



MahWengKwai & Associates

ADVOCATES AND SOLICITORS



Speaker
AARON LIEW
Senior Associate



Speaker
**KEERTHANA
AISWWARYA**
Associate



Moderator
**KIRBASYINI
CHANDRAN**
Senior Associate

Wed 7 October 2026
3:00pm (GMT +8)
mwka.com/talks

MWKA ONLINE TALKS

Understanding Beneficiaries' Rights and Executors' Duties in Estate Administration



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Trusted by small medium enterprises (SMEs),
family businesses and individuals since 1985.

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About Us

- Welcome to MahWengKwai & Associates!
- Trusted by small medium enterprises (SMEs), family businesses and individuals.
- Established in 1985 by Dato' Mah Weng Kwai, now a consultant with the firm.
- Medium-sized law firm with 33 lawyers and 30 staff.

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Corporate



Dispute
Resolution



Employment



Individuals &
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Our Services

- Full-service law firm with 4 Departments:
 - Corporate
 - Dispute Resolution
 - Employment
 - Individuals & Families

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Our Practice Groups



Our Practice Groups

- 5 Practice Groups:
 - ASEAN-China Desk
 - Construction
 - Foreign Direct Investment
 - Real Estate
 - Sports & Esports

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MWKA Online Talks

- To share knowledge, raise awareness, encourage networking
- For clients, potential clients, in-house counsel
- Recent MWKA Online Talk:
 - 12.8.2026: Navigating Business Acquisitions: Key Legal Considerations from Negotiations to Completion
- Upcoming MWKA Online Talk:
 - 14.10.2026: Can JMB and MC Committee Members Be Sued Personally? Understanding Personal Liability in Strata Management

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Aaron Liew

Senior Associate

- ❖ Senior Associate in our Dispute Resolution and Corporate & Commercial departments
- ❖ Bachelor of Laws (Honours) from University of Manchester, UK
- ❖ Called to the English Bar (Middle Temple) in 2020
- ❖ Admitted to the High Court of Malaya in 2021
- ❖ Areas of practice include contentious probate litigation, corporate advisory and corporate litigation

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Keerthana Aiswarya

Associate

- ❖ Associate in our Dispute Resolution Department
- ❖ Bachelor of Laws (Hons) from Northumbria University in Newcastle, United Kingdom, in 2020. She subsequently completed the Bar Professional Training Course (BPTC) at the same university
- ❖ Admitted to the High Court of Malaya in February 2025
- ❖ Keerthana's current practice area is land acquisition.

Talk Points

- What rights do beneficiaries have?
- Executors' duties – what does the law expect?
- What can beneficiaries do when executors fail?
- When does the executor's job actually end?

Introduction

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A close-up photograph of a black fountain pen with a silver nib, resting on a document. The document contains faint, partially visible text including "enforce the marital", "Signature:", and "Date:". A large, semi-transparent yellow rectangle is overlaid on the bottom right of the image, containing the title text.

Introduction: The Inheritance Question

What is an Estate?

- An **estate** is all the **assets and liabilities** a deceased person had at the point of their death
- **2 types of estate:**
 - **Testacy**
 - An individual who passed away with a valid will
 - The will takes effect upon the death of the testator
 - **Intestacy**
 - When a person dies without leaving behind a will

When will I get my inheritance?

Before Distribution: Who Has Authority to Act?

Before an estate can be distributed, it must first be administered by an authorised personal representative.

