

What happens to debts after death

Information for people affected by cancer

Many people worry about what will happen to their debts after they die. Often they are concerned that their family members will be responsible for paying off what they owe.

This fact sheet explains what happens to debts after a person dies.

Your executor is responsible for collecting and distributing the assets of your estate. First they must pay any debts, then distribute remaining assets to the beneficiaries. This fact sheet provides general information to help an executor to understand how distributing assets works. For more information on the responsibilities of an executor, see the fact sheet *Your role as executor*.

What happens to debts after death depends on whether:

- there are any assets (money or property) in the estate
- the debts are secured or unsecured
- the debts are only in the name of the deceased, or in joint names with someone else
- someone has guaranteed the debts.

Paying off debts

When a person dies, any debts they have are paid off by any money or property they leave behind (their estate). The remaining assets are given to the people nominated in the will (the beneficiaries).

The executor is responsible for determining what debts need to be repaid, and they must advertise asking for any creditors.

- If there is enough money in the estate, the executor pays off the debts owed to those creditors using that money.
- If there is not enough money in the estate, the executor will sell property and use the money from the sale to pay the debts.
- If there is not enough money in the estate after all the assets are sold, the debts may not need to be paid.

Other people are only responsible for a debt if:

- the debt is secured against an asset that is owned by someone else
- the debt is in joint names with someone else
- someone has guaranteed the debt.

The difference between secured and unsecured debts

- **Secured debts** – This is a debt that is secured against a particular asset. When a creditor lends you money, they may take security for the debt. This means that if the borrower stops making repayments, the lender can take the secured asset and sell it to recover the amount owed. Types of secured debts include a home loan and car loan.
- **Unsecured debts** – With these debts, if repayments stop, there is no particular asset the lender can take and sell. The lender must go to court and get an order to take the borrower's assets and sell them to pay off the debt. Types of unsecured debts include credit cards and personal loans.

What happens to debts after death

How different debts are paid off after death

Secured debts

If the deceased has an outstanding loan which is secured against an asset owned by you, the lender can sell that asset if repayments on the loan stop. While the beneficiaries of the estate (e.g. friends or family members) are not responsible for the debt, the estate may lose the asset if the loan can't be repaid.

Debts in joint names

If the deceased has a secured or unsecured debt in joint names, then everyone named on the account is responsible for the debt. If one account holder dies, their estate may be used to pay off part of the debt or the joint account holder will be responsible for the whole debt.

If the deceased account holder has no assets in their estate, or not enough to pay off their share of the debt, then the other joint account holder will have to pay the outstanding amount.

Having a credit card with another person as an "authorized user" does not mean that there is a joint debt – one person can have the account and issue the other a secondary card.

Guaranteed debts

A guarantee is a promise to continue repayments if the borrower stops making them.

If a friend or family member has guaranteed a loan, the lender can chase that person for the debt after the borrower has died. If the debt is secured, the lender can also sell the asset given as security to repay the debt.

Debts that are unable to be repaid

If the estate doesn't have enough money to pay all debts, and the debts are unsecured debts in the deceased's name only, with no guarantor, the debts may not have to be repaid.

The executor will let the lenders know that the debts will not be repaid. The executor is responsible for checking whether there are any assets available to creditors to repay the debts. Other family members do not have to do anything.

Will any debts be payable by the family?

A family member is only responsible for paying the deceased's debts if one of the following applies:

- they have an asset which has been used as security for the loan
- they are a joint borrower
- they have guaranteed the loan.

Where to get help and more information

- Cancer Council **13 11 20** for information and support. Download information from your local website.

ACT..... actcancer.org
 NSW cancercouncil.com.au
 NT..... nt.cancer.org.au
 QLD cancerqld.org.au
 SA..... cancersa.org.au
 TAS cancertas.org.au
 VIC cancervic.org.au
 WA..... cancerwa.asn.au
 Australia..... cancer.org.au

Note to reader

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



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