



**If you have been named as the executor of a will, you will need to carry out the terms of the will. The executor is responsible for administering the estate. There may be more than one executor.**

## What does the executor do?

An executor's responsibilities may include:

- Notifying the beneficiaries that the will-maker (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 you to sell some of the 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 get legal authorisation, called a grant of probate from the Supreme Court of South Australia.

To protect the interests of those who hold the deceased's assets (for example, a bank), the executor may be asked to prove they are authorized to administer the estate before the assets can be released. The grant of probate is the proof required.

Being an executor involves more than just distributing someone's wealth, and some estates can be complicated. If you are unsure about what the role involves, a lawyer can help you.

## 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.

## 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. (See table on the next page).

## 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 less 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 also 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.



## Your role as executor

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 testator's bank, as the cash limit and other rules vary from institution to institution.
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	Transport South Australia 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, a letter from the executor, proof of identity, the certificate of registration and the completed application form.
Shares	Shares in the name of only the deceased 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 855 080 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 to allow 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.

### What to do if you need a grant of probate

You need to file an application for probate containing the original will, the original death certificate and other documents with the registry of the Supreme Court of South Australia. The steps for applying are available on the Supreme Court's website. Applying for probate is a complicated process and the Probate Registry staff is unable to assist with advice, so it is a good idea to get advice from a lawyer.

For more information visit the Courts SA website for steps on applying for a grant of probate.



## Your role as executor

**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**—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 and any correspondence from a lawyer), 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.

### 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 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. 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.

### Where to get help and information

- Supreme Court of South Australia  
[www.courts.sa.gov.au/courts/supreme/probate\\_grants.html](http://www.courts.sa.gov.au/courts/supreme/probate_grants.html)
- 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](mailto:cc@cancersa.org.au) **Website** [www.cancersa.org.au](http://www.cancersa.org.au)