

# Black & Blanco

A simple guide to

## **LEGAL LIFE AFTER DEATH**

# What do I need to do when a loved one passes away?



When a loved one passes away, we are often overcome with shock, loss and grief and while we know there are numerous legal and administrative steps which need to happen, it can be overwhelming knowing where to start.

Firstly, it's important to remember that you don't have to do everything alone. You can ask family and friends to help and there is support available from various government and community groups and professionals.

Secondly, you don't have to do everything straight away. While some tasks may need to happen rather quickly (such as the organisation of a funeral or other commemorative service), others can wait a little longer.

## 1. The First Steps

### Doctor's Certificate

When someone dies a doctor must sign a certificate confirming the death. Funeral arrangements cannot be made until the doctor's certificate, also called a **Doctor's Certificate of Cause of Death** is issued. Once the doctor's certificate is issued, the funeral director can take the deceased into their care.

### Death Certificate

The next step is to register the death with your state or territory's registry of births, deaths and marriages. Often the funeral director will assist with this process. The registry will issue an official **Death Certificate**.

The Death Certificate is needed to organise the estate, claim insurance and manage finances.

Often the Death Certificate is required by organisations and authorities to prove the death of the deceased. However, you should never hand over or send an original Death Certificate to any authority or organisation as the original is required by the Supreme Court when seeking a **Grant of Probate** or **Grant of Letters of Administration** (discussed in more detail below). In most cases certified copies of the Death Certificate are sufficient for organisations such as financial institutions and government organisations to prove death. Certified copies of the Death Certificate may be arranged by your solicitor or a Justice of the Peace.

## 2. Insurances, funeral plans and funeral bonds

Some people have specific funeral insurance to cover the costs associated with their funeral. Additionally, sometimes private health, sickness, accident or life insurance policies may help pay for funeral and other associated expenses. If you know that the deceased had insurance which included funeral cover, or if you are unsure, make enquiries directly with the insurance company.

Some people pay for their funerals in advance under a **Funeral Plan**. Others may put aside funds to cover their funeral costs often referred to as **Funeral Bonds**.

## 3. Who to notify

When someone passes away, aside from notifying family and friends, there are numerous people and organisations which need to be notified. Below is a list of some of some of the key people and organisations which need to be advised.

|  |  |
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| Australian Electoral Commission  | Professional advisors such as solicitor, accountant, financial advisor       |
| Australian Taxation Office   | Executor of the Will   |
| Centrelink   | Funeral insurance, funeral plan or funeral bond company                      |
| Department of Veterans' Affairs  | Insurance companies  |
| Medicare   | Funeral director   |
| My Aged Care   | Education provider such as school, TAFE or university                        |
| Banks, credit unions and financial institutions  | Employers and/or employees   |
| Credit card and hire purchase providers  | Public services such as library and state authorities                        |
| Superannuation fund  | Telecommunication providers such as telephone, mobile and internet           |
| Health benefits fund   | Utilities such as gas, electricity and water                                 |
| Health professionals such as doctor, physiotherapist, dentist, podiatrist, optometrist | Landlord and/or tenants  |
| Clubs such as the Returned and Services League   | Membership, subscription or account providers, including and online accounts |

## 4. Freezing of assets

When a person dies any assets they own in their individual name are 'frozen' until they are legally dealt with pursuant to a Court order (discussed in more detail below).

### Bank Accounts

A bank will freeze a deceased customer's individual accounts when notified of their death. This includes transactional accounts, term deposits, credit cards and loans. Banks won't necessarily know that a customer has died, therefore it is important to notify the bank as soon as possible.

You cannot withdraw any amount from a deceased's bank account and you should not do so even if you have a signed cheque or the deceased's debit card and the pin number. Any funds in a deceased's bank account become part of their estate.

Any funds held in joint accounts will generally continue as normal and while you should still notify the bank of the death for the bank's administrative purposes, any joint accounts should be unaffected.

### Release of money for payment of funeral expenses

Sometimes banks and financial institutions will release funds for payment of funeral expenses when presented with a valid tax invoice from funeral service providers. Each bank and financial institution has a different policy in this regard so contact the deceased's bank directly for confirmation of their processes.

