What happens to debts after death?

Many people worry about what will happen to their debts after they die. Often, they are concerned that their family members will be responsible for paying off the debt.

What happens to your debts after you have died, depends on whether:

- there are any assets (money or property) remaining that can be used to pay off debts
- the debts are secured or unsecured
- the debts are only in your name, or in joint names with someone else
- someone has guaranteed the debts.

If there is a will, an executor will have been named. This person takes on responsibility for locating the money and property left behind (called the estate) and paying any debts or liabilities, before distributing the remainder of the estate to people named in the will as beneficiaries. (For more information on the responsibilities of an executor, see *Your role as executor*). If there is no will, your next of kin can decide who will administer the estate. They can either administer it themselves or engage a lawyer to assist them.

Paying off debts

When a person dies, any outstanding debts are paid off by any money or property left behind. This is known as their estate. The executor in the will divides up the estate, and gives the assets to the beneficiaries.

The executor must advertise in the newspaper for any creditors to come forward.

- If there is enough cash in the estate—the executor pays off the debts owed to those creditors with the cash in the estate.
- If there is not enough cash in the estate—the executor will sell property and use the money from the sale to pay the debts.
- If there is not enough money in the estate after all the assets are sold—then the debts may not need to be paid.

The difference between *secured* and *unsecured* debts

- **Secured debts**—this is a debt that is secured against a particular asset. When a bank lends you money, they may take security for the debt. That means that if you stop making repayments, the bank can take certain property (called the *security property*) and sell it to recover the amount you owe. For example, if you have a mortgage, your house is security for your home loan. If you stop paying your home loan, the bank can take your house and sell it to pay off the debt.

- **Unsecured debts**—with these debts, if you stop making repayments, there is no particular asset the bank can take and sell. The bank must go to court and get an order that your valuables be taken and sold to pay off the debt. Credit cards and personal loans are usually unsecured debts.

Other people are only responsible for paying the debts if:

- the debt is secured against a particular asset owned by someone else
- the debt is in joint names with someone else
- someone has guaranteed the debt.

How different debts are recovered after death

Secured debts

If you have an outstanding loan when you die, which is secured against an asset owned by you, the lender can take that asset if repayments on the loan stop. So although your friend or family member is not technically responsible for your debt, the estate may lose the asset if the loan can't be repaid. If the secured loan is in joint names, unless the co-borrower maintains repayments, it may be repossessed.

Debts in joint names

If you have a debt in joint names—e.g. a credit card debt—then everyone whose name is on the account is responsible for the debt. If one account-holder dies, their estate may be used to pay off part of the debt or the joint account-holder will be responsible for the whole debt.

If the deceased account-holder has no assets in their estate, or not enough to fully pay off their share of the debt, then the other account-holder will have to pay everything that is outstanding.

Guaranteed debts

When you guarantee a loan for someone, you are promising to continue repayments if the borrower stops making them.

So, if you have a loan that is *guaranteed* by someone else, that person will be responsible for making repayments if you stop making them.

If a friend or family member has *guaranteed* your loan, the bank can chase that person for the debt after you have died. If the debt is *secured*, the bank can also sell the secured asset.

Other situations

If your estate doesn't have enough money to pay out all your debts, and the debts are *unsecured debts* in your name only, with no *guarantor*, then the debts may not have to be fully paid.

A lender cannot request your family members to pay your debts after you have died, unless:

- they have an asset which has been used as *security* for your loan
- they are a joint borrower, or
- they have *guaranteed* your loan.

The executor will deal with the lenders and let them know that the debts will not be repaid. The executor is responsible for checking whether there are any assets, such as superannuation or insurance, available to creditors to repay the debts. Other family members do not have to do anything.

Where to get help and information

- Cancer Council Legal Referral Service 13 11 20

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

Cancer Council SA, 202 Greenhill Road, Eastwood SA 5063
Cancer Council Helpline 13 11 20 **Telephone** (08) 8291 4111 **Facsimile** (08) 8291 4168
Email cc@cancersa.org.au **Website** www.cancersa.org.au