



Executor's Commission

Under the Administration and Probate Act 1958 (as amended) the court may allow out of the assets of any deceased person, to his executor/administrator, such commission or percentage not exceeding 5% for his or her pain and trouble, as is just and reasonable.

Also commission may be also claimed:

- where a Will provides for an executor to receive commission (but such clauses may receive close scrutiny by the courts);
- where beneficiaries and executor agree on payment of commission (but only if all the beneficiaries agree and have the capacity to agree).

Application to court: an executor is required to set out in an affidavit, details of his or her pain and trouble and also file an estate set of accounts. Beneficiaries also have the opportunity to be heard in relation to such application. Executors ought to realise that a court only has a discretion to allow commission, but realistically, it would be common for an executor to be given commission. The court should consider in these applications: accuracy of the executors accounts, any benefit given to the executor under the Will, the extent of pain and trouble stated by the executor and any allegation of misconduct.

The rate of commission is struck on the value of gross realised assets and not the value of assets at the date of death of a deceased.

Multiple executors: if all executors apply for permission the same maximum percentage still applies. A court will not divide an award of commission between a group of executors who are required to make their own decision as to its division. Further, if only one of a group of executors applies for commission, the court may make a lower award.

Costs: the award of costs in commission application is discretionary, and consequently, an executor is not entitled to take his or her costs out of an estate, without a court order.

"Pearce Webster Dugdales are experienced in this area and are qualified to provide advice to you."

Contact: Pearce Webster Dugdales, Level 4, 379 Collins Street, Melbourne.