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In this issue, we discuss some of the obligations of being a company Director, give some background to what an assent is in administration of estates, and continue with the second edition of material on desirable attributes of Executors.

Glossary: Assent

When Executors are dealing with estates, it is important that their advisers and beneficiaries know the meaning of what an “assent” is, because it is an important part of the process of completing part of the administration of an estate.

When someone has died, the Executor has a duty to get in the assets of the estate of the person who has died. This means “getting them in” to the Executor’s name, and under the Executor’s control.

When the estate administration process had reached the stage where the assets can be transferred to the beneficiaries, the Executor assents to the assets passing to the beneficiaries. This arises in two ways:

- (a)** for example, if a gift of an engagement ring or a fur coat has been given by the Willmaker to their niece, Mary, when the Executor assents to the transfer of the ring and the coat to Mary, they are transferred in full to Mary and are no longer part of the assets under the estate administration;
- (b)** similarly, for example, a gift of a property at 21 High Street, Abbotsfield, to Mary, set

out in a Will, will not be effective until the Executor assents to the transfer of that property as part of the estate administration.

As a gift recipient can decline to take a gift, the process of transferring those assets to beneficiaries is done by the executor assenting to those assets with the beneficiaries' consent.

We use the technical term for the transfer that the executor makes from themselves to the beneficiaries. The Executor cannot make that assent when the beneficiaries have declined to accept the gift under the estate. After the assent is completed, the gift recipient's title to the articles given, or the property given, is complete.

For enquiries about the administration of estates, the obtaining of Probate of Letters of Administration, contact Jacqueline Goodwin, Kate Moss or Peter Worrall, at Worrall Lawyers.



Peter Worrall
Director



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Company Directors – Financial Records

Directors of companies need to be conscious of acting both lawfully and properly at all times. This article by David Bailey, who both works with Kimberley Martin and with Peter Worrall in Trusts, Corporations and Commercial Law, explores some of the important aspects of being a company Director.

A corollary of acting properly in the capacity of a director, is the need to constantly monitor and be conscious of the company's financial circumstances at all times.

Directors should approach their role with an inquisitive mind, as the responsibility imposed upon them (as the pinnacle of the company hierarchy) is onerous.

To avoid a breach of your duties as a Director, it is critical that appropriate financial procedures are implemented in order to produce accurate financial reports. The Director should constantly and attentively monitor the financial circumstances of the company, and be fully aware of the standards expected in maintaining the company's financial records. If not, a Director could find themselves in breach of their duties, even if unintentionally.

General Due Care and Diligence

The general obligation imposed upon directors in effecting their powers and satisfying their duties owed to the company is to do so with 'the degree of care and diligence' a reasonable person acting as a director in the specific company's circumstances would: Corporations Act 2001 (Commonwealth), s 180.

The case of Australian Securities and Investments Commission v Healey [2011] FCA 717, assists in defining the general standard expected of directors in relation to the discharge of their obligations relating to financial management. When reviewing any financial reports or documents as a Company Director, you must be satisfied that the documents reflect the company's financial position, to the best of your knowledge as Director, and that no material information is omitted. Directors must take a diligent interest in the financial circumstances

of the company and ensure that this is accurately reported.

Statutory Standards

Under s 286 of the Corporations Act, companies have an obligation to keep written financial records that:

1. correctly record and explain the company's transactions, financial position and performance during the period of the report; and
2. are of a standard sufficient to facilitate the production and auditing of true and fair financial statements.

Additional Standards

In addition to these general standards, the Act provides that financial reports must also comply with standards set by the Australian Accounting Standards Board (or in the case of not for profit entities, the Charities and Not-for-profit's Commission Governance Standards). Directors should be aware that these standards are extensive and frequently updated.

Directors need to be conscious of the classification of their company as this influences the nature of financial procedures that must be implemented.

Not-for-profit entities, although having different standards to comply with, still have comprehensive reporting obligations and directors of these companies should be fully aware of the standards expected.

To speak with one of our Lawyers about governance and the requirements of Corporations and Company Law in maintaining your company's financial records, or other duties of company Directors, telephone us on **(03) 6223 8899**.



David Bailey
Lawyer

Some Desirable Attributes for Executors [Part 2]

In Issue 55 of this newsletter, we considered some desirable attributes to look for when choosing an Executor. That article continues below, and reflects on some further qualities that may make someone a good choice as your Executor.

Self Awareness and Confidence

Self awareness and confidence in dealing with an estate are appropriate attributes for an executor. Executors need to take a measured and considered approach.