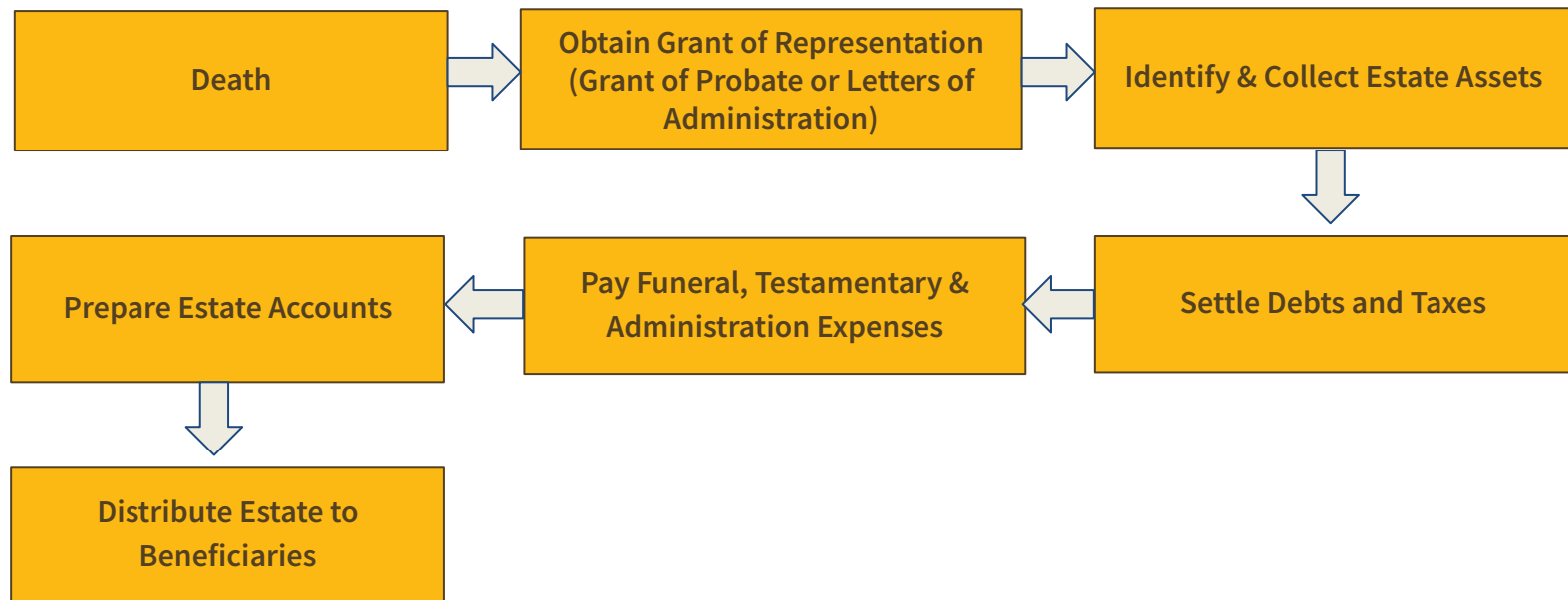
Grant of Probate	Letters of Administration
• Where there is a valid Will • The executor named in the Will applies for, and upon approval, is granted Probate. • Gives the executor authority to administer the estate	• Generally where there is no Will • Administrator is appointed upon an application for a Grant of Letters of Administration • Gives the administrator authority to administer the estate

Executor vs Administrator

Executor	Administrator
● Appointed by the deceased in a Will ● Obtains a Grant of Probate ● Administers the estate according to the Will ● Derives authority from the Will, which is recognised by the Grant	● Appointed by the Court ● Obtains Letters of Administration ● Administers the estate according to the applicable law (or the Will, where applicable) ● Derives authority from the Court's appointment

Different titles, same role: Both are personal representatives responsible for administering the estate and owe substantially the same duties to the estate and its beneficiaries.

Estate Administration process



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Beneficiaries Under a Will

Entitlement vs Distribution

A beneficiary is a person or organisation named in a Will to receive a benefit from the estate. There is an important distinction between your entitlement under the Will and the actual transfer or payment of that entitlement.

Entitlement under the Will

→ Beneficiary has a right to what the Will provides

Entitlement administration

→ The entitlement must be ascertained and the estate dealt with

Actual distribution

→ Asset or payment is transferred to the beneficiary

Being named in the Will creates an entitlement, not an immediate right to receive the asset.

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A close-up photograph of a black fountain pen with a silver nib, resting on a document. The document contains faint, partially visible text including "and enforce the marital settlement", "Signature:", and "Date:". A large, semi-transparent yellow rectangle is overlaid on the bottom right of the image, containing the text "What Rights Do Beneficiaries Have?".

What Rights Do Beneficiaries Have?

Beneficiaries' Rights

- A beneficiary does not merely have a right to receive an inheritance. They can also expect the estate to be properly administered before distribution.

