

Shoalcoast Community
Legal Centre Inc.



AFTER SOMEONE DIES

A guide to help families with some of the legal processes after someone has died.

S H O A L C O A S T C O M M U N I T Y L E G A L C E N T R E

ACKNOWLEDGEMENTS

We acknowledge and thank the Waminda Comprehensive Care Team for their assistance in putting this guide together.

DISCLAIMER

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WHEN SOMEONE DIES

WHO IS THIS GUIDE FOR?

This guide is for next of kin, family members and close friends of a deceased person.

This guide has been created for those who will take care of a deceased person's affairs such as the funeral, the will and the estate.

HOW CAN THIS GUIDE HELP ME?

This guide was developed in response to the community need for a resource that provided information to families and next-of-kin after someone dies.

This guide was designed to be a resource that answers many of the questions that families have after someone dies and increase awareness of the legal processes that take place.

This guide is not intended to be legal advice. If you need legal advice and/or you need assistance understanding this guide please contact Shoalcoast Community Legal Centre.

REGISTERING A DEATH

The NSW Registry of Births, Deaths and Marriages ('the Registry') must be notified when someone dies.

Generally the doctor or coroner will register the death with the Registry.

The Registry must also be notified of details about cremation or burial.

The funeral director will generally do this. If there is no funeral director, the person organising the burial or cremation will need to notify the Registry.





THE DEATH CERTIFICATE

The funeral director usually completes the registration of death with the Registry. If you choose to do it yourself, there is an **online form** or paper form available at Service NSW.

The death certificate will be issued to the person who made the application within a few weeks of registering with Births, Deaths and Marriages.

If you have any issues obtaining a death certificate you should get legal advice.

WHO DO YOU NOTIFY?

It is important to know that there are no laws about who you need to notify when someone dies, other than the NSW Registry of Births, Deaths and Marriages. You can choose if you want to notify any of the following people or organisations.

The organisations and government departments you might want to notify include:

- Australia Post if you want to redirect mail or close a PO Box
- Australian Tax Office (ATO)
- Bank or credit union they held accounts with
- Centrelink if they were receiving a benefit
- Their employer if they had one
- Funeral insurance or bond if they had a policy or bond
- Landlord or real estate agent if they were leasing a property
- Local council if they were a rate payer
- Medicare
- Transport for NSW if they had a driver's license or car registered in their name
- Superannuation fund
- Utilities such as gas, electricity or telephone service

Remember, you are not legally obligated to contact any of these organisations.

If you are the deceased person's next of kin, it is usually your responsibility to tell people that the deceased person has died.

If you are notifying organisations that someone has died, you will usually need to provide them with a copy of the death certificate.

You can make some notifications using the Australian Death Notification Service. You can access the service [here](#).

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PREPARING FOR A FUNERAL

ARE YOU RESPONSIBLE FOR ARRANGING THE FUNERAL?

The person responsible for arranging the funeral depends on whether the deceased person had a will.

If the deceased person had a will, the person who is named as the executor is responsible for arranging the funeral.

If the deceased person didn't have a will, the next of kin or a close relative can arrange the funeral.

If there is a dispute about who should arrange the funeral, you should get legal advice.

Who can go to the funeral?

There are no laws about who can and cannot go to a funeral.

You might want to notify family and friends of the deceased person to let them know when a funeral is being held.

A funeral is a private occasion and people who are not wanted at a funeral can be asked not to attend.

If disputes arise about who can and cannot attend the funeral that you can't resolve on your own, you can contact your local Community Justice Centre for assistance.

ARRANGING THE FUNERAL

There is no legal requirement for the person responsible for arranging the funeral to use a funeral director. However, there are many complicated laws and regulations regarding funerals, cremation and burials that make it difficult, but not impossible, for some to arrange a funeral on their own.

If you wish to engage the services of a funeral director, ask questions about basic funeral options and a breakdown of the costs.

You can speak with more than one funeral director about making arrangements. It might be helpful to take a friend or family member with you when speaking with the funeral director and have a list of questions you want to ask.

If you want to arrange the funeral yourself, you should research the legal requirements, such as the forms that need to be submitted, health regulations around keeping a deceased person's body at home and burial or cremation requirements.

