Cancer Council Northern Territory

Legal and financial fact sheet

What happens to debts after death

Information for people affected by cancer

Many people worry about what will happen to their debts after they die. Often they are concerned that their family members will be responsible for paying off the debt.

This fact sheet explains what happens to debts after a person dies.

It is the responsibility of the executor of an estate to collect the assets of an estate and distribute them, firstly to the liabilities of the estate, and then to the beneficiaries. This fact sheet is not intended to assist an executor in performing their duties, but is general information to help an executor to understand how distributing assets works. For more information on the responsibilities of an executor, see the fact sheet *Your role as executor*.

What happens to your debts depends on whether:

- there are any assets (money or property) in your estate
- the debts are secured or unsecured
- the debts are only in your name, or in joint names with someone else
- someone has guaranteed the debts.

Paying off debts

When a person dies, any outstanding debts are paid off by any money or property left behind (their estate). The executor divides up the estate and gives the assets to the beneficiaries.

The executor must advertise for any creditors to come forward.

If there is enough cash in the estate, the executor pays off the debts owed to those creditors using that cash.

If there is not enough cash in the estate, the executor will sell property and use the money from the sale to pay the debts.

If there is not enough money in the estate after all the assets are sold, the debts may not need to be paid.

Other people are only responsible for paying the debts if:

- the debt is secured against a particular asset that is owned by someone else
- the debt is in joint names with someone else
- someone has guaranteed the debt.

The difference between *secured* and *unsecured* debts

- **Secured debts –** This is a debt that is secured against a particular asset. When a bank lends you money, it may take security for the debt. This means that if you stop making repayments, the bank can take certain property (called the *security property*) and sell it to recover the amount you owe. For example, if you have a mortgage, your home is security for your loan. If you stop paying your loan, the bank can take your home and sell it to pay off the debt.

- **Unsecured debts –** With these debts, if you stop making repayments, there is no particular asset the bank can take and sell. The bank must go to court and obtain an order to take your valuables and sell them to pay off the debt. Credit cards and personal loans are types of unsecured debts.

What happens to debts after death

How different debts are recovered after death

Secured debts

If you have an outstanding loan when you die which is secured against an asset owned by you, the lender can take that asset if repayments on the loan stop. So although your friend or family member is not technically responsible for your debt, the estate may lose the asset if the loan can't be repaid. If the secured loan is in joint names, unless the co-borrower maintains repayments, the asset may be repossessed.

Debts in joint names

If you have a debt in joint names – e.g. a credit card debt – then everyone whose name is on the account is responsible for the debt. If one account holder dies, their estate may be used to pay off part of the debt or the joint account holder will be responsible for the whole debt.

If the deceased account holder has no assets in their estate, or not enough to fully pay off their share of the debt, then the other account holder will have to pay everything that is outstanding.

Guaranteed debts

When you guarantee a loan for someone, you are promising to continue repayments if the borrower stops making them.

So, if you have a loan that is guaranteed by someone else, that person will be responsible for making repayments if you stop making them.

If a friend or family member has guaranteed your loan, the bank can chase that person for the debt after you have died. If the debt is secured, the bank can also sell the secured asset.

Other situations

If your estate doesn't have enough money to pay out all your debts, and the debts are unsecured debts in your name only, with no guarantor, the debts may not have to be fully paid.

A lender cannot force your family members to pay your debts after you have died unless one of the following applies:

- they have an asset which has been used as security for your loan
- they are a joint borrower
- they have guaranteed your loan.

The executor will communicate with the lenders and let them know that the debts will not be repaid. The executor is responsible for checking whether there are any assets, such as superannuation or insurance, available to creditors to repay the debts. Other family members do not have to do anything.

Where to get help and more information

- Cancer Council **13 11 20** for Information and Support

Note to reader
This fact sheet provides general information relevant to the Northern Territory only and is not a substitute for legal advice. You should talk to a lawyer about your specific situation.

Cancer Council NT
Casi House
Unit 2 / 25 Vanderlin Drive
Wanguri NT 0810
Cancer Council NT Toll Free 1800 678 123
Facsimile (08) 8927 4990
Feedback admin@cancernt.org.au
Website nt.cancer.org.au/