

Estate administration

A guide for people with cancer, their families and friends

This fact sheet explains what happens to a person's belongings (their estate) after they die. The way the estate is managed and divided up will depend on whether the person who died left a Will.

If there is a valid Will

When someone dies and has a valid Will, the person named in the Will as Executor makes sure the person's wishes are followed and their assets are divided up. This process can take up to a year, but it can take longer if someone contests the Will. There also may be more than one Executor of a Will.

What does the Executor do?

An Executor's responsibilities may include:

- finding the original Will
- organising the funeral and arranging the burial or cremation
- getting a death certificate
- applying for a grant of probate or letters of administration
- letting the people named in the Will (the beneficiaries) know that the person has died and the estate will be divided up
- working out what the person owned (e.g. money, property or belongings), if they had any debts (e.g. bills or loans), and the value of the estate
- paying any outstanding debts, including funeral costs, loans, or tax – sometimes this means selling assets from the estate to pay for the debts
- giving what's left in the estate to the beneficiaries named in the Will – this might include setting up trusts for children or people with a disability.



A Will must follow certain legal rules to be considered valid, e.g. it must be signed by 2 witnesses who are not beneficiaries in the Will. For more information, see our *Planning ahead* fact sheet.

Being an Executor of an estate can be complicated and time-consuming. To carry out their duties, an Executor may need legal permission, called a grant of probate. If you are named as an Executor of a Will, it's a good idea to get advice from a lawyer to help you understand what to do (see below).

What is a grant of probate?

A grant of probate is a legal declaration from the Supreme Court of a state or territory that the Will is valid and it allows the Executor to do their job. It gives the Executor authority to carry out the instructions in the Will and manage the estate.

How a lawyer can help an Executor

Legal process



A lawyer can explain what the Executor's rights and responsibilities are so that they carry out their duties properly. They can help apply for a grant of probate. A lawyer can also explain the correct legal order for paying debts and sharing what's left.

Money matters



A lawyer can help find and collect the deceased person's money, property and belongings. They can also give advice about any tax that needs to be paid.

Estate matters



A lawyer can help prepare a list of everything the deceased person owned, so it can be shared with the right people. They can also help if someone makes a legal claim against the estate.

Assets that may need a grant of probate

Sometimes you will not need a grant of probate. This will depend on the assets and value of the estate (see table below). Generally, when the estate is small in value and does not include real estate (property), you may not need to get a grant of probate.



<p>Bank, credit union or other account</p>	<p>Many financial institutions allow access to the accounts of the person who died without a grant of probate if the amount in each account is small. Check with the bank as the cash limit and other rules vary between institutions. Joint accounts with the person who died usually become the property of the other owner.</p>
<p>Real estate (property)</p>	<p>You usually need a grant of probate if the person who died owned a home or land that is only in their name or they owned it with someone else as a tenant-in-common (each person owned a share). But if the person owned the property as a joint tenant (both people owned it together), probate is not needed as the property automatically goes to the other owner (for example, a spouse).</p>
<p>Shares</p>	<p>You may need a grant of probate if the person who died had shares in their name only, and these shares are worth more than a certain amount specified by the broker or share registry (usually \$15,000). The Executor should contact the company's share registry or Computershare Investor Services (1300 850 505) to check the number and value of the shares, and whether they need a grant of probate to pass them on to the beneficiaries.</p>
<p>Life insurance</p>	<p>If a life insurance policy includes instructions about who will receive the benefit, you may not need a grant of probate. You usually need a grant of probate if no-one is named on the policy to receive the money, or if the estate is named as the beneficiary (this can happen if the person who died had set up a trust in their Will). But if the policy is considered small (e.g. less than \$50,000), the insurer may accept a certified copy of the death certificate and a signed statement, called a statutory declaration. Call the insurance company to check what they need.</p>
<p>Superannuation (with binding death nomination)</p>	<p>A binding death nomination is a legal instruction that tells the superannuation fund exactly who should receive the super if someone dies. If a valid binding nomination is in place, the super fund will pay the benefit to the beneficiary and you should not need a grant of probate. Only a dependant can be nominated to receive super. For more information visit ato.gov.au and search for "superannuation death benefits".</p>
<p>Superannuation (without binding death nomination)</p>	<p>If the person who died did not have a binding death nomination in place or has a non-binding nomination (where the super fund can decide who gets the money), you may not need a grant of probate. The Executor can ask the trustee of the super fund to pay the benefit out directly to dependants, or to make a payment to the Executor, who will then distribute it to the Will's beneficiaries. Each fund has different rules, so it's best to contact them directly to discuss.</p>
<p>Tax returns</p>	<p>If the person who died is due to receive a tax refund on their tax return, the Australian Taxation Office (ATO) may need a grant of probate for the Executor to get the refund as part of the estate's assets.</p>

How to apply for a grant of probate

An Executor can apply for a grant of probate through the Supreme Court in the state or territory where the person who died held assets. This process can be complicated, with a lot of paperwork. A lawyer, a trustee company or the Public Trustee or Guardian agency in your state or territory can help. These agencies are government services that help people manage legal and financial matters when they cannot do it themselves.

