

# Get that bequest!

**A letter arrives from a solicitor informing you that a loyal donor has recently died and left you a bequest. What happens next will determine whether that person's gift actually hits your bank account. Vera Visevic lists the 13 key steps that charities must know to ensure the bequest is secured.**

## Step 1 – Learn of the Death of the Benefactor

As difficult as this is, it's important for a charity to learn of the death of a benefactor as early as possible.

## Step 2 – Obtain a Copy of the Will

Whether or not a charity is entitled, at this point in time, to receive a copy of the will depends on the State or Territory in which the benefactor lived. A summary of the position is as follows:

State/Territory	
NSW	Yes
Queensland	Yes
Victoria	Yes
South Australia	No
ACT	No
Northern Territory	Yes
Tasmania	No
Western Australia	No

## Step 3 – Executor Applies for Probate

The executor (i.e. the person appointed by the will-maker to carry out their final wishes) applies to the Supreme Court Registry for a grant of probate. This confirms the validity of the will and office of executor. The simpler the assets and liabilities of the benefactor, the sooner the executor should be able to obtain a grant of probate.

## Step 4 – Probate is Granted

The executor is now free to collect all the assets of the estate, pay the liabilities and commence paying the legacies and distributing the estate to the beneficiaries named in the will.

## Step 5 – Charity Obtains A Copy Of The Probate

Charities should seek to obtain a grant of the probate (which will often also include a copy of the will and the inventory of assets and liabilities). In most jurisdictions it is possible to obtain a copy of these documents directly from the Supreme Court Registry. Obtaining a copy of the inventory of assets will assist the charity in assessing roughly how long it will be before the charity is paid its bequest.

## Step 6 – Executor Realises The Assets And Pays The Estate's Debts

After probate has been granted, the executor "realises" the assets of the estate and pays any liabilities. If a charity is a residuary beneficiary, it will often need to wait until the assets have been realised and the liabilities paid before receiving any interim or final distribution.

## Step 7 – Executor Attends To Taxation Issues

It is the duty of the executor to lodge tax returns on behalf of both the deceased and the estate.

## Step 8 – Claims On The Estate Must Be Dealt With

A claim may be made on the estate under the Family Provision Act. This will inevitably expend some of the assets of the estate and result in delays in the final distribution of the estate. A charity which is a beneficiary of an estate where a Family Provision Act claim has been made should obtain legal advice about how to respond to that claim.

## Step 9 – Interim Distributions To Beneficiaries

At any point during the administration of the estate, if the executor has calculated how much of the estate is necessary to pay out the liabilities (including tax) and all of the legacies, the executor should be in a position to make an interim distribution to a charity which is a residuary beneficiary.

## Step 10 – Commission Negotiated Between Beneficiaries And The Executor

An executor may apply to the Supreme Court for permission to deduct a commission from the estate as payment for their role in administering the estate. The earlier that beneficiaries (including any charities) reach agreement with the executor about the size of the commission, the sooner the final distribution of the estate can occur.

## Step 11 – Executor Accounts To The Beneficiaries


An executor must:

1. keep full and proper accounts of the estate property, income and outgoings; and
2. render these accounts when required by the beneficiaries.

## Step 12 – Release And Indemnity

The executor may ask a beneficiary charity to sign a Deed of Release and Indemnity, which releases and indemnifies the executor from any costs and damages incurred in administering the estate. Assuming that the terms of the deed are reasonable, the signing of such a deed will often speed up the final realisation and distribution of the estate.

## Step 13 – Executor Makes Final Distribution To Beneficiaries

Once all the other steps listed above have been attended to, the executor is in a position to make a final distribution to the residuary beneficiaries of the estate. 



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