There are a number of do it yourself funeral guides online that can help guide you through the process. The State Library of NSW is a good place to start.

You should seek legal advice about any legal or regulatory requirements you are unsure about.

WHO PAYS FOR THE FUNERAL?

The person who arranges the funeral is usually responsible for paying for the funeral costs.

If you arrange the funeral you might have to sign a contract with the funeral director that makes you legally liable to pay the funeral costs.

You will be able to pay for the funeral costs from the deceased person's estate, if there is enough money in the estate.

Before you arrange the funeral, you should check if the deceased person had:

- Funeral insurance
- A funeral bond
- A pre-paid funeral

If the deceased person had one of these funeral plans, you should contact the insurance company about covering the funeral costs.



WHAT IF THERE IS NO MONEY FOR A FUNERAL?

You may be able to seek financial assistance to pay for the funeral from:

- Centrelink - the spouse or carer of the deceased person may be eligible for a bereavement payment.
- Department of Veterans' Affairs - the spouse of the deceased person may be eligible for a bereavement payment if the deceased person received a veteran pension.
- NSW Aboriginal Land Council - offers grants to Aboriginal or Torres Strait Islander people to help cover funeral costs.
- Local Health District - has discretion to provide financial assistance to the person responsible for the funeral. You can write to your Local Health District and explain the financial situation.
- Charitable Organisations - in certain circumstances charitable organisations may be able to provide some assistance. Contact them directly and explain the financial situation.
- Bank or credit union - you may be able to take out a small loan to help pay for funeral costs.

DESTITUTE FUNERALS

If the deceased person has no money or assets they are called 'destitute'.

If a destitute person dies, the government may pay for their funeral. The Area Health Service will pay for a basic funeral service. The Area Health Service will contact the next of kin with the details of the funeral.

Usually, the Area Health Service will organise for the deceased person to be cremated unless the deceased person's next of kin asks for them to be buried. If the deceased person is to be buried it will be in a common grave and the deceased person will be identified by number.

If you would like the details of a relatives burial or cremation, these records are kept by:

- The cemetery or cremation authority
- The Registrar of Births, Deaths and Marriages
- Public Health Units

If you are in need of financial assistance with funeral expenses, talk to healthcare staff about this. They will be able to direct you to a social worker who can provide advice about destitute funerals. Be aware that a destitute funeral is organised entirely by the State with no input from the next-of-kin or family.

The Area Health Service will have the details of the contracted funeral home they use to provide funeral services. You can contact this funeral home to find out the details of the service and cremation or burial so that you can attend.

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THE WILL

WHAT IS A WILL?

A will is a legal document that explains how someone wants their assets distributed after they die.

If the deceased person has a will, the person who is named as the '**Executor**' can apply for '**Probate**' and distribute the assets of the deceased person. If the deceased person doesn't have a will, the next of kin might want to apply for '**Letters of Administration**' from the Supreme Court of NSW. It may not be necessary to apply for Probate or Letters of Administration.

An **Executor** is the person appointed in a will who has the responsibility and authority to manage the estate of the deceased person.

Probate is a legal document issued under the seal of the Supreme Court of NSW, certifying that the will has been proved and granting the executor authority to administer the estate.

Letters of Administration are documents issued under intestacy to appoint a particular person or persons to administer a deceased person's estate.





SEARCHING FOR THE WILL

The next of kin should find out if the deceased person made a will. Start by looking for the deceased person's will in their home. If you cannot find it, some other places to look are:

- Their lawyer
- Their accountant or financial advisor
- At their bank
- NSW Trustee & Guardian
- The Supreme Court of NSW

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ASSETS & DEBTS

WHAT ARE THE ASSETS AND DEBTS?

Assets are all of the property that a person owns, such as:

- House
- Car
- Money (cash and in bank accounts)
- Shares
- Clothing
- Furniture
- Pets

Debts are what a person owes, such as:

- Home loan
- Personal loan
- Credit card
- Unpaid bills

It is important to find out the assets of a deceased person to work out whether it will be necessary for you to apply to the Supreme Court of NSW for a grant of probate or letters of administration.

SUPERANNUATION

Superannuation ('**super**') is a pension fund that has been paid into by the deceased person's employer or the deceased person themselves over their working life.

