

# A Guide to Death, Funerals and Small Estates



Whitireia Community Law Centre Trust Incorporated

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## **Whitireia Community Law Centre Trust Incorporated**

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# Introduction

People who have just lost a loved one sometimes want to be actively involved in the funeral service and burial of the deceased. This can help the grieving process as it gives family members a focus of attention that may make the loss they are feeling slightly easier.

Where the deceased had little in the way of money or other property, family members will often be left with the task of dealing with the affairs of the deceased's estate, because there are simply no funds available to pay a professional to do this job.

This resource booklet uses a case study to give an example of the situation where the deceased has left a will and to show what must be done immediately after the death of a person in order to cremate or bury the body. The booklet also provides information about what family members need to do to close bank accounts, pay the debts of the deceased and distribute any surplus funds according to the will (or the rules of intestacy i.e. where the deceased has not left a will). This case study involves a small estate which does not require formal High Court permission to administer but there is some information on dealing with larger estates.

The booklet contains forms with examples filled in to demonstrate how to complete the documentation necessary to achieve the above tasks. It is designed for family who do not have the resources to pay a funeral director or a lawyer to complete the tasks involved or who simply choose to take control of the process themselves.

As you will notice going through this resource, things are very much easier for those left behind if the deceased has left a will, especially if the estate is substantial. If you haven't made a will (or you know of friends or family members who haven't) take action **now!** Appendix B tells you all you need to know and provides a blank form.

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## Case Study

### Fulfilling Florence's last wishes

Florence had been ill for some time before she died. She had taken that time to instruct her brother Terry on what she wanted done when she eventually passed on. Terry had lived with Florence for 11 years before her death. Together they had purchased a small flat and had shared living expenses and supported each other over that time. Florence didn't have much in the way of assets and wanted to make sure that lawyers and funeral directors did not get their hands on what little she did have to leave her relatives.

She had instructed Terry on exactly what she wanted. She was to be cremated and her ashes scattered over the sea, not far from where both she and Terry were born. She also wanted her jewellery to go to their youngest niece. She told Terry he was to have anything else that was left over. She had recorded these instructions in a simple will that had been witnessed by a neighbour and the district nurse who visited her on a daily basis.

Terry was made executor of her will and he was instructed to try and keep her funeral expenses as low as possible.

Florence died happy in the knowledge that her brother Terry would stick to the plan that he had been given concerning her final arrangements.



# Section One – Dealing with the deceased’s body

In most cases, families are content to hand control of funeral arrangements over to a funeral director. There is no legal obligation to do this and in some cases families may want to be actively involved in the final arrangements as part of their grieving process.

When someone dies, the family will naturally be concerned to see their deceased relative and know what control they have over the body. They will also need to consider what must be done to organise the funeral and disposal of their loved one’s body.

The following discussion deals with these matters and what must be done to organise a burial or cremation.

## A Confirmation of death

Generally before the family can move the body to their home or to a funeral parlour, there must be a legal confirmation of death in the form of either:

- ***Medical Certificate of Causes of Death (when death is by natural causes)***

If the deceased has died after an illness or other natural causes, the doctor who gave medical care (the “attending doctor”) will complete a certificate stating the cause of death. If the attending doctor will not be available in the 24 hours following death another doctor may provide this certificate. (In legal terms this means that the body can be “released” [www.legislation.co.nz](http://www.legislation.co.nz) - section 46 of the Burial and Cremation Act 1964).

to the family immediately, for them to prepare for a funeral. There will be no legal problem with moving the body home once a Medical Certificate of Causes of Death has been issued. **The *Medical Certificate of Causes of Death (or Coroner's Authorisation – see below) must accompany the body whenever it is moved.***

- ***Coroner's Authorisation given by the Coroner***

If the death occurred because of any of the following circumstances:

- a violent or unnatural cause (e.g. drowning, a car crash, poisoning)
- the cause of death is unknown
- the person dies in prison
- the person dies “in care” (e.g. in a psychiatric hospital or children’s home)
- the person appears to have taken their own life
- the person dies during or following a medical procedure

**a Medical Certificate of Causes of Death cannot immediately be issued by a doctor and the death must be reported to the Coroner.**

## B The coroner

Coroners are appointed by the Governor-General to investigate deaths occurring in the kinds of instances listed above. When a death is reported to the coroner, the coroner must establish a cause of death.

