

LOCATING ASSETS WHEN SOMEONE PASSES AWAY

An Important Distinction

A will can usually only dictate what happens to assets belonging personally to a deceased person.

A will does not deal with assets held via other structures [for example, assets inside trusts and companies].

Working out what is in a deceased person's estate and what is not in their estate is one of the most critical things when administering an estate.

One of the easiest ways of identifying assets is to separate the assets as follows:

Assets owned personally

This includes assets that are held in the deceased's own name.

What fits into this column varies greatly depending on the circumstances.

For example, care should be taken to ensure that any asset in this column, is not subject to a prior right, including, for example:



Shares in private companies or units in unit trusts subject to an agreement containing an option to purchase by the other stakeholders



Pre-existing mutual wills prescribing how a client is allowed to structure their estate plans



Jointly owned property. More detail about estate challenges can be found in our information sheet located [here](#).

Administrators should also be aware of assets or liabilities that may fall within this column, but are not often remembered, including, for example:



Life insurance that is held in the deceased's name [as opposed to being held by a super fund]



Unpaid present entitlements or loans owing to the deceased [where a trust owes them money, but they were never paid the amount]

Assets inside structures

This column covers assets inside entities such as trusts, companies, partnerships etc.

What fits into this column varies greatly depending on the circumstances.

For example, care should be taken to ensure that any asset in this column, is not subject to a prior right, including, for example shares in private companies or units in unit trusts subject to an agreement containing an option to purchase by the other stakeholders.

Administrators should also be aware of assets or liabilities that may fall within this column, but are not often remembered, including, for example, unpaid present entitlements or loans owing to the entity.

Superannuation benefits

Superannuation means all of the deceased's superannuation benefits, whether they be held through a Self-Managed superannuation fund [that they manage themselves] or a retail / industry fund [that is managed by a third party].

It includes also:



Assets their self-managed fund holds on bare trust – if a self-managed superannuation fund



Any life insurance taken out by their super fund.



Just to complicate things, it's important to understand that while in most states, only assets held personally can be the subject of an estate claim, there are some further exceptions to this that you must be aware of when administering an estate.



Laws pertaining to estate challenges in New South Wales enable a court to include certain property that is not legally part of a deceased estate into the pool of assets that can be subject to an estate challenge. This can be done when either the deceased person or their property has a connection with New South Wales.



The reality is that while assets may be held inside other structures [such as trusts or companies], this does not necessarily mean they are safe from a challenge of any type. More and more, we are seeing cases where the administration of superannuation funds and the validity of nominations [documents stating where superannuation funds should be directed on a person's death] being questioned in court by disappointed beneficiaries.



There are also a myriad of laws and rules around the management of entities such as trusts or companies that can be challenged in court by particular parties.



It is therefore critical to ensure that you consider all of these issues and seek specific advice about the circumstances of the deceased estate.

Assets of an Estate

Below are examples of assets that may form part of a person's estate. You should carefully consult with the deceased's advisers [accountants, brokers, financial planners] to ensure you correctly identify the assets.

It is important to remember that these are guides only and specific advice should be obtained before any formal steps are taken.



Real Estate

Confirm the details of each property [best obtained from a rates notice]

If rented, confirm contact details for tenant [or agent] and estimated rental income



Leasehold (including crown leases)

Confirm the details of each property [best obtained from a rates notice]

If sub-leased, confirm contact details for tenant [or agent] and estimated income



Water allocation

Confirm the details of each allocation [best obtained from a rates notice]

If rented, confirm contact details for tenant [or agent] and estimated rental income



Bank accounts

Confirm the details of each property [best obtained from a rates notice]

If sub-leased, confirm contact details for tenant [or agent] and estimated income



Cash

Confirm if deceased had any cash on hand at the date of death



Investments (including options)

Confirm the details of each investment.



Shares in publicly listed companies

Confirm the details of each group of shares

This includes the number of shares, name of company, calls outstanding and type of share for each shareholding etc



Units in public unit trusts

Confirm the details of each group of units
This includes the number of units, name of trust etc



Securities and bonds

Confirm the details of each investment



Debentures, secured and unsecured notes

Confirm the details of each investment



Companies

Confirm the details of each Company [Number of shares, type of shares, name of company, ACN number and office held in company, if any, e.g. director]



Trusts

Confirm the details of each Trust [Name of trust, nature of trust, trustee, interest held in trust, e.g. beneficiary [indicate class of beneficiary]/principal etc. and any powers the deceased had]



Interests in partnerships and joint ventures

Confirm the details of each Partnership [Name of partnership, share (e.g. %) and interest held - in capital and income]



Sole proprietorship

Confirm the details of each business [Name of business and details of stock in trade and goodwill]



Farm interest

Confirm the details of any farm interests [Including details of livestock, crops, farming implements, machinery and saddlery]



Life insurance policies

Confirm the details of each life insurance policy in the name of the deceased [Details of insurance company, policy number, type of policy and beneficiary for each life policy, current surrender value of policy etc]



Debt due to the deceased

Confirm the details of any debt owed to the deceased [Details of unpaid wages – including any long service leave- or any loan which is due to the deceased (by third parties or entities), including monies due under a mortgage, bill of sale or promissory note]

This may include any loans or other monies owed to the deceased



An interest in another deceased's person's estate

Confirm the details of any interest in another person's estate [Details of the other deceased's person's estate and nature of the interest]



Compensation

Confirm the details of any compensation either due or possibly owed [Details of any compensation entitlement (e.g. for personal injury), type of payment received (e.g. lump sum) and amount received]