### Emergency maintenance distributions

While the assets of a deceased generally cannot be dealt with or distributed until a Grant of Probate or Grant of Letters of Administration has been obtained, in New South Wales an Executor may, in limited circumstances, make a distribution from the estate for the proper maintenance, support or education of a beneficiary without such grant where a person entitled to receive part or all of the deceased's estate was, at the time of the deceased's death, wholly or substantially dependent on the deceased. The circumstances where such 'emergency' distributions are permitted are limited and as Executors can be held liable where they fail to distribute assets in accordance with a Will, it is recommended that professional advice be obtained before any such distribution is made.

## 5. Wills

A Will is a legal document that states how a person's belongings are to be distributed after their death.

The **Executor** of the Will is the person responsible for distributing the deceased's assets to the people named in the Will after any debts are paid.

There is no central depository for Wills and if a Will cannot be found amongst the deceased's personal papers it is recommended that investigations are made with local solicitors and accountants to see if they hold a Will. A solicitor or accountant may be able to assist you in the process of searching for a deceased's Will by contacting other practices or publishing notices in their respective professional publications.

If the deceased has not left a Will, or a Will cannot be found, the estate is shared under a formula set by law. If there are no close relatives there is a chance the estate could be paid to a state or territory government

### No Will

When a person dies without leaving a Will, also known as **Intestate**, their estate does not automatically pass to the State (Crown), as is often assumed. Legislation in each state determines exactly how the estate is to be divided amongst surviving relatives.

## 6. Probate

Where there is a Will, it is generally the Executor of the Will who administers the deceased's estate and handles the distribution of their assets and payment of any debts. In order to get authority to do this, a [Grant of Probate](#) from the Supreme Court is generally required.

To obtain a Grant of Probate, the Executor named in the Will must:

1. Publish an online notice of intention to apply for a grant on the Probate Registry. The purpose of publishing a notice of intended application is to allow the deceased's creditors an opportunity to make a claim on the estate by contacting the person who is intending to apply for the Grant of Probate. A notice of intended application also gives notice to anybody that may intend to challenge the contents of the Will, the validity of the Will or who may have knowledge of a later or alternate will; and
2. Wait at least 14 days from the date the notice was published before filing an application for probate with the Supreme Court.

An application for probate must be accompanied by various documents including the original Will, original Death Certificate, affidavit sworn by the Executor, schedule of the assets and liabilities of the deceased, inventory of property owned by the deceased, list of the beneficiaries and the Supreme Court filing fee.

Once a Grant of Probate has been given, management of the deceased's assets can be transferred to the Executor and they may commence distributing assets to beneficiaries in accordance with the Will.

All Grants of Probate are stored, along with the corresponding Will, at the Supreme Court. These are public documents. If a deceased person does not have a Will, validation of their estate and beneficiaries is not done with a Grant of Probate, but with a similar document known as '*Letters of Administration*' (discussed in more detail below).

If a person died without independently owning any property (for example any property may have been jointly owned with their surviving spouse), or only had only a small amount of money to his or her name, a Grant of Probate may not be required. If you are unsure seek the advice of a solicitor.

### [Timeframe to lodge the application](#)

If an application for probate is filed after 6 months from the date of death of the deceased, an explanation must be given to the Court accounting for the delay.

### [How long does it take to obtain a Grant of Probate?](#)

An application for a Grant of Probate will be considered by a registrar.

Approximate processing times are published on the Supreme Court website but generally it takes 4-6 weeks to obtain a Grant of Probate for a non-complex matter. Complex applications may take additional time to be considered.

## 7. Letters of Administration

When a person dies without leaving a Will, also known as '*Intestate*', the next-of-kin needs to obtain a **Grant of Letters of Administration** in order to administer the estate.

If a person dies without a Will, their estate does not automatically pass to the State (Crown), as is often assumed. Legislation in each state determines exactly how the estate is to be divided amongst surviving relatives, and who will be appointed the administrator.

The application for a Grant of Letters of Administration can be quite complex as it is often unique to the particular circumstances of the deceased and involves the drafting of legal affidavits, consent forms and disclaimers. The legal process involves steps similar to those required for a Grant of Probate, although additional information is required regarding the searches undertaken to try and locate a Will, identification of the deceased's spouses and family members.

## 8. Need help?

At **Black & Blanco**, we take the time to understand your personal circumstances and wishes and make things easy by coming to you, outside of office hours if necessary and providing fixed fee quoting.

Contact us to organise an obligation free 20 minute telephone consultation.



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## Flow Chart of Basic Estate Matter

