



Dealing with a Death

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1. What this information sheet covers

This information sheet deals with the legal requirements and procedures that must be followed when a person has died –

- In some situations a death must be reported to the coroner – see “2. Reporting and registering a death”.
- The body cannot be buried or cremated without a doctor’s certificate or coroner’s order, and there are specific requirements for cremation – see “4. Burial and cremation”.
- The death must be registered within a certain time after the burial or cremation – see “2. Reporting and registering a death”.

In general, these procedures will be carried out by the person in charge of the funeral, which will be –

- the funeral director (if one is being used), or
- the deceased person’s family, or
- the executor (the person appointed in the will to manage the deceased’s property).

This information sheet also provides practical advice about –

- who should be notified about the person’s death
- arranging the funeral
- support for bereaved families and friends.

2. Reporting and registering a death

Reporting a death to the coroner

In certain cases doctors are required to report deaths to the coroner. In general this is when there is something violent, unnatural, unexpected or suspicious about the death (see below for more details).

When a death is reported to the coroner, the body cannot be buried or cremated until the coroner has made an order for the disposal of the body.

When it is **not** necessary to report the death to the coroner, a doctor will issue a Medical Certificate of Cause of Death and the burial or cremation of the body can then go ahead.

When must a death be reported to the coroner?

A death must be reported to the coroner –

- if it was unnatural or violent (for example, a drowning, a car accident or poisoning)
- if the cause of death is unknown
- if the death was suicide
- if no Medical Certificate of Cause of Death has been issued

- if the person died while under anaesthetic or during a medical operation or procedure, or if the death appears to have been caused by the anaesthetic, operation or procedure
- if the person died in prison or in Police custody
- if the person died in a state institution, such as a psychiatric hospital or children's home.

What happens when the coroner investigates the death?

Once a death has been reported to the coroner, the body cannot be buried or cremated until the coroner is satisfied of the medical cause of death and makes an order for the burial or cremation to go ahead. In many cases this will happen within 24 hours of the death.

When a coroner investigates a death the following things may happen –

Identifying the body

The body is formally identified. A close relative or friend must sign a formal declaration before a Justice of the Peace saying who the deceased person is. These formal identifications are arranged by the Police.

Post-mortem examinations

A post-mortem examination (or “autopsy”) may be performed. This is an examination by a pathologist to find out what caused the death. Post-mortems are performed to help the coroner decide whether or not to hold an inquest, or where an inquest is to be started or is underway.

After a post-mortem, the coroner usually issues an order for the disposal of the body (that is, burial or cremation) without there being any need for an inquest.

Inquest

An inquest may be held in the Coroner's Court. An inquest is a legal hearing to establish –

- the fact that the person has died
- who the person is
- when, where and how the person died.

Another purposes of inquests is to enable the coroner to make any recommendations or comments that may reduce the chance of other deaths in similar circumstances.

When deciding whether to hold an inquest, the coroner must consider –

- whether the death appears to have been a natural one
- if the death appears to have been unnatural or violent, whether it appears to have been caused by something that someone else did or failed to do
- any allegations, rumours, suspicions or public concern about the death
- whether drawing attention to how the person died is likely to reduce other deaths in similar situations
- whether any of the deceased's immediate family want an inquest.

An inquest **must** be held if –

- it appears that the death was suicide

- it appears that the death happened while the person was in prison or Police custody, or in a state institution such as a psychiatric hospital or children's home, or
- the inquiries or examinations so far have not established the matters that inquests are required to establish (see above for those matters).

After the inquest a copy of the proceedings (including the coroner's findings and recommendations, and any written evidence presented at the inquest) can be obtained from –

The Coronial Services officer
 Ministry of Justice
 PO Box 5094
 Wellington

However, the coroner can ban the publication of any evidence given at the inquest, or of any other part of the proceedings, if it is in the interests of justice, decency or public order to do so.

Registering a death

All deaths must be registered with the Registrar of Births, Deaths and Marriages, whose office is part of the Department of Internal Affairs. The person in charge of the funeral must do this by sending the following documents to the Registrar within three working days of the body being buried or cremated –

- a Notification of Death for Registration form (a BDM 28 form, available from Births, Deaths and Marriages), and
- either –
 - a Medical Certificate of Cause of Death issued by a doctor, or
 - a coroner's order for the disposal of the body, or a notification from the coroner that an inquest is not necessary.

The Notification of Death for Registration form contains personal details about the deceased, including –

- their name, date of birth, sex and occupation
- when and where the death occurred
- the age and sex of the deceased's spouse and children (if they are living)
- the names of the deceased's parents.

When these documents have been filed and the death has been registered, the Registrar issues a death certificate.

There is no charge for filing the documents, but there is a charge for a copy of the death certificate.