However, a beneficiary right $\neq$ automatic legal right

- A beneficiary named in a Will, or entitled on intestacy, does not necessarily acquire an immediate proprietary interest in each specific asset forming part of an unadministered estate.
 -
- The Estate has to be administered first, before a beneficiary can obtain the interest or title in the particular assets.

Beneficiaries' Rights

- Beneficiary ≠ owner of every assets
- Beneficiary = person entitled to proper administration and ultimately to the benefits due to him/her

“The Will has stated I am the beneficiary of the house. Everyone living in the house has to leave”

- No immediate legal interest
- No automatic right to possession
- Only enforceable rights in relation to the proper administration of the estate

Beneficiaries' Rights

- *Chor Phaik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188 (FC)
 - **Held:** Beneficiaries of an unadministered estate did not themselves possess the interest or title in the particular estate lands to necessary to deal with them as owners.
- *Faustina Anne Sta Maria v Mary Patricia De Cruz* [2024] 1 MLJ 741 (COA)
 - **Held:** Beneficiaries do not own particular unadministered assets does **not mean that they have no rights at all.**
 - Their rights include the right to require proper administration and, in an intestacy, rights under the statutory trust for sale/conversion and to the eventual proceeds of distribution

Beneficiaries' Rights

Key Beneficiaries' Rights

- **Proper administration:** The estate is properly collected, protected and administered.
- **Information & accounts:** Reasonable information about the estate and its administration.
- **Due distribution:** Receive what they are entitled to once the estate is ready for distribution.
- **Fair treatment:** Proper and fair treatment in the administration of the estate.

An estate may take time to administer but beneficiaries have rights along the way

(1) Proper administration

- **Core Right:** For the executors to properly administer the estate
- The beneficiaries are entitled to expect the following actions by the executor(s):
 - Identify the estate;
 - Collect the assets;
 - Protect the assets;
 - Settle proper taxes, liabilities and outstanding debts;
 - Account for administrative dealings;
 - Administer in accordance with the Will; and
 - Eventually distribute the estate.

(1) Proper administration

- **Section 67 Probate and Administration Act 1959:**

- The deceased's estate must first be used to settle all debts and liabilities.
- Creditors' claims take priority over distribution to beneficiaries.
- Distribution of the estate can only occur after debts have been paid.

- **Section 68 Probate and Administration Act 1959:**

- Executors or administrators are responsible for collecting and managing the deceased's assets.
- They must pay funeral expenses, administration costs, debts, and liabilities from the estate.
- The remaining assets are distributed according to the will or the rules of intestacy.

(1) Proper administration

- **Section 69 Probate and Administration Act 1959:**
 - Establishes the legal framework for administering a deceased person's estate.
 - Distinguishes between solvent and insolvent estates:
 - **Solvent estates:** Assets are applied in the statutory order set out in the First Schedule, ensuring expenses and debts are settled before the remaining estate is distributed to beneficiaries.
 - **Insolvent estates:** Funeral, testamentary, and administration expenses are paid first, followed by creditors according to the priorities under bankruptcy law.
 - Ensures the estate is administered in an orderly and lawful manner before any distribution to beneficiaries.

(2) Right to information and estate accounts

- **Core Right:** Right to inspect account
- The question most beneficiaries would ask:
 - “Am I entitled to see the estate accounts?”
 - “What is the value of the estate?”
- **Section 62 Probate and Administration Act 1959:** empowers the Court to require the executor or administrator to produce an inventory and accounts of the estate, enabling beneficiaries to ascertain how the estate has been administered.

