

# 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 South Australia. 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 South Australia gives the executor authority to carry out the wishes and terms of a will.

### Do I need to apply for a grant of probate?

It may not be necessary to apply for a grant of probate when someone passes away. It will depend on the nature and value of the estate, assets and the requirements of any institutions holding the assets. If the estate is small and does not hold real estate, there may not be a need to obtain a grant of probate. For more information, see the Supreme Court of South Australia website: <http://www.courts.sa.gov.au/RepresentYourself/ProbateRegistry/Pages/Home.aspx>

### 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. The bank will advise you of any further requirements they may hold to release the funds they hold. 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.

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To download forms for dealing with shares in a deceased estate, see <https://deceasedestates.computershare.com/#Timeline> or call 1300 850 505.

**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. The insurer will advise you of any additional requirements they may have.

**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. The insurer will advise you of any additional requirements they may have.

**Motor vehicles** – If the car was solely owned by the deceased, the executor or the person the car is being

transferred to (e.g. beneficiary in the will) will need to contact Transport South Australia. You will need to supply written reasons for transfer (i.e. a statutory declaration or copy of the will), proof of identity, certificate of registration and the death certificate. A small transfer fee is payable. Contact Transport South Australia on 13 10 40 for more information.

### What is needed for a grant of probate?

An application for probate must be filed through CourtSA, an online application through the Supreme Court of South Australia. Applying for probate can be a complicated process, so it is a good idea to get advice from a lawyer.

See the Courts SA website for steps on applying for a grant of probate: <http://www.courts.sa.gov.au/RepresentYourself/ProbateRegistry/Pages/ApplyingForGrant.aspx>

### Assets that may require a grant of probate

<b>Bank, credit union or other account</b>	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.
<b>Real estate</b>	Land Titles Office 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).
<b>Motor Vehicle</b>	Transport South Australia does not 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.
<b>Shares</b>	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 to find out the number and value of shares held and whether the grant of probate is required for distribution.
<b>Life insurance</b>	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.
<b>Superannuation</b>	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.

## Your role as executor

### 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 sign a 'Renunciation of Probate' form and file it at the Supreme Court of South Australia. You can get a copy of the form from the Probate Registry of the Supreme Court or here: <http://www.courts.sa.gov.au/RepresentYourself/ProbateRegistry/Pages/Probate-Forms.aspx>. 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.

#### Do I get paid for my expenses as an executor?

You could be entitled to apply to the Supreme Court for commission for your work as executor and may stipulate the amount of commission to be provided. 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 negotiate with the lessor/agent to end the tenancy.

The representative can arrange a suitable time for the landlord to regain possession and rent is payable until repossession occurs. For further information, contact the Residential Tenancies branch of the Office of Consumer and Business Affairs on (08) 8204 9544.

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:

- 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

- Cancer Council **13 11 20** for information and support
- Supreme Court of South Australia  
<http://www.courts.sa.gov.au/OurCourts/SupremeCourt/Pages/default.aspx>
- Law Society of South Australia  
<https://www.lawsocietysa.asn.au/>  
**(08) 8229 0200**

#### Note to reader

This fact sheet is intended to provide general information and is not a substitute for professional medical, legal or financial advice. You should talk to a professional about your specific situation. All care is taken to ensure that the information in this factsheet is correct at the time of publication. Please note that laws, regulations and entitlements that affect people with cancer may change. 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 factsheet.

#### Acknowledgements

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