

# Wills, following a Will after someone has died

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A lawyer can listen to your story and help identify the next steps you can take.

When a person who has left a Will dies, there are some formal procedures that must be followed before the estate can be distributed.

## What do these legal words mean?

**Estate**- everything that belongs to a person, their possessions, money, shares and interests (for example the rights to claim something in the future) and also their debts and mortgages.

**Will**- a legal document which outlines how a person wishes to have their estate dealt with when they die.

**Testator**- the person who makes a Will. Sometimes a female testator is referred to as a testatrix.

**Executor**- a person named in a will who is given responsibility for dealing with the testator's wishes.

**Grant of Probate**- the authority given by a Court to an executor to follow the directions of a Will.

**Intestate**- a person who has died without having made a Will.

**Administrator**- a person who a Court gives responsibility for dealing with the estate of an intestate.

**Next of kin**- a person's closest living blood relative or relatives.

**Beneficiary**- someone who receives a gift from a Will.

## Someone I know has died – what needs to happen with their Will?

When a person who has left a Will dies, there are a number of formal procedures that must be followed before the estate can be distributed to the beneficiaries. In most cases, the executor will need to apply for a [Grant of Probate](#) from the [Probate Division of the Supreme Court](#).

Depending on size of the estate, a Grant of Probate may not be necessary. For example, some banks will allow an executor to close an account which has less than \$50,000 if the executor can provide the Will, death certificate and proof of their identity as the executor.

To obtain a Grant of Probate, the executor will need to file a number of documents with the Court. The [fee](#) to do this will depend on the value of the estate. It can take some time to gather all the necessary information to complete the paperwork. The Court cannot issue a Grant of Probate until 14 days after the Notice of Intention to apply for a Grant of Probate has been published on the Courts website. If the documents

are in order, the Grant of Probate cannot take between 3 – 18 weeks to be issued.

The Grant of Probate will include a maximum of four executors, even if the Will names more than four people. The executors have very serious obligations in terms of collecting the assets and paying any bills or outstanding tax that the testator owed at the time of their death. When they have done all this, they then must follow the directions of the Will by giving the gifts to the named beneficiaries to fulfil the wishes of the testator.

If the Will names executors who cannot or choose not to apply for the Grant of Probate, someone else may apply to take on this role. If the Court accepts the application, this person will be known as an administrator and they will have the same responsibility as an executor.

## I am the Executor or Administrator of a Will – what do I need to do?

An executor or administrator must collect the assets of the deceased and distribute them to the beneficiaries. How this is done depends on the Will and the nature of the estate. A beneficiary does not own the gifted property until the executor distributes the gifted property from the estate. An executor has 12 months from the date of death to distribute an estate, although the Court can allow the executor a longer period of time.

If an executor acts improperly or is not administering the estate carefully and in accordance with the law, the beneficiaries may complain to the Supreme Court. This is the only right a beneficiary has before the distribution of the estate. An executor who obtains an estate by fraud or who retains an estate must account for the assets.

## When someone dies without a Will – what needs to happen?

If a person dies and they do not have a valid Will, then it is said that they died 'intestate'.

The next of kin will need to apply to the Court for [Letters of Administration](#). A Court will make an order for a Grant of Letters of Administration to the person or people who are the next of kin, under a complex set of rules.

The Letters of Administration has the same effect as a Grant of Probate. Any next of kin who wish to apply for Letters of Administration must go through similar steps as those required for obtaining a Grant of Probate. However, the process of applying for Letters of Administration is more expensive than applying for a Grant of Probate.

An administrator of an estate has the same obligations as an executor. That is, they must collect the assets of the estate and pay any outstanding debts etc. However, as there is no Will to follow, the administrator must distribute the estate following directions set out in the [Intestacy Act 2010](#) which will give priority to a spouse, then children and finally other blood relatives of the deceased person. If there are no living relatives entitled to the estate, the estate will go to the State Government, however the Government may provide some money from the estate to someone who was dependent on the intestate while they were alive.

## What if the person who died was Aboriginal?

The [Intestacy Act 2010](#) recognises the laws, customs, traditions and practices of Aboriginal people. If an Aboriginal person dies without a Will, a person who is not the spouse or blood relative of the Aboriginal person who died, but would otherwise expect to receive something under the laws, customs, traditions and practices of the Aboriginal community or group to which the Aboriginal person belongs, may apply to the Court for an order for distribution.

An application to the Court for distribution of an estate in this way must be made within 12 months after administration commences, or a longer period allowed by the Court, but no application may be made after the intestate estate has been fully distributed.

An order may require someone who has received property from the estate before the date of the application to return the property so that it can be distributed according to the order. However, this will not apply to any part of the estate that has been, or is to be used, for the maintenance, education or advancement in life of a person who was totally or partially dependant on the intestate immediately before their death.

This is written for people who live in or who are affected by the laws of Tasmania, Australia. The law changes all the time – this information is not legal advice. If you have a legal problem, you should talk to a lawyer before making a decision about what to do.