(3) Distribution of assets

- **Core Principle:** Beneficiaries receive their entitlement only after the estate has been administered
- The question most beneficiaries would ask:
 - “When will the estate be distributed to me?”
 - “How will my share of the estate be determined?”
- Once an Executor/Administrator obtained the Grant of Representation, the Executor/Administrator must administer the estate accordingly
- Collect & realise estate assets, pay any expenses, distribute the assets.
- Beneficiaries should only receive the assets as stipulated in the Last Will & Testament (or in accordance with Distribution Act 1958)

(3) Distribution of assets (Grant of LA)

- For an Administrator of a Grant of Letters of Administration (**steps**):
 1. Obtain Grant + Ascertain Assets and Beneficiaries list
 2. Determine statutory entitlement under **section 6(1) Distribution Act 1958**
 3. Family Arrangement (if beneficiaries agree to vary)
 4. Prepare & File Application for Distribution Order
 5. Extract of Distribution Order
 6. Distribute Estate Assets

(4) Proper and impartial administration

- **Core Principle:** A personal representative must act impartially and in the best interests of all beneficiaries.
- The question most beneficiaries would ask:
 - “Can the executor favour one beneficiary over another?”
 - “What if I am treated differently from the other beneficiaries?”
- **Duties of a Personal Representative**
 - Must act in good faith and in accordance with the terms of the will or the applicable law.
 - Must act impartially and avoid favouring one beneficiary over another.
 - Must not place themselves in a conflict of interest or obtain an unauthorised personal benefit from the estate.
 - Must administer the estate for the benefit of all beneficiaries and account for their decisions.

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Duties of a Personal Representative

Personal Representative

- Who are personal representatives?
 - Executor
 - Administrator
- The principal executorial duties as established in *Ligar Fernandez v Eric Claude Cooke* [2002] 5 MLJ 177 (FC):

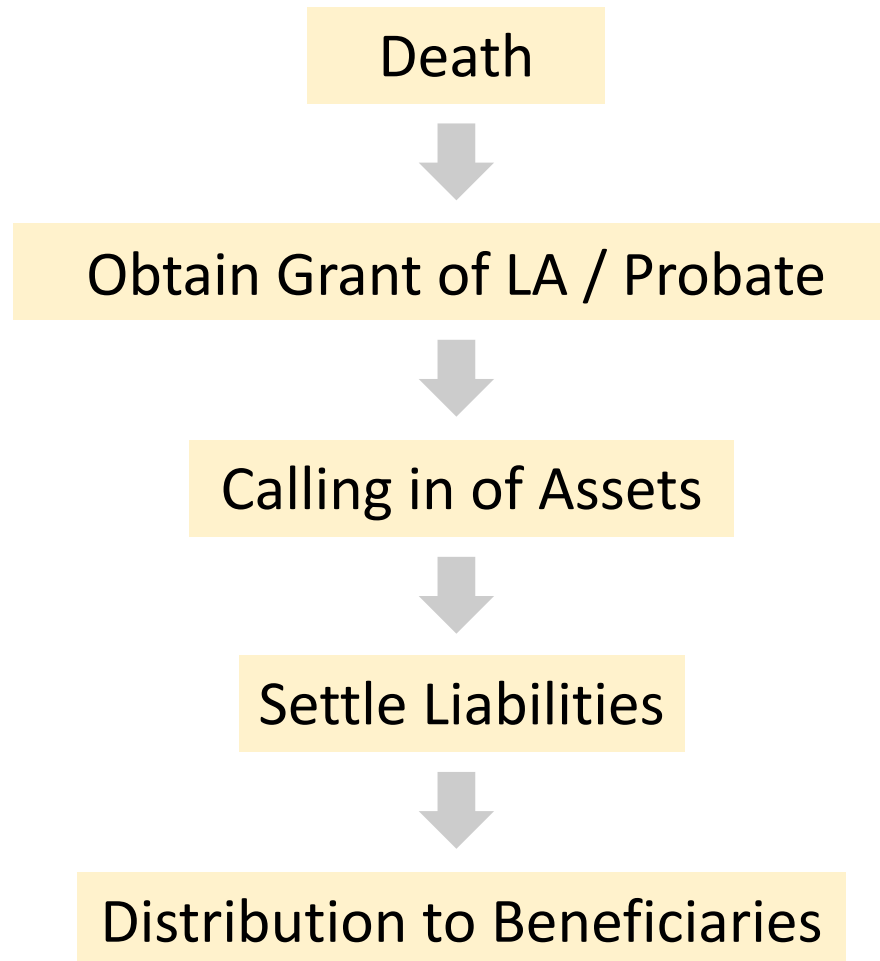
“The principal duties of an executor are to get in the assets of the deceased, to pay his debts, to pay the legacies given by the Will, and to distribute the assets.”
- In short, Executor’s jobs are: collect, protect, account and distribute