In any of the above circumstances the doctor or officials involved would report the death to the coroner. In the case of an accident such as a car accident, the body would be taken to a hospital morgue, either arranged by police at the accident scene or by hospital staff if death occurred after arrival at hospital.

The coroner will either decide that further investigation is unnecessary, (so that the attending doctor may then issue a *Medical Certificate of Causes of Death*) or will investigate further to establish a cause of death and then issue a “burial order”.



If further investigation is necessary, the coroner will take legal possession of the person’s body to find out how and why the person died. The coroner might decide a pathologist (a medical specialist in diseases) should examine the body. This examination is called a “post mortem” (or “autopsy”).

A post mortem involves the surgical examination of the body of the deceased person which will usually involve a pathologist examining the internal organs of the body as well as any external injuries. The pathologist will attempt to leave no visible signs of such an examination once this has been completed.

When deciding whether a post mortem is necessary, the coroner will consider:

- Whether a post mortem will reveal useful information about the person’s death;
- The wishes of the deceased person’s family;
- Any distress or offence a post mortem may cause to the deceased person’s family due to their spiritual beliefs or ethnic origins;
- Whether the death may have been caused by the actions of other people.

**The family should let the coroner know if they have any concerns regarding post mortems.**

Before commencing a post mortem the coroner must first advise the deceased person’s family that a post mortem is to be done and the reasons for it. They will also advise the family that they can obtain a copy of the pathologist’s report when the post mortem has been completed.

If the coroner orders the post mortem it will be paid for by the state. If the deceased died in hospital, the hospital authority will pay for the post mortem. If however the family request a post mortem outside of these circumstances, they will have to pay the associated cost.

## **When will the coroner release the body?**

The coroner will usually sign a *Coroner's Authorisation* for disposal of the body within 24 hours of any post mortem. If the coroner decides a post mortem is not required, the body should be released with no more delay than would normally occur if a doctor signed a *Medical Certificate of Causes of Death*. There may be delays if specialists (other than the pathologist) need to be called in.

If there is a will, the person named in the deceased person's will as **executor** will have legal charge of the deceased person's body. They must ensure that the body is put to rest according to the wishes set out in the will.

Where there is no will then the immediate family has charge of the body. If the family is unable to agree over how to put the body to rest and there is undue delay as a result of this, the Ministry of Health may authorise the local authority to carry out disposal of the body. **It is therefore important for the family to reach agreement as quickly as they can.**

## **Coroner's inquest**

After any post mortem has been done, the coroner may decide to conduct an inquest (public hearing) to finally establish the cause of death and to make public recommendations to help prevent further similar deaths. An inquest can be held without a post mortem having been performed. **The inquest will take place some months after the death.**

The coroner should not make negative comments about the deceased person at the hearing without first telling the family that he/she will be making such comments. Before making negative comments, the coroner will stop the public hearing for a period of seven days so the family can be told that negative comments will be made, and to give them a chance to add their own comments or dispute what is to be said.

## C Was the deceased person an organ donor?

This can be established by checking the deceased's will (if there is one), their driver's licence or with family members, their doctor or hospital staff (they will check the Land Transport registry records regarding organ donation).

If the family decides to go ahead with organ donation, **the deceased's family or executor** (under the deceased's will) may authorise giving the deceased's body to a medical practitioner who will carry out the procedure. **The *Medical Certificate of Causes of Death* or *Coroner's Authorisation for disposal of the body* must be given to the doctors who will carry out the procedure.**

They will ensure that matters are carried out quickly as possible so that organ donation can be done without disrupting funeral plans. It will usually happen within a few hours of death. After organ donation has been completed, the deceased's body will be returned to the executor or to the family for burial or cremation.

## D Organising a burial

Once a Medical Certificate of Causes of Death has been issued by a doctor or a burial order has been issued by the Coroner, the family may put the body to rest.

In order to legally bury a body the following documents are required:

1. *Medical Certificate of Causes of Death* from the attending doctor (or an approved substitute) or *Coroner's Authorisation for disposal of the body* from the Coroner
2. An application for burial to the local authority
3. Form to register death (can be done within three days of burial).