If a funeral director is arranging the funeral, he or she will file the necessary documents.

Who else should be notified of the death?

It is a good idea to notify the following other people or organisations of the death –

- **Employers, Work and Income, or the Accident Compensation Corporation** – Check to see if any salary, superannuation, benefits or ACC compensation or entitlements are due. Arrange to have these paid into the deceased person's estate.

- **Insurance companies** – If the deceased had a life insurance policy, arrange with the insurance company for any payment to be made.
- **Inland Revenue Department** – If the person was receiving a salary or taxable income, a tax return up to the date of death must be filed.
- **Land Titles Service (part of Land Information NZ)** – If the deceased's house was registered as a Joint Family Home, the house should at some stage be transferred to the name of the surviving spouse or partner. The Land Titles Service recommend that the transfer be carried out by a lawyer.
- **Internal Affairs Department** – Although it is not required by law, Internal Affairs recommend that the deceased's passport be cancelled. The passport can be sent to the New Zealand Passport Office in Wellington (or to the nearest Internal Affairs office) with a covering note stating the date and place of death. If the family wishes, the cancelled passport can be returned.
- **Telephone, electricity, gas, local authority (rates)** – These accounts should be cancelled, or changed to the name of the surviving spouse or partner.

3. Arranging a funeral

Introduction

Funerals can be arranged either –

- through a funeral director, or
- by the family or friends of the deceased (Do-it-yourself funerals), or
- by a person before he or she dies (Pre-arranged funerals).

Each of these methods is explained below.

Using a funeral director

Funeral directors can arrange –

- transport of the body (from the place of death and to the cemetery or crematorium)
- registration of the death
- complying with the legal requirements for burial or cremation (including bookings for a cemetery or crematorium, and filing the necessary forms for cremation)
- the embalming, care and presentation of the deceased's body
- death notices and/or funeral notices
- the funeral service
- the printing of bereavement stationery and hymn sheets
- the minister or celebrant and the organist
- flowers
- catering facilities for after the funeral
- support services for bereaved families and friends
- applications to government agencies for funeral grants.



You can choose to use all or just some of the services offered by a funeral director – for example, you may wish to make your own arrangements for the service, the celebrant, flowers and so on.

If you use only some services, check that you will be charged only for those services. Some funeral directors charge a flat fee for arranging a funeral.

It is recommended that you choose a funeral director who is a member of the Funeral Directors Association of New Zealand (FDANZ). FDANZ members must have appropriate qualifications and experience, and must follow the FDANZ's code of conduct. For example, members are required to respect the deceased's cultural and spiritual beliefs.

Complaints about the behaviour of, or service provided by a funeral director can be made to –

Funeral Directors Association of New Zealand
PO Box 10-888
The Terrace
Wellington
Phone: (04) 473 7475
Website: www.fdanz.org.nz

Do-it-yourself funerals

Any person can take charge of the funeral arrangements. The main legal requirements are as follows –

- **Prerequisites for burial or cremation** – The deceased's body cannot be buried or cremated until either a doctor's certificate or a coroner's order has been issued. If the body is to be cremated, you will also need to obtain a cremation certificate from a doctor and to file this certificate and an application form with the crematorium authority. This must be done before the body can be cremated. For more information, see "4. Burial and cremation".
- **Registration of death after burial or cremation** – You must register the death with the Registrar of Births, Deaths and Marriages within three working days after the body has been buried or cremated. For more information, see "2. Reporting and registering a death".

Family and friends can keep the body at home and lay it out before the funeral. The family can also build their own coffin and transport the body to the place of burial.

Embalming is not always necessary if the body is to be buried or cremated within two or three days after the death. However, if the body is to be kept at home, the family may wish to consider embalming, because the appearance and odours associated with a person decomposing are unpleasant. There can be health risks involved in handling dead human bodies, particularly where there is a risk of hepatitis, HIV, AIDS or other infectious diseases.

Some other tasks or decisions involved in arranging a funeral are –

- contacting close family and friends
- death notices and/or funeral notices in newspapers (including newspapers in other places that the deceased had links with)
- the form of the service. Funeral services do not have to be led by a minister – a secular celebrant can be chosen or the family may conduct their own service.
- indicating whether you would like people to donate to a particular charity



- choosing a place for people to gather after the service. This may involve asking friends or professional caterers to provide food.

Pre-arranged funerals

People can leave instructions in their will or with their family about the sort of funeral they would like. While these are not legally binding, it would be unusual for these instructions not to be followed.

Funerals can also be paid for in advance. Among the advantages of this are that relatives do not have the worry of organising and paying for a funeral, and it avoids any concern that there will not be enough money in the estate to cover the cost of the funeral.