What happens if you do not need a grant of probate?

If you do not need a grant of probate, the Executor can contact the institutions holding the person's assets (e.g. banks) and ask if they can release the assets without probate. Each institution has its own rules, so it's best to check with them. A lawyer can help with this.

Applying for a grant of probate

The steps that an Executor or their lawyer will need to follow are different in each state or territory. Usually, the process includes the following:

1

Publish a notice of intention as Executor to apply for probate

Go to the online registry for the Supreme Court in the state or territory where assets have been left.

2

Wait the specified time for your state or territory (e.g. 14 days)

This gives time for anyone who may know about another Will, has an interest in the estate or is owed money, to come forward.

3

Make a probate application and file it with the relevant Supreme Court

Certain documents need to be provided to support the application, including an original copy of the Will.

4

Pay the filing fee

The amount depends on how much the estate is worth.

If probate isn't needed, an Executor can take the following steps:

Bank accounts – Write to the bank, credit union or financial institution and include certified copies of the death certificate and the Will. Ask for the money to be released. If the Executor is not a customer of that institution, they may need to complete a 100-point identification check at a branch.

Shares – Contact the share registry for each company or sharebroker and send certified copies of the death certificate and Will. Ask for the shares to be released. Forms and help are available at computershare.com/au or by calling 1300 850 505.

Life insurance policies – Write to the insurance company and attach certified copies of the death certificate and Will. 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 of the fund and attach certified copies of the Will and death certificate. Ask them to release the death benefit (the preserved amount of super and any life insurance cover) to the named beneficiary, or to the Executor if no beneficiary is named.

Cars – Go to the transport office in your state or territory (e.g. Service NSW) and bring certified copies of the death certificate and Will, proof of identity, the car's registration papers, and a completed transfer form (download from your transport authority website). Ask for the car's ownership to be transferred to the beneficiary, or to the Executor if the car needs to be sold.

Most organisations will need proof of the Executor's authority, even if they do not need a grant of probate. This may include providing certified copies of the death certificate and Will, and proof of identity.

Sometimes the bank or organisation holding a deceased person's assets will ask the Executor to sign an indemnity before releasing assets without probate. This means they promise to protect the institution from any loss if someone later claims they should have received those assets instead.

What happens if the person who died was renting their home?

When a renter dies, the Executor of their Will or their next of kin should let the landlord or real estate agent know. The rules and processes vary between states and territories, but this is what's likely to happen:

Sole lease



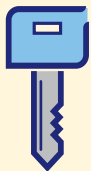
If the person who died was the only one renting the home, their Executor or a family member can talk to the landlord or real estate agent about ending the lease. The date the lease ends will depend on what action is taken.

Joint lease



If the person was renting with someone else and both names were on the lease, the surviving tenant may need to keep paying the full rent for the remainder of the lease, or they may negotiate an early end to the lease.

Fixed-term lease



If the person died during a fixed-term lease, the estate usually doesn't have to pay rent after the home has been emptied and the keys returned – even if that happens before the lease was meant to end.

Tenants' unions and services



These organisations can provide information on ending a lease and some also offer free legal advice.

ACT	legalaidact.org.au/tasact
NSW	tenants.org.au
NT	dcls.org.au/tenants-advice
QLD	tenantsqld.org.au
SA	syc.net.au
TAS	tutas.org.au
VIC	tenantsvic.org.au
WA	circlegreen.org.au/tenancy

If there is no Will

When someone dies without a Will, this is called dying intestate. If this happens, or there is no Executor available to apply for a grant of probate, the next of kin can apply to the relevant Supreme Court for a grant of letters of administration. This grant appoints an Administrator to manage the deceased person's estate, in place of an Executor.

The Administrator is usually a spouse or next of kin. If there is no next of kin, or if they are unable or do not want to act as Administrator, the Supreme Court may give administration powers to the relevant trustee and guardian organisation or any other person it chooses.

What does an Administrator do?

Once the Supreme Court issues the letters of administration, the Administrator collects the assets, pays off any outstanding debts and then distributes the assets to any eligible beneficiaries. The law decides who will receive the assets of an estate – this is commonly known as the rules of intestacy.

What are the rules of intestacy?

The rules of intestacy vary between states and territories. In most states, the spouse or current de facto partner of the person who died gets the whole estate, unless the deceased has children. If there are children, the estate is then usually shared between the spouse or de facto partner, and the children.

If the person who died had former spouses or de facto partners, this will also be considered, especially if there are children from that relationship. The court may also consider anyone who was financially dependent on the person at the time of death.

