Public Trustee's online resource [I've been named as executor – where do I start?](#) which can be found at [www.publictrustee.sa.gov.au](http://www.publictrustee.sa.gov.au).