Nous: Common Sense and Practical Intelligence

Common sense is not as common as it should be. Good executors are practical, pragmatic, and full of common sense.

Experience at Administering Projects

Executors who have experience and success in their private and professional lives of administering projects are more likely to be successful in executing the terms of a Will for the benefit of the beneficiaries than people who do not have this experience.

This attribute is different from “managerial” attributes because having experience at administering projects and the drive to see them through to the end, ensures that the task of executorship is carried out.

Planning: A Commitment to Getting the Job Done

Executors need the capacity to plan the tasks involved, and a strong resolve to get the job done by following and adapting that plan. The task that the executor faces in administering an estate can be planned out in stages. Planning should always be undertaken.

The essential questions, which any good beneficiary will ask with some regularity, are:

- What have you been doing in the past to advance the administration of the estate?
- What are you presently doing to advance the administration of the estate?
- What do you plan to do in the near future to advance the administration of the estate?
- What are the steps necessary to complete the administration of the estate from the stage it has reached at present?
- How long will it take to finish the estate administration by taking the proposed steps to do so?

A review of these questions by an Executor, before beneficiaries start to ask the questions, should induce a good executor to work hard at the planning process, and then continue with diligence in implementing that plan as adapted from time to time.

The aim in every administration of any estate is to get to the end where the estate is fully administered. Good executors have the drive to plan, undertake, and execute the necessary steps.

This commitment to get the job done and the drive to undertake the tasks necessary is more important than personal legal knowledge.

Ability to Seek Advice

The seeking of advice is sensible. The cost of it is generally an estate expense.

A person who knows their own limitations, who understands that administering an estate is a process that must be carried out within the law, and who understands that apart from the law, there will be aspects of accounting, taxation and superannuation that are involved, is more likely to seek advice than one who is overly confident of their own abilities.

Ability to Give Good and Comprehensive Instructions

Executors will often have a variety of people assisting them. The best executors are very good at giving instructions that are comprehensive.

Ability to Take Advice

The taking of advice, that is following advice that is sought, is also sensible. And an executor who, having sought advice from appropriate qualified advisers, will find that following that advice has a protective quality for an executor in carrying out the executorship.

For those reasons, but also because taking advice is a partial protection for executors, executors should, once they have sought advice, take that advice.

Delegation

Executors of great ability have the capacity to do all the work themselves. Few have that ability, and few do all the work themselves. Many good executors delegate appropriate tasks to lawyers, and occasionally to others. When they delegate, they observe the prime rule of good delegation and that is to observe, review, and keep control of the delegated tasks so as to ensure that all of the delegated tasks are completed satisfactorily.

Non Aligned

People who are not aligned with factions within a family, or who are not aligned with classes or groups of beneficiaries are more likely to be successful than those who have a tendency to align themselves with particular groups. If they are strongly independent of factions and groups, they are more likely to be perceived by the beneficiaries to be fair and act appropriately.



Peter Worrall
Director

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We will take a final look at desirable qualities of Executors in a later edition of Estate Planning Tasmania News.

Free Family Law Information Sessions

Worrall Lawyers regularly conduct free Family Law Information Sessions.

The sessions are aimed at providing an insight into the various considerations that parties confront in relation to financial and child related matters at the end of their marriage or de facto relationship. Sessions are also focused on using family law as an estate planning tool through appropriate agreements when marriages and relationships are in a sound condition.

By request we can focus on particular problems. For example:

- agreements about property prior to or during a relationship;
- property disputes in family law;
- family trusts in family law; and
- superannuation in family law.

For further information about our information sessions or to book your place at a session please telephone us on **(03) 6223 8899**.



Trevor McKenna
Senior Associate
Family Lawyer

Start your happy ever after

Your first step is getting
the right legal advice

Free Family Law Information Sessions

Tuesdays, 12.30pm or 5:30pm
133 Macquarie Street, Hobart

Expert advice & solutions



Join Family Lawyer Trevor McKenna
for a one hour insight into:

- Marriage, Divorce & De Facto Relationships
- Parenting Orders & Child Support
- Property Settlements, Maintenance & Superannuation
- Agreements, Negotiations & the Family Law Courts

Bookings are essential
so speak to us on 6223 8899
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Further Information

Our Website:

A wealth of information in relation to estate and commercial matters can be found at our website www.pwl.com.au

Contributions:

Contributions and suggestions from Estate Planning News readers are always appreciated. Email us at jacqueline.goodwin@pwl.com.au

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