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Do unpaid bills come out of your estate?

Considerations for will makers, executors and beneficiaries

When someone dies, many beneficiaries want to know what happens to outstanding debt, whether it comes out of the estate, who pays it and when. Examples include mortgages, utilities, phone bills, funeral expenses, and credit card debt.

“Before any debts can be dealt with, the executor needs to obtain probate which involves providing the courts with details of all the deceased assets and liabilities,” says Malcolm Gee, National Manager of Estate Management at Equity Trustees.

Probate is the process of proving to the court that the will the executor possesses is the valid and final will of the deceased, and that their list of assets and liabilities is complete. Once the court approves this by issuing a grant of probate, the executor is appointed as the legal entity to deal with the assets and liabilities of the estate. The executor is then able to administer the estate and carry out the wishes of the will maker.

There will be court costs and other legal fees incurred prior to probate being granted. These costs are normally borne by the executor and not reimbursed until assets of the estate are brought under the executors control.

Some other debts that executors need to consider are:

- **Funeral expenses:** One of the first expenses incurred after someone passes away are the funeral expenses. Often if the receipt for this cost is provided to the deceased's bank and there are sufficient funds available, the bank will pay the invoice directly or reimburse the executor or family member who has paid this bill. The sooner this bill is paid the faster the death certificate can be ordered which is the first step to commence the administration of the estate.
- **Outstanding medical and aged care bills:** Ordinarily medical and aged care bills are paid in advance or in the case of medical bills, they may be taken care of by Medicare. Aged care costs will cease on the death of the resident so there may be a small amount to pay. If there is a Refundable Accommodation Deposit (RAD) this will be held by the institution and not released to the executor until probate has been provided and all outstanding costs have been paid.
- **Utilities:** Often there will be outstanding bills for electricity, gas, council rates, water rates or strata levies when someone passes away or they will be received in the weeks or months after their death. In many instances it is advisable to pay these bills if possible so that connections remain, especially if there is someone living in the property or if the property is to be maintained before selling. It is advisable to contact these service providers to advise them about the death of the bill payer and discuss with them arrangements for paying the outstanding amount.
- **Loans:** If the deceased had any outstanding loans at time of death it may be possible to cease payment of the loans when advising the financial institution. However normally interest will continue to accrue on any outstanding balance until the loan amount is repaid.



- **Outstanding tax obligations:** If the deceased has an outstanding tax obligation at the time of their passing, this debt will remain outstanding and potentially accrue interest costs until it is repaid by the executor.
- **Insurance on assets in the estate:** One of the critical obligations for the executor is to ensure that all estate assets are protected before they are ultimately distributed in accordance with the instructions in the Will. In light of this, it's important the property of the estate is adequately insured. This includes property, cars, motorbikes, boats, caravans and any valuables, and may involve renewing any insurances already in place or taking out new insurance policies as appropriate. This cost would normally be incurred by the executor who would only be reimbursed once probate has been granted and access to the deceased's bank account occurs.

"If a family member is unable or unwilling to pay these bills then it will fall to the executor of the estate to manage these," says Mr Gee.

Mr Gee adds, "As a trustee or executor, one of the primary duties is to ensure that all outstanding debts and liabilities of the deceased are settled before any distribution of assets. Ensuring all debts are paid is critical to fulfilling the executors' fiduciary responsibilities and avoiding legal complications. If this is not done correctly the executor may be personally liable for any unpaid debts."

"The executor of an estate is responsible for the debts of the estate. However they can use assets of the estate to pay any outstanding debts or tax liability. Funds do not become available to the executor until probate has been granted so any debts will remain outstanding until that time."

"Once all the debts are repaid, it enables the executor to focus on distributing the remaining assets of the estate as directed by the testator," concluded Mr Gee.

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