Super is not part of the deceased person's estate and is dealt with separately from the will or laws of intestacy.

You may be able to get early release of super funds to help pay for funeral costs. This will depend on the super fund.

If you are not sure if the deceased person had a super account, you can contact the ATO.



ACCESSING A DECEASED PERSON'S SUPER

The Super fund will not automatically allow the next of kin to access the deceased person's super account after they pass away.

The Super fund will pay the deceased person's superannuation benefit or '**death benefit**' to the nominated beneficiary if there is a '**binding nomination**'.

If there is no binding nomination, the Super fund will decide who the death benefit is paid to.

You should contact the Super fund and ask what documentation they need and who they will pay the death benefit to.

BANK ACCOUNTS

Notifying the bank

If you are the next of kin or executor, you can contact the deceased person's bank and tell them they have passed away. The bank may ask you to provide a copy of the death certificate. You may need a certified copy depending on the bank.

You can ask the bank to provide you with details of the deceased person's accounts.

Closing accounts

You should ask the bank about the process for closing the accounts of the deceased person. Each bank may have a different process.

If the amount of money left in the bank accounts is substantial, you may need to apply for probate or letters of administration before the bank will close the account.

The bank may ask you to provide:

- A copy of the death certificate
- A copy of the will (if there is one)
- A copy of the Grant of Probate or Letters of Administration (if you have applied)
- Documents to verify your identity and relationship to the deceased person (e.g. birth certificate if you are their child, marriage certificate if you are their spouse)
- Any other forms the bank may require in accordance with their written policies.

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WHAT TO DO WITH THE ESTATE

WHEN THERE IS A WILL

If there is a will and you are named as the Executor you have certain duties including:

- Taking control of the assets owned by the deceased person
- Identifying any debts owed to and by the deceased person
- Applying for a grant of probate from the Supreme Court of NSW
- Distributing the estate to the beneficiaries according to the will

What if you don't want to be executor?

If you are named as the executor but you don't want to be the executor, you can complete a Renunciation of Probate form and file it with the Supreme Court of NSW.

APPLYING FOR A GRANT OF PROBATE

If you are the executor named in the will, you must apply for probate if there is real estate owned by the deceased person or if there are any assets that can't be transferred without probate.

The Supreme Court of NSW has information about applying for a grant of probate.



WHEN THERE IS NOT A WILL

If there is no will and you are the next of kin, relative or close friend of the deceased you can apply to the Supreme Court of NSW for Letters of Administration.

Applying for Letters of Administration

You can apply for Letters of Administration where:

- There is no will
- There is a will but no executor named in the will
- The executor in the will is unable or unwilling to act

If the deceased person died **intestate** (without a will) in NSW and owned assets, you can apply for letters of administration. The laws of intestacy determine who will receive the assets of the deceased person.

The Supreme Court of NSW has information about applying for letters of administration.

DEBTS OF THE ESTATE

The deceased person may have outstanding debts after they pass away. These might be '**secured**' debts (e.g. home loan or personal loan) or '**unsecured**' debts (e.g. unpaid bills).

If you are the Executor or Administrator you will have to pay the debts of the deceased person out of their estate before distributing the estate to any of the Beneficiaries.

You should seek legal advice before speaking with any creditors or applying for a Grant of Probate or Letters of Administration.



USEFUL CONTACTS

Shoalcoast Community Legal Centre

p: 1800 229 529 **e:** info@shoalcoast.org.au

w: shoalcoast.org.au

NSW Trustee & Guardian

p: 02 8688 2600 **w:** tag.nsw.gov.au

Supreme Court of NSW - Probate

p: 1300 679 272 **e:** sc.probate@justice.nsw.gov.au

w: supremecourt.justice.nsw.gov.au

Law Access NSW

p: 1300 888 529 **w:** lawaccess.nsw.gov.au

Australian Death Notification Service

w: deathnotification.gov.au

Services NSW

p: 13 77 88 **w:** service.nsw.gov.au

Centrelink

p: 132 300 **w:** servicesaustralia.gov.au

**Shoalcoast Community
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We acknowledge the traditional custodians of the land on which we live and work, and pay our respect to Elders both past & present & emerging.