

Your role as executor

Information for people affected by cancer

If you have been named as the executor of a will, you will need to carry out the terms of a will. 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:

- notifying the beneficiaries that the person who made the will (testator) has died
- locating and collecting all of the assets of the estate
- determining the value of the estate
- paying any debts, including funeral expenses, loans, income tax and fees for administering the estate. This may require the executor to sell some assets
- distributing the remainder of the assets to the beneficiaries (this may include setting up trusts for minor or mentally incapable beneficiaries).

To carry out these duties, the executor may need to obtain legal authorisation, called a grant of probate, from the Supreme Court of NT. Some estates can be complicated and you may need legal advice to assist you.

Do I need to apply for probate?

If the estate is small, you may not need probate. This will depend on what assets the testator had and their value. For more information, see page 2.

What to do if you don't need a grant of probate

If you don't think you need a grant of probate, then you should contact the asset holders and ask them to release the assets to you. A lawyer can help you with this process, and legal costs will be much lower than if probate was needed.

Bank accounts – Write to the relevant banks or credit unions, attach certified copies of the death certificate and the will, and ask them to release the funds to you 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 you for distribution to the beneficiaries. Computershare has downloadable forms for dealing with shares in a deceased estate. See computershare.com.au or call 1300 555 159.

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.

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.

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 (available from the Motor Vehicle Registry) to your nearest MVR office to have the vehicle transferred into the name of the beneficiary.

What to do if you need a grant of probate

You need to file an application for probate with the Supreme Court of NT in person or by post.

See www.supremecourt.nt.gov.au for how to apply for a grant of probate.

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When to apply for probate	
Bank or credit union 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.
Real estate	The Land Titles Office will need a grant of probate if the home or land 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).
Motor vehicles	The Motor Vehicle Registry doesn't need a grant of probate to transfer the registration of the deceased's vehicle but will need to see a certified copy of the death certificate, a copy of the will, proof of identity, the certificate of registration and the completed application form.
Shares	Shares in the name of the deceased only and 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 nominated on the policy, a grant of probate is not 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 made a binding death benefit nomination, the benefit will usually be paid to the nominated person without the 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.

Common questions

What if I don't want to be an executor, for example, because I'm too ill?

If you don't want to be the executor, you should sign a 'Renunciation of Probate' form and file it at the Supreme Court. You can get a copy of the form from www.supremecourt.nt.gov.au. It's important that you don't take any steps towards administering the estate, such as writing to the asset holders or distributing any assets.

Can I be paid for my expenses as executor?

You could be entitled to apply to the Supreme Court for commission for your work as executor. However, if you are also a beneficiary under the will you might not be able to claim commission.

What happens if the deceased had a residential tenancy agreement?

If a sole tenant in rented accommodation dies, the tenant's personal representative or relative can

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terminate the tenancy on 14 days' notice to the landlord. If the parties agree on another end date, the tenancy will end on that date.

If the deceased was one of two or more tenants listed on the residential tenancy agreement, then the surviving tenant(s) can apply to have the lease transferred to their name(s) only, if that is their wish.

How can a lawyer help me?

A lawyer can:

- tell you in detail about the rights and responsibilities of an executor
- prepare and help you to complete the forms needed to apply for probate
- assist you to identify and collect the deceased's assets
- advise you on the possibility of tax liability
- advise you about the legal order in which debts must be paid and the remaining assets distributed
- explain the legal order of distribution of the estate in a case where there is no will
- assist you with any claims that may be made against you over 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 NT – www.supremecourt.nt.gov.au
- Cancer Council **13 11 20** for Information and Support

Note to reader

This fact sheet provides general information relevant to the Northern Territory only and is not a substitute for legal advice. You should talk to a lawyer 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.