Furniture, chattels and whitegoods

Confirm the details of each item [Provide detailed inventory of furniture including antiques, heirlooms, whitegoods, electricals, silverware and other contents - attach copy]



Jewellery

Confirm the details of each item of jewellery [Description of the piece]



Artwork

Confirm the details of each piece [Name of artist and painting of each piece of work and a description]



Wine cellar

Confirm the details of any significant wine bottles or paraphernalia [Description of type, producer and year]



Stamp, coin and/or other collection of valuables

Confirm the details of the collection [Attach catalogue if available]



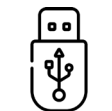
Motor vehicles

Confirm the details of each vehicle [Details of year, make, model and registration number/VIN number of each vehicle]



Boats

Confirm the details of each Boat [Details of the year, make, model and registration number/VIN number of each boat and where it is presently located]



Digital Assets

Confirm the details of any digital assets [for example, digital documents, audible content, motion picture, and other relevant digital data. The types can include photography, logos, illustrations, animations, audio-visual media, presentations, spreadsheets, word documents, electronic mails, websites, and other digital formats and their respective metadata]



Refunds

Confirm the details of any refund either due or possibly owed [Details of any refund, type of payment received (e.g. lump sum) and amount received]



Private health insurance

Confirm the details of each health insurance provider [Details of insurer and membership number]



Funeral expense contribution

Confirm the details of funeral insurance [Details of insurer and membership/account number. Consider if private health insurance or Department of Veteran Affairs may contribute]



Pre-paid funeral plan

Confirm the details of each pre-paid insurance plan [Details of insurer and membership/account number]



Vehicle insurance

Confirm the details of vehicle insurance provider [including membership number]



House insurance

Confirm the details of home insurance provider [including membership number]

**Medicare**

Confirm Medicare number and listed number – if more than one person on the card

**Motoring club**

Confirm the details of club and membership number [e.g. RACQ etc.]

**Tax refund**

Confirm if deceased had any outstanding tax returns [you must do two tax returns – one for the deceased up until the date they passed away and one from the day after they passed away until the next tax year]

**Other property and interests**

Confirm if deceased owned overseas assets, Managed investment scheme interests, Holiday or country club entitlements etc

Liabilities of an Estate

Below are examples of debts that may be directly incurred by the deceased or indirectly through operation of their estate. You should carefully consult with the deceased's advisers [accountants, brokers, financial planners] to ensure you correctly identify any liabilities.

It is important to remember that these are guides only and specific advice should be obtained before any formal steps are taken.

**Credit card accounts**

Confirm the details of each account [Name of institution, account number, account name for each account, balance at date of death]

**Loans owed by deceased at date of death**

Confirm the details of each loan account [Name of institution, account/identification number, account name for each account, balance at date of death, any security held]

This can include unsecured and related party loans

**Overdraft Facilities**

Confirm the details of each overdraft account [Name of institution, account number, account name for each account, balance at date of death]

**Leases, hire purchase and other credit facilities**

Confirm the details of each account [Name of institution, account number, account name for each account, facility type, balance at date of death]

**Litigation**

Confirm the details of any actions against the deceased

**Medical/hospital account**

Confirm the details for each medical practitioner or institution, including any outstanding balances and what has already been paid by Medicare and private health cover [if any]

**Funeral account**

Confirm the balance owed for funeral [including council costs and any extra costs associated with a headstone, plinth or similar]

**Rates/utilities**

Confirm the details of each account [Name of institution, account number, account name for each account, balance owed at date of death]



Taxation liability

Confirm if deceased had any outstanding tax returns [you must do two tax returns – one for the deceased up until the date they passed away and one from the day after they passed away until the next tax year]



Other liabilities [including contingent liabilities]

Confirm if deceased had other liabilities

Non-Estate Assets

Below are examples of assets that may be outside the estate, but still need to be considered as a part of the wider estate administration process. You should carefully consult with the deceased's advisers [accountants, brokers, financial planners] to ensure you correctly identify all assets and liabilities.

Particular care must be taken where the deceased resided in or had some connection with New South Wales. Where the deceased had a connection to New South Wales, special rules apply ['notional estate rules']. These rules allow a court to consider assets that do not generally form part of a deceased estate, and in some cases, 'claw back' those assets where they were transferred out of the 'notional estate'.

It is important to remember that these are guides only and specific advice should be obtained before any formal steps are taken.



Superannuation

Confirm the details of each superannuation account [Name of superannuation fund, name of trustee, interest held in fund - including any insurance, nominations in place and type of nomination]



Private schemes

Confirm the details of each interest [Name of institution, membership or account number and surrender value]



Assets held in other entities

You will first need to confirm whether the deceased had an interest in other entities [trusts, companies etc].

You will then need to read the governing documents [trust deeds, company constitutions etc] for that entity to confirm what rights or entitlements the deceased had in the entity.

This is a particularly complex area given the above must be taken in the context of other rights, the corresponding law and other circumstances. Specific advice should be obtained as there are significant, adverse practical and financial repercussions of getting this wrong.

General Advice Disclaimer

Information provided in this document is general in nature and does not constitute financial or legal advice. Every effort has been made to ensure that the information provided is accurate, but information may become outdated as legislation and new government announcements are made. Individuals must not rely on this information to make a financial investment or legal decision as it does not take into account their personal circumstance. Before making any decision, we recommend you consult a licensed adviser or legal practitioner to take into account your particular objectives, circumstances and individual needs.