



# A Conversation About Estate Disputes: Part 7 – Costs Consequences For Executors Behaving Badly.

An executor is a well-trusted person appointed by a testator (the person making the Will) to manage their estate. An executor is also responsible for distributing the deceased's assets in accordance with the Will upon their death.

When an individual dies without a valid Will having been effected, an eligible person such as a family member of the deceased can apply to the court for appointment as

the estate's administrator, whom would then have extremely similar responsibilities to an executor.

Executors have a special relationship and important duty to act in the best interests of the estate, and an individual can always renounce their appointment as an executor if they are not up for the responsibility. However, when an executor misbehaves or acts inappropriately in their dealing or handling of the estate, this can have severe cost consequences and penalties for them.

If a court discovers that an executor or administrator of an estate, who is also a party to the litigation, has not acted reasonably, in an appropriate manner, and in-line with their duties, the court may make an adverse cost order against the executor or administrator personally. In this case, the costs would not be borne by the estate itself but rather by the executor's own funds. The executor or administrator can also be removed from their role.

The Victorian Supreme Court case of *Re Buckingham* [2016] VSC 757 is an example of this. Within this case, it was held that an executor's failure to keep proper accounts, or a lengthy delay in doing so, is a serious matter which renders the usual indemnification from the estate inappropriate, leaving the executor to pay the costs of proceedings and of the residuary beneficiaries on an indemnity basis. This follows that if the executor had properly managed the estate, the proceedings here would have been unnecessary. Only if an executor has acted reasonably will they not be deprived of their costs out of the estate, which is ultimately up to the court to decide.

## How can Andersons help?

Andersons Solicitors have an experienced **[Wills and Estates Legal team](#)** to advise you on all issues relating to estate planning. Please [contact our offices](#) to make an appointment or call to discuss your legal needs.

This article was researched and written by Law Clerk Anthony Luppino and Senior Associate [Lynn Pham](#).