

Your role as executor

Information for people affected by cancer

An executor of a will must carry out the wishes and terms of a will and defend those wishes and terms. The executor is responsible for administering the estate. There may be more than one executor of a will.

What does the executor do?

An executor's responsibilities may include:

- locating and collecting the original will
- making funeral arrangements
- locating beneficiaries and notifying them that the person who made the will has died and that the estate is to be distributed
- identifying all of the assets and liabilities and working out the value of the estate
- paying any debts and liabilities including funeral expenses, loans, income tax and fees for administering the estate – this may require the executor to sell some assets of the estate
- distributing the remainder of the assets to the beneficiaries (this may include setting up testamentary trusts including for minor or mentally incapable beneficiaries).

Being an executor of an estate can be complicated and time consuming. In order to carry out your duties, you may need to obtain legal authorisation, called a grant of probate, from the Supreme Court of NSW. If you are named as an executor of a will it is a good idea to get advice from a lawyer to make sure you get it right.

What is a grant of probate?

A grant of probate is the process by which the Supreme Court of NSW gives the executor authority to carry out the wishes and terms of a will.

Do I need to apply for a grant of probate?

Sometimes a grant of probate is not needed. This will depend on the assets of the estate and their value. Generally, when the estate is small in value and does not include real estate there may not be a need to obtain a grant of probate. For more information, see the table on page 2 for a guide to which assets usually mean you need to obtain a grant of probate.

What if a grant of probate is not needed?

If an executor considers there is no need for a grant of probate, then the executor should contact the asset holders and ask them to release the assets without a grant of probate and what their conditions might be in doing so.

A lawyer can help you with this process, and if successful, legal costs will be much lower than if a grant of probate was applied for. Some examples are outlined below.

Bank accounts – Write to the relevant banks, credit unions or other financial institutions, attach certified copies of the death certificate and the will, and ask them to release the funds to the executor for distribution to the beneficiaries. If you are not a customer at the bank, you may need to complete a 100-point identification check at a branch.

Shares – Write to the share registries of each company in which shares are held, attach certified copies of the death certificate and the will, and ask them to release the shares to the executor for distribution to the beneficiaries. To download forms for dealing with shares in a deceased estate, see computershare.com/au or call 1300 555 159.

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Life insurance policies – Write to the insurer, attach certified copies of the death certificate and the will, and ask them to release the benefit to the named beneficiary or to the executor if there is no named beneficiary.

Superannuation – Write to the trustee, attach certified copies of the death certificate and the will, and ask them to release the death benefit (the preserved amount and any life cover amount) to the named beneficiary or to the executor if there is no named beneficiary.

Motor vehicles – Take a certified copy of the death certificate, a certified copy of the will, proof of identity, the certificate of vehicle registration and the completed application form (obtain an application form from Roads and Maritime Services – RMS) to the nearest RMS office to have the vehicle transferred into the name of the beneficiary or the executor if it is to be sold by the estate.

What is needed for a grant of probate?

You may wish to apply for a grant of probate through a solicitor, the NSW Trustee & Guardian or a trustee company. You will need to follow a few steps:

- Publish your intention as executor to apply for probate. Go to the Supreme Court Online Registry.
- Wait 14 days. This waiting period gives anyone who knows of another will, creditors or others with an interest in the estate an opportunity to come forward.
- Make a probate application and file it with the Supreme Court of NSW in person or by post no earlier than 14 days from the date of publishing the intention. This needs to include original documents and statements to support the application.
- Pay the filing fee. Usually, this fee will need to be paid when lodging the probate application forms. Generally, the amount of the filing fee will depend on the value of the estate.

For more details on applying for a grant of probate, see supremecourt.justice.nsw.gov.au

Assets that may require a grant of probate

Bank, credit union or other account	Many financial institutions allow access to the deceased's accounts without a grant of probate if the amount in each account is small. Check with the deceased's bank, as the cash limit and other rules vary between institutions. If unsuccessful, then a grant of probate will be required.
Real estate	NSW Land Registry Services will need a grant of probate if the home or property is in the deceased's name only, or the deceased was a tenant-in-common with another person. However, if the deceased person owned the property as a joint tenant, probate will not be required as the property will automatically revert to the other joint tenant (e.g. the spouse of the deceased if they owned the property together as joint tenants).
Shares	Shares in the name of the deceased only and generally if valued at over \$25,000 need a grant of probate to be released for distribution by the executor. The executor should contact the share registry of the company concerned or Computershare Investor Services on 1300 555 159 to find out the number and value of shares held and whether the grant of probate is required for distribution.
Life insurance	If a beneficiary is not nominated on the policy, a grant of probate is usually required. If the estate is nominated as the beneficiary (which may occur if the insured created a testamentary discretionary trust), a grant of probate is likely to be required. However, if the policy is less than \$50,000, the probate requirement may be waived, and a certified copy of the death certificate and a statutory declaration may be sufficient for the benefit to be paid out.
Superannuation	If the deceased has not made a binding death benefit nomination, there may be a need for a grant of probate. If there is no binding death benefit nomination, the executor may ask the trustee to pay the benefit directly to the deceased's dependants, rather than into the estate. In this case a grant of probate is not needed.

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Common questions

What if I don't want to be an executor?

You are under no legal obligation to be the executor. While many people think it is an honour, you may be unwell or feel you don't have the time to be the executor. If this is the case, you will need to complete and sign a "Renunciation of Probate" form and file it at the Supreme Court. You can download the form from the NSW Courts Online Registry website, <https://onlineregistry.lawlink.nsw.gov.au>. You will need to do this before taking any steps to administer the estate, such as writing to the asset holders or distributing any assets.

Do I get paid for my expenses as an executor?

You could get paid if the will states how much you should receive. You could be entitled to apply to the Supreme Court for commission for work as executor.

What happens if the deceased had a residential tenancy agreement?

If a sole tenant of rented accommodation dies, the tenant's personal representative or relative can negotiate with the lessor/agent to end the tenancy. The date that the agreement ends will depend on the action taken. In any event, in NSW, if a tenant dies during a fixed term lease, the estate is not liable to pay for any rent after the estate has provided vacant possession of the premises even if that date is before the expiry date of the fixed term. If the deceased was one of two or more tenants listed on the residential tenancy agreement, then the surviving tenant(s) may be liable for the balance of the term of the lease.

How can a lawyer help me?

A lawyer can:

- Advise you of your rights and responsibilities as an executor
- help you apply for a grant of probate and complete the forms
- assist you to identify and collect the deceased's assets
- advise you on the possibility of tax liability
- advise you about the right legal order in which debts must be paid and any remaining assets distributed
- explain the legal order of distribution of the estate in a case where there is no will
- assist with any claims that may be made against the administration of the estate
- help you draw up a statement of assets for realisation and distribution to the beneficiaries.

Where to get help and more information

- Supreme Court of NSW – www.supremecourt.justice.nsw.gov.au
- Cancer Council **13 11 20** for information and support
- The Law Society of New South Wales – Find a Lawyer - **(02) 9926 0300** or <https://www.lawsociety.com.au/for-the-public/find-a-lawyer>

Note to reader

This fact sheet provides general information and is not a substitute for legal or financial advice. You should talk to a professional about your specific situation

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For information and support on cancer-related issues, call Cancer Council **13 11 20**. This is a confidential service.