The Funeral Directors Association offers a prepaid funeral plan called the FDANZ Family Bereavement Plan. Under this plan, you meet with their funeral director to discuss the kind of funeral you would like and how much this will cost. Money is then paid into a trust account managed by Sovereign Assurance Co Ltd. This money cannot be withdrawn and can be used only to pay for the person's funeral.

For more information on assistance with paying for the funeral, see "6. Support for bereaved families".

4. Burial and cremation

What must happen before the body can be buried or cremated?

A body may be buried or cremated only after **one** of the following things has happened –

- A doctor has signed a Medical Certificate of Cause of Death. Usually this will be issued by the doctor who tended to the deceased during their final illness. If the doctor is not satisfied that the death was the natural result of the illness, the doctor must not sign a certificate, and must report the death to the coroner.

or

- The coroner has issued an order for the disposal of the body, if the death was one that had to be reported to the coroner (see "2. Reporting and registering a death").

Where can the body be buried?

With some exceptions, all burials must be in one of the following –

- a public cemetery
- a Māori burial ground
- a denominational burial ground
- a "private burial ground" (these are private burial areas authorised under the Cemeteries Amendment Act 1912).

These are the exceptions –

- The body can be buried in a private burial place if there is no cemetery or burial ground within 32 kms of the place where the person died or where the body is to be buried.

- The body can be buried in a private burial place that was used before 1 April 1965 so long as written permission is obtained in advance from a District Court judge and also, if it's in an urban area, from the mayor or two local councillors. Permission can be withheld only if the burial would harm "public health or decency".
- The body can be buried in any place (whether or not it was used for burials before 1 April 1965) if, in advance, the Minister of Health is satisfied that exceptional circumstances make that place particularly appropriate and, for burials in urban areas, if the mayor or two local councillors agree to the burial.

What are the requirements for cremation?

If the body is to be cremated, an executor or near relative (or other people in certain cases) must complete an application form and a doctor must issue a cremation certificate. These documents must be filed with the crematorium authority before the body can be cremated.

These requirements are in addition to the requirement that there must be either a Medical Certificate of Cause of Death or a coroner's order.

Local councils operate crematoriums. Contact your local council for more information. Council websites may provide copies of the various cremation forms online.

After the cremation, the ashes can be kept, buried or scattered.

Instructions in the will

The deceased person may have left specific instructions in their will about funeral and burial arrangements. For example –

- whether they want to be buried or cremated
- whether they want to donate their body or specific organs for medical purposes.

These instructions are only a guide for the family or executor, and are not legally binding. However, it would be unusual for them not to be followed.

Registering the death after burial or cremation

The death must be registered with the Registrar of Births, Deaths and Marriages within three working days after the burial or cremation – for more information, see "2. Reporting and registering a death".

5. Dealing with the deceased's will

Obtaining probate for the will

What is "probate"?

After a person has died the executor of the person's will must apply to the High Court for "probate". This is a court order recognising the will as authentic and giving the executor the legal authority to deal with the deceased person's estate and distribute their property according to their will.

How do I apply for probate?

If you are the executor you must apply in writing to the High Court for probate to be granted in your favour. Usually you apply through a lawyer.

Unless someone else is contesting the will, you apply “ex parte”, which means you don’t have to notify anyone else that you are applying. This is called an application for “probate in common form”, in contrast to an application for “probate in solemn form”, which is where someone is contesting the will.

An ex parte application must use the general format shown in Form 20 of the High Court Rules (which is in the Second Schedule to the Judicature Act 1908). If you use a lawyer, they must certify that the application is correct.

As well as the application form, you must also file the following documents with the Registrar of the High Court –

- the will (the original, not a copy)
- an affidavit (a statement sworn before a lawyer) by you that –
 - contains evidence of the death (preferably a sworn statement by you that you attended the funeral or by another person who attended the funeral, or a death certificate)
 - contains evidence of where the deceased was living when he or she died
 - states that you believe that the will is the deceased’s last will.

There is also an application fee.

Where do I file the application?

You must apply to the High Court registry nearest to where the deceased was living when they died or, if they weren’t living in New Zealand, at the registry nearest to where the deceased’s property is.

Will there be a court hearing?

In most cases the High Court Registrar will approve the application and a court hearing is not necessary. Then final documents must be filed with the court, to “seal” probate.

Do I need a lawyer to apply for probate?

Probate is usually arranged through a lawyer. All the documents must be set out in a specific form. The High Court has no sample forms available but court staff can give some assistance.

Finding a missing will

After a person has died there may be problems finding a copy of their will. Places where a will might be held include –

- among their papers and belongings
- at their lawyer’s office
- at the deceased’s bank

- with Public Trust (if Public Trust drew up the will).