Executor vs Administrator

Executor	Administrator
● Appointed by the deceased in a Will ● Obtains a Grant of Probate ● Administers the estate according to the Will ● Derives authority from the Will, which is recognised by the Grant	● Appointed by the Court ● Obtains Letters of Administration ● Administers the estate according to the applicable law (or the Will, where applicable) ● Derives authority from the Court's appointment

Different titles, same role: Both are personal representatives responsible for administering the estate and owe substantially the same duties to the estate and its beneficiaries.

Duties of a Personal Representative



Collect & Identify Assets

- An Executor should **identify and collect** all known or unknown assets of the Deceased, including:
 - bank accounts
 - land / properties
 - shares
 - commercial and business interests
 - debts owing to the deceased

Pay liabilities

- Before distributing to beneficiaries, an Executor must consider:
 - funeral expenses;
 - testamentary expenses;
 - administration expenses (if any);
 - creditors;
 - secured liabilities (loans, facilities);
 - tax liabilities (if any); or
 - potential contingent liabilities.
- **Premature distribution** will expose executor personally if estate assets are insufficient to meet liabilities.

Administering the Assets

- An Executor must administer the assets of the estate once identified, including disposal, distribution or vesting.
- **Section 60 Probate and Administration Act 1959**
 - Obtain the concurrence of all personal representatives before selling, transferring, conveying, or assenting to immovable property, unless the court orders otherwise.
 - Dispose of estate property subject to the restrictions imposed by the Act and the deceased's will.
 - Obtain the court's permission before an administrator disposes of immovable property or leases it for more than five years.
 - Ensure any disposal complies with the Act, as a non-compliant disposal may be voidable by an interested person

Administering the Assets

- The Executor/Administrator's authority and duties are derived from the Will or PAA 1959, not from majority voting among beneficiaries.
- Executor must administer and distribute the assets accordingly to the power conferred to them.
- The Executor or Administrator must act in the best interests of the estate and its beneficiaries.
- The Executor or Administrator must comply with any statutory restrictions when dealing with estate assets, particularly immovable property.

Accounting

- During the course of administration, keep an accurate record of the estate.
- An Executor should be able to explain the inflow and outflow of money in an estate.
- Maintain proper records:
 - Estate assets;
 - Income received;
 - Proceeds of sale;
 - Expenses;
 - Professional fees or administration fees;
 - Debts;
 - Assets remaining.

Accounting

- **Section 62 Probate and Administration Act 1959**

- Prepare a true and complete inventory of the deceased's movable and immovable assets, demonstrating how the estate has been administered.
- File that inventory by affidavit in court when lawfully required.

- **Order 43 Rules of Court 2012**

- Apply to the Court for an order directing the executor or administrator to render accounts of the estate.
- Require accounts or necessary inquiries to be made into the administration of the estate.

Avoid conflicts of interest

- What if the executor is also a beneficiary?
- Problem arises when the executor uses his administrative position to advance personal beneficial interest at the expense of other beneficiaries
- Selective distribution of assets favouring the executor himself
- **Section 61 Probate and Administration Act 1959**
 - A personal representative must not purchase, directly or indirectly, any property of the deceased's estate.
 - Any such purchase is voidable at the instance of any person interested in the property.

No Delay without Justification

- Executors should not delay administration of the estate without any justification
- Ideally administer the estate within 3 years from the date of the Grant of Representation
- *Damayanti Kantilal Doshi & Ors v Jigarlal Kantilal Doshi & Ors* [1998] 4 MLJ 268 (COA)
 - The deceased appointed his wife and son as executrix and executor. Although probate was granted, the estate was not properly administered for about **seven years**. The beneficiaries applied under s 34 PAA 1959 to revoke the probate and replace the executors.
 - **Held:** Sufficient evidence showed that the executrix and executor had not properly discharged their duties in the interests and welfare of the beneficiaries. Accordingly, the respondents showed sufficient cause under **Section 34 PAA 1959** for the Court to interfere with the testator's wishes.