If the person who died does not have a spouse or children, the court will usually give the estate to family members in a certain order. For example, under NSW intestacy rules, the parents of the person who died would receive the estate next. If there are no living parents, the estate would then be given to siblings (not step-siblings), then grandparents, then aunts and uncles.

Common questions about estate administration

Can someone refuse to be an Executor?

The role of Executor can be complicated and time-consuming. No-one is under any legal obligation to be an Executor. It's a good idea to speak with loved ones before choosing them.

Some people may feel honoured to be asked, but others might be unwell or too busy. If someone doesn't want to be the Executor or feels they cannot fulfil the obligations, they can fill out a form called a renunciation of probate and lodge it with the Supreme Court. They must do this before they start any work on the estate, e.g. contacting banks or sharing out assets.

Can an Executor get paid for relevant expenses or time?

An Executor can be paid for administering the estate if the person who died has stated this in their Will. They can also be paid back for any costs they have had to cover while managing the estate – like court filing fees or other expenses. These costs are usually taken from the estate.

If the Will doesn't mention payment, the Executor can ask the Supreme Court for a payment called a commission. This is a way to recognise the time and effort they've put into the job.

Can an Executor be living interstate or overseas?

Yes, it is possible to choose an Executor who lives interstate or overseas. They may need to appoint a Power of Attorney in Australia to help them carry out some tasks. Some things may make the Executor's job harder, such as:

- collecting and handing out personal items
- getting properties ready for sale and transferring ownership of properties
- dealing with time-zone differences that can slow down communication
- needing to travel to sign or witness documents
- tax rules that may negatively affect people who live outside Australia
- different legal processes in other countries, states or territories.

Can a lawyer help an Administrator?

A lawyer can help an Administrator manage an estate in the same way they can help an Executor (see page 1). They can also help the next of kin apply for a grant of letters of administration.

Where to get help and information

For more details about estate administration in each state and territory, see the tables below and on the next page. For information and support, you can also call your local Cancer Council on 13 11 20.

Applying for probate

ACT	courts.act.gov.au/supreme
NSW	supremecourt.nsw.gov.au
NT	supremecourt.nt.gov.au
QLD	courts.qld.gov.au/courts/supreme-court
SA	courts.sa.gov.au/going-to-court/court-locations/supreme-court/
TAS	supremecourt.tas.gov.au
VIC	supremecourt.vic.gov.au
WA	supremecourt.wa.gov.au

Trustee and guardian organisations

ACT	ptg.act.gov.au
NSW	nsw.gov.au/departments-and-agencies/trustee-guardian
NT	pgt.nt.gov.au
QLD	pt.qld.gov.au
SA	publictrustee.sa.gov.au
TAS	publictrustee.tas.gov.au
VIC	statetrustees.com.au
WA	wa.gov.au/organisation/department-of-justice/public-trustee

Government agencies (for car registrations)

ACT	accesscanberra.act.gov.au/driving-transport-and-parking/registration
NSW	service.nsw.gov.au
NT	nt.gov.au/driving/mvr
QLD	tmr.qld.gov.au
SA	service.sa.gov.au
TAS	service.tas.gov.au
VIC	service.vic.gov.au
WA	transport.wa.gov.au/licensing

Land registry organisations (for real estate)

ACT	actlis.act.gov.au
NSW	nswlrs.com.au
NT	nt.gov.au/property/land-titles-office
QLD	titlesqld.com.au
SA	landservices.com.au
TAS	nre.tas.gov.au/land-tasmania/land-titles-office
VIC	servictoria.com.au
WA	landgate.wa.gov.au

Where to get help and information

Call Cancer Council 13 11 20 for more information and support. You can also visit your local Cancer Council website.

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

Other useful websites

You can find many useful resources online, but not all websites are reliable. These websites are good sources of support and information.

Australian Taxation Office (ATO)	13 10 20 ato.gov.au
Computershare Investor Services	1300 850 505 computershare.com/au
Services Australia	servicesaustralia.gov.au

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Note to reader

Always consult your doctor about matters that affect your health, and your financial adviser or financial counsellor about matters concerning your

finances, and a lawyer about legal matters. This fact sheet is intended as a general introduction to the topic and should not be seen as a substitute for medical, legal or financial advice. You should obtain independent advice relevant to your specific situation from appropriate professionals. Laws, regulations and entitlements that affect people with cancer may change. While all care is taken to ensure accuracy at the time of publication, Cancer Council Australia and its members exclude all liability for any injury, loss or damage incurred by use of or reliance on the information provided in this fact sheet.

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Cancer Council acknowledges Traditional Custodians of Country throughout Australia and recognises the continuing connection to lands, waters and communities. We pay our respects to Aboriginal and Torres Strait Islander cultures and to Elders past and present.

