

# 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:

- Advertising in the local paper that the person who made the will (testator) has died and that the estate is to be distributed
- 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).
- Selling the assets of the estate if required.

To carry out these duties, the executor may need to obtain legal authorisation, called a grant of probate, from the ACT Supreme Court. 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](http://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 Roads and Maritime Services – RMS) to your nearest RMS 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 ACT Supreme Court in person or by post.

See [courts.act.gov.au/supreme](http://courts.act.gov.au/supreme) for how to apply for a grant of probate.

## Your role as executor

When to apply for probate	
<b>Bank or credit union 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 testator's bank, as the cash limit and other rules vary between institutions.
<b>Real estate</b>	The ACT 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).
<b>Motor vehicles</b>	The Road Transport Authority 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.
<b>Shares</b>	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 <b>1300 555 159</b> 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 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.
<b>Superannuation</b>	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 along with the application for probate. You can get a copy of the form from the Probate Registry of the Supreme Court. 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.

#### 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.

## Your role as executor

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The date that the agreement ends will depend on the action taken. If a written notice is used, the tenancy ends two weeks after the notice is received. If the parties agree on another end date, the tenancy will end on that date. If no notice is given or no agreement is made, the tenancy ends one month after the tenant's death.

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

- ACT Supreme Court  
[courts.act.gov.au/supreme](http://courts.act.gov.au/supreme)
- Cancer Council **13 11 20** for Information and Support

#### Note to reader

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

**Cancer Council ACT**  
5 Richmond Avenue, Fairbairn ACT 2609  
Cancer Council 13 11 20 for Information and Support  
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**Email** [reception@actcancer.org](mailto:reception@actcancer.org)  
**Website** [actcancer.org](http://actcancer.org)



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