Rights and Duties Work Together

Beneficiary Rights	Duties of an Executor/Administrator
Proper administration	Preserve and collect assets
Information	Keep proper records
Fair treatment	Act honestly, in good faith and impartially
Distribution	Complete administration before distributing the estate according to the Will / applicable law

A personal representative is responsible for the proper administration of the estate—not merely carrying out the deceased's wishes or distributing the estate

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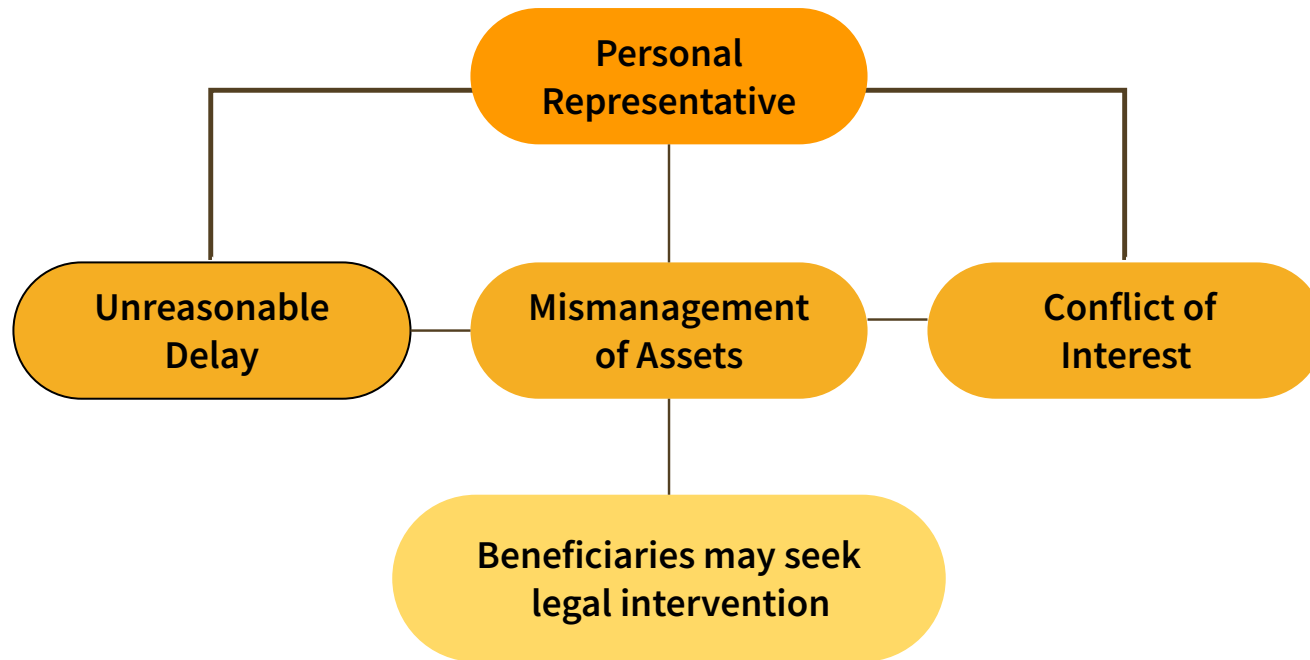
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What can beneficiaries do when executors fail?

Common Disputes Revolving Administration of Estates

- Breach of trust
 - acting in their own self-interest/misappropriating money
- Delayed responses
 - failure to update beneficiaries regularly
- Conflict of interest
 - executor buying the estate's properties
- Failure/refusal to distribute assets
- Failure/refusal to provide estate accounts

What can beneficiaries do when executors fail?



Personal representatives must account for their dealings with the estate. If concerns arise about a breach of duty, beneficiaries should first raise them with the personal representative.

What can Beneficiaries Do?

- In a case of dispute, lack of information on the administration of estate:
 - Ask for information
 - Demand an Account / Status of administration
 - Administration Action in Court
 - Removal of Executors / Revocation of Grant

Demand for Information & Account

- **Ask for information**, request the following:
 - Status of administration;
 - List of assets and liabilities;
 - estate accounts;
 - explanation for any delay; or
 - proposed distribution.

