

What to do when someone Passes Away



Article by Wills + Estates Lawyer, Cathy Fon.

December, 2021.

When someone close to you passes away, it seems like there are a thousand things to think about. In this article, I have set out the legal matters that you and your family will need to consider. Keep in mind that many of these things are not urgent and can often wait until a family is ready to tackle them.

Who is in charge? Who is responsible for doing all of the things that need to be done?

If the deceased has left a Will, there will be one or more persons named in the Will as the *Executor*. The Executor has the legal right and responsibility to finalise all matters for the deceased. If there is no Will, or it cannot be found, then it would usually be the spouse or the adult child(ren) of the deceased who would step into this role.

The Funeral

Usually, the close family of the deceased (eg. spouse, adult children) will organise the funeral. They should abide by any directions left in the Will – for example, many people will state in their Will that they want to be cremated. If there is a dispute about the funeral arrangements, it may be necessary for the Executor to make a final decision.

Paying for the Funeral

The costs of the funeral should be paid for by the *Estate* (that is, the assets left by the deceased). A discussion should be held with the funeral company to work out when the invoice will be given to the family and how it can be paid. Funeral companies will often allow a family extra time to pay the invoice, using money held in a bank account owned by the deceased or where a funeral bond refund is expected. Banks are usually happy to pay a funeral invoice directly from a deceased's bank account.

Death Certificate

The funeral company will generally prepare the application for a *Death Certificate*, in consultation with the family, and submit it to Births, Deaths and Marriages. It usually issues 3-4 weeks after someone passes away. This Certificate is essential in finalising the estate and certified copies will be needed for banks, super funds, nursing homes and various other entities.

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Is there a Will?

It is important to find out if the deceased had a *Will*. Most people keep their original Wills with their solicitor but a copy of it would usually be given to them. A copy might be kept with their important documents at their home, or family members might know if one had been prepared. The Will identifies the Executor (the administrator of the estate) and may also give directions about the deceased's wishes in relation to their funeral or cremation.

Bank Accounts

Once someone passes away, it is essential that their bank accounts not be used by anyone else. This is because, at the date of death, the assets belonging to the deceased during their life now belong to their 'estate'. The only exception to this is where the deceased owned a joint account with someone else. In this case, the balances in those accounts will now become the property of the surviving joint account holder and the bank will simply change the name on the account.

As noted above, a bank will usually allow a cheque to be drawn on a deceased's account in order to pay the funeral bill. A bank may also pay other associated invoices out of the account. But otherwise, a family member or executor ought not be using the account. A separate estate bank account can be established in order to receive funds or pay invoices on behalf of the estate.

Centrelink

It may be necessary to advise Centrelink that a person has passed away, so that pension payments (for example) can be stopped and other government agencies can be advised. A family may also be eligible to receive a bereavement payment from Centrelink, so that should be discussed.

Who else needs to be advised?

The Services Australia government website has a handy document which lists a number of organisations who will need to be advised that someone has passed away. It can be found at [Who to Notify Checklist](https://servicesaustralia.gov.au/who-to-notify-checklist) (servicesaustralia.gov.au)

Administering the Estate

It will be necessary to do these key jobs:

1. Identify if the deceased had a WILL – which will direct you to the name of their executor (which is the person who has the right to administer the estate) and their beneficiaries.
 2. If there is no Will, determine what Queensland law says about who can administer the estate and who are to be the beneficiaries in such a case.
 3. Find out what the deceased OWNED – bank accounts, superannuation, property, personal possessions, debts owed to them, shares in private or public companies etc.
 4. Find out what the deceased OWED – personal and home loans, private loans, credit card debts etc.
 5. Contact each of these entities (where something was owned or owed) individually to discuss what needs to be done to transfer the assets or the debts to the estate.
 6. Lodge final tax returns for the deceased and/or the estate.
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Probate or Letters of Administration

In some estates, it is necessary to get a formal Grant from the Supreme Court to allow an executor to administer all or part of the estate. Situations where Probate or Letters are needed include:

1. Where there is a large amount of money in a bank account
 2. Where there is a Refundable Accommodation Deposit with a nursing home
 3. Where you need to deal with the ATO to finalise tax returns
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Transferring Property

If a deceased person owned property, either alone or jointly, then the name on the title of that property will need to be changed. This is done by preparing the appropriate forms (which may include statutory declarations) and lodging them at Titles Queensland.

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Getting Legal Advice

Once a bereaved family is ready, it may be useful to sit down with a solicitor to talk through what needs to be done to finalise the deceased's estate. A solicitor can help you identify where assets are located and how they can be paid out to the estate. It is also helpful to have an expert identify if there are particular issues which need to be addressed in your circumstances and to help with the more complex aspects of administration, such as transferring property and applying for Probate.

Cathy Fon is a Wills + Estates lawyer at O'Shea Dyer Solicitors, Townsville. Cathy was Admitted in 2005 and has worked part-time as a lawyer for many years since. Cathy has been working exclusively in Wills + Estate since 2019.

Estate Matters

O'Shea Dyer Solicitors offer a low fixed fee First Appointment of \$220
(including gst) for all Estate Enquiries.

Chat for an hour with an experienced Estates Lawyer who will give you advice tailored
to your situation.

Ask about our prices for Wills, Testamentary Trust Wills and Enduring Power of Attorney Documents.
We try to make things as affordable and easy as possible.