A burial must take place at

- a cemetery that is **within 32km** of where the person died or was taken after death, or
- a denominational (religious category) burial ground, or
- a Maori burial ground, or
- a private burial ground within 32km of where the person died or was taken after death.

Under the Births, Deaths and Marriages Act, burial must be done within a "reasonable time" after death (usually within a week).

## Purchasing a burial plot

It is advisable to check within the family, or with the local authority as to whether the deceased or other family members had already purchased a plot. In some areas it may be possible to have more than one burial in the same plot.

As at 2010 a burial plot in the Porirua area will cost \$1,753 for an adult size plot (aged over 10 years), or \$821 for a child. A second burial in a plot would cost \$1,013 for an adult and \$445 for a child, based on charges in 2010. Charges increase each year and will vary depending on the local authority.

The family should contact the local authority at least 24 hours before burial to choose a burial plot. In urgent cases the family may be able to arrange a burial plot on the same day as the burial, if contact is made early in the day.

When applying for a plot the family will need to complete a form similar to the example found in Appendix One and attach a copy of the *Medical Certificate of Causes of Death* or *Coroner's Authorisation*.

The family will also either have to pay for the plot immediately, or show proof that payment will be made by WINZ. If the deceased is eligible for a Funeral Grant, the family should contact Work and Income New Zealand first, in order to have this processed quickly. For more information about this, see page 12.



Costs for plots can include accessories such as mats around the grave site and automatic devices to lower the casket into the grave. Families can choose not to have these (i.e. they may lower the casket into the grave themselves).

The plot is dug by the cemetery's sexton and this is covered in the purchase cost of the plot. It is generally not something the family can do themselves as there are Health and Safety regulations under which the local authority may be liable if a person is injured while digging the plot.

The family will be given a time for burial (which they can choose, according to what the local authority have available). Burial should be done on time or as close to the time given as possible, to allow cemetery staff to plan cemetery maintenance at times that will not disturb family members at burial sites. If the mourners are to arrive very late at the cemetery, the family should ring the cemetery first.

## **E Organising a cremation**

In order to legally cremate a body the following documents are generally required:

1. *Medical Certificate of Causes of Death* from the attending doctor or *Coroner's Authorisation* from the Coroner
2. *Application for Cremation* ([www.legislation.nz](http://www.legislation.nz) -Cremation Regulations 1973 – form A)
3. *Certificate of Medical Practitioner* (as above - form B)
4. *Permission to Cremate* (from medical referee of local crematorium – as above - form F).

**Step One:** Attend local authority office with full fee and *Medical Certificate* or **Authorisation**

You will need to take the *Certificate* or *Authorisation* with you when you apply for permission to cremate the deceased person. The local authority will require you to pay the fees for the cremation in full when you book or provide a letter from WINZ or ACC stating that a grant will be paid and the amount provided.

**Step Two:**  
Complete  
*Application for Cremation*

The *Application for Cremation* is generally made to the local authority controlling the crematorium. The *Application for Cremation* can be completed at the office of the local authority. Staff are generally happy to assist.

In 2010 the fees for a cremation in Porirua were \$433 for an adult and \$62 for use of the crematorium chapel for a committal. Use of the chapel for a full service will cost \$564. These charges may change each year.

**Step Three:** Take  
*Certificate of Medical Practitioner* to attending doctor

The local authority will provide the family with two blank forms: a *Certificate of Medical Practitioner* (form B) and *Permission to Cremate* (form F). Form B should be taken to the doctor who viewed the body. This form provides more details as to the circumstances of the death and once completed should be taken to the medical referee of the local crematorium.

**Step Four:** Take completed *Form A* and *Form B* to medical referee

The medical referee must complete a *Permission to Cremate* (*Form F*). Medical referees are doctors within the region of the crematorium who approve cremations and provide an extra precaution to ensure that all documentation is correct and there are no concerns over cremating the body. There is usually a charge for the referee's services. In Porirua in 2010 this was \$17 - \$25.

If the medical referee is satisfied with the paperwork he/she will then complete a *Permission to Cremate* certificate addressed to the crematorium's attendant.