Speak to the Personal Representative

- Raise your concerns directly with the Executor/Administrator and, where appropriate, propose a discussion with all beneficiaries.
- As a beneficiary, you may request a complete inventory and accounts of the estate and require the personal representative to account for dealings with estate assets.
- Personal representatives have a duty to keep accurate accounts and be ready to render them when called upon.

Cases have established that a personal representative is accountable for all dealings with estate property and must render proper accounts when called upon to do so (***Woon Mooi Hua & Anor v Tan Kay Swee* [1971] 1 MLJ 169 (HC)**)

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Administration Action

If the dispute between you and your personal representative remains unresolved, beneficiaries may apply to the High Court for directions on the administration of the estate by way of an administration action

- **Order 80 of the Rules of Court 2012:**
 - Governs administration actions, allowing the High Court to supervise the administration of a deceased's estate.
 - Enables beneficiaries, creditors, or other interested parties to seek the Court's directions on disputes relating to the administration of the estate.
 - The Court may order the personal representative to provide accounts, make payments into court, or perform (or refrain from) specific acts to ensure the estate is administered properly.

Administration Action

- **Purpose:** to obtain directions on questions that arose during the administration of an estate
- **Seek the High Court's directions** on issues arising during the administration of the estate.
- Resolve disputes concerning:
 - estate administration;
 - beneficiaries' or creditors' rights; and
 - interpretation of interests under a will or intestacy.
- **Facilitates proper administration** rather than removing the executor.

Administration Action

- The High Court may:
 - order the executor to provide estate accounts;
 - direct or restrain specific actions; or
 - make other orders necessary for the proper administration of the estate.
- Applications may be made by **beneficiaries, personal representatives, creditors, or other interested parties.**

An administration action assists the court in ensuring that the estate is administered properly, rather than punishing the executor.

Removal of a Personal Representative

- Beneficiaries may apply to the High Court to revoke the Grant of Probate or Letters of Administration for sufficient cause.
- **Section 34 of the Probate and Administration Act 1959:**
“Any probate or letters of administration may be revoked or amended for any sufficient cause.”
- Removal is an **exceptional remedy**, reserved for serious cases where the executor can no longer properly administer the estate.
- The applicant must provide evidence of misconduct or inability to perform the role.

Removal of a Personal Representative

Common Grounds for Removal

● Serious misconduct or dishonesty.	● Unsuitability to continue as executor.
● Unreasonable inaction or lack of diligence.	● Grant obtained through fraud or misrepresentation.
● Conflict of interest.	● Breakdown in relationships preventing proper administration.

Cases have shown that Court is slow in removing the person(s) named in the will as executor (***Liong Seow Keng & Ors v Ho Soon Cheng [2015] 3 CLJ 808 (HC)***).

Objective Test

- The phrase “sufficient cause” is not defined in the **Probate and Administration Act 1959**.
- **Objective test** - The welfare and interests of the beneficiaries of an estate as the **paramount criterion** when deciding whether there is sufficient cause to interfere with the estate affairs by revoking the Grant of Probate or Grant of Letters of Administration.
- Abdul Hamid Embong J (as he then was) in *Ligar Fernandez v Eric Claude Cooke* [2002] 5 MLJ 177 (FC) accepted that:

“all that is needed is for the plaintiff to adduce sufficient evidence to raise a strong suspicion of the defendant's inaction, want of diligence and honesty, or a conflict of interest situation or inability to act to invoke the court's jurisdiction under s. 34 of the Probate and Administration Act 1959 and allow the reliefs sought”.

Removal of a Personal Representative

- *Re Khoo Boo Gong, Decd Khoo Teng Seong V Teoh Chooi Ghim & Ors* [1981] 2 MLJ 68 (FC):
 - Section 34 of the Act empowers the court to interfere if ‘sufficient cause’ is shown. The phrase ‘sufficient cause’ is not defined, but the courts have always considered the welfare and interests of the beneficiaries of an estate as the paramount criterion in deciding whether or not there is sufficient cause to interfere. This is strictly an objective test.
 - **Held:** An executor will only be removed where it is necessary to ensure the due and proper administration of the estate; the court will respect the testator's choice of executor unless sufficient cause is shown.

