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 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).

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

Do I need to apply for a grant of probate or administration?
It may not be necessary to apply for either when someone passes away. It will depend on the nature and extent of the estate, assets and the requirements of any institutions holding the estate assets. For more information, see the Supreme Court of Victoria website.

What to do if you don’t need a grant of probate or administration
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 – Complete the Vicroads Deceased Estate Pack.

What to do if you need a grant of probate
You need to file an application for probate with the Supreme Court of NSW in person or by post.

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

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 an Affidavit of ‘Renunciation of Probate’ form and file it at the Supreme Court. You can get a copy of the form from Supreme Court of Victoria website. 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.
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negotiate with the lessor/agent to end the tenancy. The date that the agreement ends will depend on the action taken. If a written notice is used, the tenancy ends 28 days 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

• Supreme Court of Victoria – www.supremecourt.vic.gov.au
• Cancer Council 13 11 20 for Information and Support

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

Cancer Council Victoria
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Cancer Council 13 11 20 for Information and Support
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