**Step Five:** Take completed *Form A*, *Form B* and *Form F* to sexton on the day of cremation

The family must take forms A, B and F to give to the sexton at the crematorium on the day of cremation. They may like to check with the local authority to ensure all the correct documentation is completed the day before the cremation is due to take place.

## F Monuments and memorials

Permission to erect headstones, plaques or memorials must be obtained from the local authority in the form of a *Monument Permit*. The cost of these vary significantly depending on your local authority. In 2010, these cost \$62 in Porirua.

Once a permit has been purchased a Monumental Mason (listed in the Yellow Pages) can be contacted and a headstone, monument or plaque chosen. The mason will install the headstone/plaque at the site.

The person who pays for the burial or cremation is generally the person who decides what will said be on the headstone or memorial plaque. The local authority will be directed by this person as to whether the grave or memorial site purchased by them will have a headstone.



The family should spend some time deciding on this important issue as it is often cause for grief at a later date if those who should have been consulted have not been given an opportunity to have their say.

## **G Registering the death**

Every death must be registered with the Registrar of Births, Deaths and Marriages within three working days of the burial or funeral. A *Notification of Death for Registration* form (BDM 28) can be requested by calling Births, Deaths and Marriages on 0800 22 52 52 . It will need to be completed and sent with the *Medical Certificate of Causes of Death* to the Registrar.

If you enclose a cheque for \$26.00 you can request the *Death Certificate* at the same time. You will need this *Death Certificate* to wind up the deceased's financial affairs and also to confirm any Funeral Grant with Work and Income or ACC.

You should receive the *Death Certificate* within ten working days of the Registrar receiving the completed *Notification of Death* form.

Information about registering a death is available from the Registrar on 0800 22 52 52 or from the Births Deaths and Marriages website at [www.bdm.govt.nz](http://www.bdm.govt.nz). The Registrar's address for sending the completed forms is PO Box 31 203, Lower Hutt 5040.

## Section Two – Financial Assistance

Although this is a difficult matter to address at a time of grieving, financial concerns may delay the funeral, burial or cremation if they are not immediately dealt with. Where the family has limited financial resources there are a number of government agencies that may be able to lend assistance.

### A Work and Income New Zealand

A Funeral Grant is available from Work and Income New Zealand to help people with actual and reasonable funeral costs. It is not designed to cover the entire funeral expenses. The maximum grant available in 2010 was \$1,820.08.

It should be noted that none of the Funeral Directors in Porirua were able to quote less than approximately \$4,000 if the body was to be embalmed and the Funeral Home collected the body, provided a casket and delivered the body to the cemetery or crematorium. This sum would be in addition to the cost of a burial plot or cremation listed above. (and see **C Indigent (Poor) Person Grant** below)

A Funeral Grant is income and asset tested. The test depends on whether the deceased has a surviving partner or dependent child or if the deceased is a child. If the value of the deceased's estate can clearly cover the costs of the funeral, Work and Income will not pay a Funeral Grant. If there are some assets available but they will not cover the full costs of the funeral, a partial Funeral Grant can be made.

If the deceased person did not have a spouse or dependent children a Funeral Grant can be paid **if the funeral costs cannot be met by the person's estate before any debts are paid.**

If there is a surviving partner, a Funeral Grant can be paid if

- the deceased person's property, plus any assets the surviving partner owns, would not be sufficient to cover the funeral expenses before paying the deceased person's debts, and
- the surviving partner meets an income test.

In 2010 this income test was whether the partner and the deceased person earned less than \$37,754.08 (before tax) in the year before the person died.

Work and Income will not pay a Funeral Grant until you can provide a copy of the death certificate or verification from Births, Deaths and Marriages that a *Notification of Death for Registration* has been received. Proof of funeral expenses and the value of the deceased person's assets is required.

A Funeral Grant can cover the cost of a casket, hearse fees, burial plot fees, cremation fees, newspaper

notice costs and any professional services with regard to preparing the body for cremation or burial (e.g. embalming). It will not pay for flowers, chapel fees, car hire, death certificates or anything that is not a “direct requirement”.

A Funeral Grant is only available if the deceased was a NZ citizen or Permanent Resident and living in New Zealand at the time of their death. Work and Income will not provide a grant if the deceased qualifies for an ACC grant.