Removal of a Personal Representative

- *Guindarajoo a/l Vegadason v Satgunasingam a/l Balasingam* [2010] 4 MLJ 842 (HC):
 - **Held:** **Section 34 PAA 1959** provides that any probate or LA may be revoked or amended for any sufficient cause. Any person having any interest, however slight, is entitled to make such an application. A grant may be revoked where there is fraud, dishonesty, conflict of interest, or a failure to diligently administer the estate.
- *Mak Chee Chong v Rockwills Trustee Bhd* [2016] 10 MLJ 124 (HC)
 - **Held:** Where an executor refuses or fails to proceed with a probate application due to disputes (such as scale-of-fees disputes), creating an ongoing stalemate or deadlock that prejudices the beneficiaries, this deadlock constitutes “sufficient cause” for removal under Section 89 of the Sabah Ordinance (equivalent to **Section 34 PAA 1959**)

Removal of a Personal Representative

- *Moey Yoke Lai (as attorney for Boy Sai Noi @ Moey Swee Kim pursuant to power of attorney dated 21 February 2013) v Ivan Ho Tiong Yin & Ors (joint executors of the estate of Chew Pheng Chong, deceased) [2017] 8 MLJ 570 (HC):*
 - **Held:** Removal requires clear evidence of misconduct, dishonesty, incapacity, or a serious breach of fiduciary duty; mere disagreement with the executor's decisions is insufficient.
- *Tan Kah Fatt & Anor v Tan Ying [2023] 2 MLRA 556 (FC)*
 - **Held:** Welfare, interests and benefit of all beneficiaries must be properly considered. Removal should not be treated as automatic merely because one beneficiary complains of conflict or misconduct.

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When does Executors' Job End?

When Does an Executor's Job End?

General Rule: An executor's duties end once the estate has been fully administered.

The executor's role is complete when:

- ✓ All estate assets have been collected and realised.
- ✓ All expenses have been paid.
- ✓ All debts, taxes and liabilities have been settled.
- ✓ All legacies under the will have been paid.
- ✓ The residuary estate has been distributed to the beneficiaries.
- ✓ The administration of the estate has been fully completed and accounted for.

When is an estate “fully administered”?

- **Indicators:**

- assets identified and collected;
- debts and liabilities resolved;
- expenses paid;
- accounts prepared;
- distributions made; and
- no further assets remaining

- No further assets being able to be found or identified

What if executor dies before completion?

Administration de bonis non

- A beneficiary, or executor of the executor's estate step in the shoe in accordance with **Section 16 PAA 1959** to complete the remaining administration of the estate.
- Obtain Grant of Letters of Administration *de bonis non* from High Court
- Administrator should then finish all remaining administration

What if a new assets is discovered?

- ***Ligar Fernandez:***
 - Where an executor has moved into the role of trustee regarding assets already administered, his executorial capacity can remain relevant to assets subsequently discovered in the estate.
- If the original personal representative is no longer capable of completing administration, the *de bonis non* mechanism becomes relevant.
- An executor's job ends when administration is complete - but "complete" can be more complicated than simply saying that everything known at the time has been distributed.
- **When does an executor's job end?**
 - **Answer: It depends.**

Key Takeaway

- **Beneficiary ≠ Owner of the Estate assets**
 - Immediate rights about administration, not assets
- **Executor ≠ absolute owner**
 - Duties to administer the estate diligently, not owning the assets
- **Beneficiaries ≠ powerless**
 - Probate and Administration Act 1959 and Rules of Court 2012 offers mechanisms for accounting, supervision, challenging or removing a personal representative
- **Executor ≠ sleeps on his rights**
 - Completes administration as soon as practicable.

Questions?

Upcoming Talks

Date	Topic	Speakers
14 October 2026 (Wednesday)	Can JMB and MC Committee Members Be Sued Personally? Understanding Personal Liability in Strata Management	Kirbasyini Chandran & Aqil Shah



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Thank you!

Notice: This presentation does not constitute legal advice and its contents should not be relied upon as such. The facts and circumstances of each and every case will differ and therefore will require specific legal advice. Feel free to contact us for complimentary legal consultation.