If you're unsure about who the deceased's lawyer was –

- check with the Land Titles Service of Land Information New Zealand (it is common for people to make a will at the same time as they buy a house, and the name of the lawyer will be on the forms held by the Land Titles Service)

or

- arrange for a "Notice of Missing Will" advertisement to be placed in the District Law Society newsletter.

If the deceased's will was made overseas, ask a local lawyer to instruct a lawyer in the other country to make enquiries.

You might also try using the International Index for Last Wills and Testaments on the internet to search for where the will is located – this only works if the will has been registered on the index. The website address is

- www.willsindex.com

If you are having difficulties finding a will, consider also the following possibilities –

- The deceased may have made a will under a different name. For example, a woman might have made a will under her maiden name or a previous married name.
- The deceased may have made a will in a different city or area.
- The law firm acting for the deceased may have closed down, in which case the will would have been deposited with another firm.
- The deceased may have destroyed all copies of the will, intending to revoke (cancel) the will.

6. Support for bereaved families

Paying for the funeral

Funerals are usually paid for out of the deceased person's estate. If there is not enough money in the estate to pay for the funeral, the cost is usually met by family and friends.

Funeral grants from Work and Income

Work and Income can provide funeral grants for people who are having difficulty paying for a funeral. To qualify for a funeral grant a person must –

- be the partner or child of the person who has died, or
- be the parent or guardian of a child who has died, or
- be responsible for arranging the funeral of a person who has no surviving spouse, partner or children.

The deceased person must have normally lived in New Zealand.

The amount of the funeral grant will depend on –

- the cost of the funeral

- the deceased person's assets
- the income and assets of the deceased's partner or, in the case of the death of a child, of the parents or guardians.

The funeral grant will not cover the whole cost of the funeral. It is usually paid to the funeral director.

For more information, contact Work and Income.

Funeral grants from ACC

When a person dies as a result of an accident, ACC will pay a grant towards funeral expenses.

For more information, contact ACC.

Access to deceased's bank accounts for funeral expenses

Access to the deceased's bank accounts (other than joint accounts) is not available until probate has been granted (see "5. Dealing with the deceased's will / Obtaining probate"). However, banks **will** release funds to meet funeral expenses. The executor must sign a statutory declaration and the bank will pay the money directly to the funeral director.

Ongoing income support

Widow's benefit

A woman is eligible for the widow's benefit if her husband, civil union partner or de facto partner has died and she comes within one of the following categories –

- she has dependent children
- she has had children and was married for at least 15 years
- she has had children, and the total of the period of her marriage (or marriages) and of any subsequent period of looking after children aged under 16 was at least 15 years
- she was widowed after 50 years of age, having been married for at least five years
- she is now at least 50, was widowed after reaching 40, was married for at least 10 years, and it is now at least 15 years since the date of her marriage (of, if she was married more than once, since the date of her first marriage).

A person who doesn't qualify for the widow's benefit may qualify for –

- the domestic purposes benefit (DPB)
- an unemployment or sickness benefit
- support from ACC (see below).

For more information, contact Work and Income.

Support from ACC

When a person dies as a result of an accident, his or her family may be entitled to financial assistance from ACC –

- **Survivor's grants** – A one-off survivor's grant is paid to the surviving spouse or partner, and additional grants are paid to the deceased's children, if they are under 18, and to any other dependants.
- **Weekly compensation** – The surviving spouse is entitled to weekly compensation payments at the rate of 60 percent of what the deceased would have received had he or she lived but been totally incapacitated. Children under 18 (or under 21 if studying) and other dependants are entitled to weekly compensation payments at the rate of 20 percent of what the deceased would have received.

For more information, contact ACC

Community support

There are many groups and organisations offering counselling and support to the families and friends of a person who has died. These include –

- the AIDS Foundation
- Barnardos
- Bereaved Parents Support Groups
- Bereaved by Suicide Support Groups
- the Cancer Society
- church support groups (for example, Presbyterian Support Services)
- the Cot Death Association (Sudden Infant Death Syndrome)
- funeral directors (and the Funeral Directors Association of New Zealand (FDANZ))
- Lifeline
- the Miscarriage Support Group
- hospices
- hospital social workers and chaplains
- Samaritans
- solo parent groups (for example, Birthright)
- Victim Support, Court Services for Victims (part of the Ministry of Justice), and specialist victim support organisations such as Women's Refuges, Rape Crisis centres and Sexual Abuse Help centres
- the Widows and Widowers Association of NZ.

Our information sheets are intended to provide useful, practical information about the law, in a concise format. They cannot cover all aspects of a topic and should not be seen as a replacement for the relevant Act or Regulations, or for legal advice from a lawyer. No liability is assumed for any losses suffered by any person relying directly or indirectly on the information provided.

We revise and update these information sheets regularly. However, the law changes frequently, and therefore it is not always possible to ensure that an information sheet is up to date at any given time.

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