Call Work and Income on 0800 559 009 for more information.

## **B** ACC

### **Funeral Grant**

If the deceased died from personal injury that is covered by the Injury Prevention, Rehabilitation, and Compensation Act 2001, funeral costs of up to \$5,429.92 (2010 level) will be paid by the Accident Compensation Corporation (ACC). Normally the executor will apply or if there is no will, a close family member.

The family needs to contact ACC as soon as possible about a Funeral Grant. In some instances ACC may pay a funeral grant within two days of death. A form will need to be filled in (called an '*Advice of Fatal Injury*' - ACC21). This can be downloaded from [www.acc.co.nz/claims-care/](http://www.acc.co.nz/claims-care/) or call the Accidental Death Unit of ACC on 0800 222 075 for more information.

### **Survivor's Grant**

Survivor's Grants are one-off payments to the partner (including a spouse or de facto partner) or children of the person who died. These grants can be paid no matter where the bereaved person lives – or where the person who died lived (here or overseas).

The bereaved partner can receive a grant of \$5,821.57. Each child under 18 and dependant can receive a grant of \$2,910.80.

### **Childcare payments**

ACC may be able to help with the cost of childcare for bereaved children living in New Zealand, even if the deceased person was not the main caregiver. The support can continue up until the child turns 14 (or beyond if they are disabled), or for five years from when their parent died, whichever is first. Payment is usually made to the person responsible for arranging the care of the child. If the children live in different

places, payments may be divided between caregivers.

There is \$123.79 available per week if there is one child, \$148.54 available for two children and \$173.31 if there are three or more children.

## **Weekly compensation**

Where the deceased person was in paid employment, the bereaved partner may receive weekly compensation for lost wages. They will be paid up to 60% of their late partner's weekly compensation and each child or dependent is paid up to 20%. More assistance may be available to children who have lost both parents as a result of the accident.

Payments can start from the date of the accident. The bereaved partner can ask ACC to convert their weekly compensation to one payment which can be paid either in one lot or in instalments, at not less than six monthly intervals.

Children between 18 – 21 may qualify for some assistance if they are in full-time study or training.

A bereaved partner can be paid weekly compensation for five years – or while they are still caring for their late partner's children (under 18) or dependants. Remarriage doesn't affect compensation.

Children can be paid until the end of the year they turn 18. If they are still full-time students they can be paid until their study ends or they turn 21 (whichever is first). Other dependants can be paid until their income goes over a set limit. Qualifying for New Zealand Superannuation will also affect payments.

More information is available from the ACC Claimant Service Centre on 0800 101 996.

## **C Indigent (Poor) Person Grant**

Local authorities may waive burial and cremation fees in situations where the deceased person has no assets and whose family are not available or will not deal with the matter of disposal of the deceased's body (e.g. in situations where there has been a family breakdown). Usually funeral directors who have been given charge of the body will apply for these grants and make a statutory declaration that no person is available to pay the funeral fees. Family members could also make declarations stating they cannot afford the burial plot or cremation fees. Speak to your local authority about this.

## D Victims of Crime

Special Grants may be available to families of homicide victims. These grants will arise from the operation of the Sentencing (Offender Levy) Act 2009 which has, at the time of publishing, yet to be passed into law. The grants may be made via ACC and/or by discretionary grants from a special fund set up to compensate victims of crime. Contact ACC or your local Community law Centre for further information on these matters.

## Section Three – Applying the law to Florence's case

### A Florence's will

Florence had made a simple will:

#### Last Will of Florence Mary Fergus

This is the last will of Florence Mary Fergus, Retired, of 10 The Glen, Porirua.

1. I revoke all former wills.
2. I appoint my brother Terrance Ian Fergus, Retired of Porirua, executor of my will and direct that he should pay all of my debts out of the proceeds of my estate and distribute the balance in accordance with my will.
3. I direct that my body be cremated and that my ashes be scattered over the sea near the coast of Pukerua Bay.
4. I direct that all of my personal jewellery go to my youngest niece, Mary Florence Brown, Technician of Titahi Bay.
5. I direct that everything else that I own go to my brother Terrance Ian Fergus absolutely.
6. In the event of Terrance Fergus predeceasing me I direct that the balance of my estate be divided equally among such of my nephews and nieces as are alive at the date of my death.
7. In the event of none of the above gifts vesting I direct the balance of my estate go to the Salvation Army.

As witness my hand this 24<sup>th</sup> day of November 2001

Signed by the abovenamed Florence Mary Fergus  
in her presence and at her request and in the presence  
of each other as attesting witnesses

*Florence M Fergus*

Jane Smith  
District Nurse  
12 The Lane  
Porirua

*Jane Smith*

John Black  
Retired  
8 The Glen  
Porirua

*J Black*

As can be seen, Florence named ‘Terry as her executor. This means that Terry now has a legal responsibility, and the authority, to arrange the funeral, gather up any money or other assets Florence may have had, pay any outstanding bills and carry out the instructions in her will.

His first priority must be to obtain possession of her body and begin to organise the cremation. He now proceeds to complete the legal documentation needed to do this.

Because Florence died in hospital of natural causes her attending doctor can give legal confirmation of death in the form of a *Medical Certificate of Causes of Death*. This is needed before Florence's body can be released into Terry's possession.

Terry contacts the hospital and asks when the certificate and the body will be available for him to move.

# **B** Moving Florence's body

After confirming with the hospital that the *Medical Certificate of Causes of Death* had been completed by the attending doctor, Terry arranged with the local undertaker to have Florence transported from the hospital to the funeral home.

There is no obligation to use transport provided by a funeral home and Terry could have used his nephew's van. If private transport is used, it is important to remember to

 <b>DEATHS</b> <small>OF THE KINGDOM OF NEW ZEALAND</small>	<i>Births, Deaths and Marriages Registration Act 1995</i>	
<input type="checkbox"/> REGISTRAR TO ENTER <input type="checkbox"/> No of death entry <input type="checkbox"/> Place of registration		
<h2>Medical Certificate of Causes of Death</h2> <p>This certificate must be given to the funeral director or person in charge of the body without delay</p>		
<p>Please print clearly</p> <p>First or given name(s) of deceased <u>FLORENCE MARY</u></p> <p>Surname or family name of deceased <u>FERGUS</u></p> <p>Date of birth <u>1 MAY 1920</u>  <small>day month year</small></p> <p>Sex <input checked="" type="checkbox"/> Female <input type="checkbox"/> Male</p> <p>Place of death (in full) <u>KENEPURU HOSPITAL</u></p> <p>Date of death (as stated to me) <u>27 MARCH 2002</u>  <small>day month year</small></p> <p>Last seen alive by me on <u>27 MARCH 2002</u>  <small>day month year</small> or <input type="radio"/></p> <p>Body seen by me after death <input type="radio"/> No <input checked="" type="radio"/> Yes</p> <p>Post-mortem <input checked="" type="checkbox"/> Not intended to be held <input type="radio"/> Held - full results available <input type="radio"/> Held - results e.g. histology awaited</p> <p>Ethnic group(s) <input type="radio"/> NZ Maori <input checked="" type="checkbox"/> NZ European or Pakeha <input type="radio"/> Other European → Which of these groups  <input type="radio"/> Samoan <input type="radio"/> Cook Island Maori <input type="radio"/> Tongan <input type="radio"/> Niuean <input type="radio"/> Dutch <input type="radio"/> English  <input type="radio"/> Chinese <input type="radio"/> Indian <input type="radio"/> Other (such as Fijian, Vietnamese) <input type="radio"/> Australian <input type="radio"/> Scottish  <small>Print other ethnic group(s) here</small></p> <p><b>I did not see the deceased alive and the doctor who last attended the deceased is unavailable, and having regard to the medical records of the unavailable doctor and having examined the body, giving regard to the circumstances of the death, I am satisfied the death is not required to be reported to the Coroner.</b></p> <p><b>Part I. (a) Direct cause:</b>      Show disease, injury or complication directly leading to death  <u>Pneumonia</u>      Approximate time between onset and death  <u>5 days</u></p> <p><b>(b) Antecedent causes:</b>      Morbid conditions (if any) giving rise to the above cause</p> <p><b>(c) State the underlying conditions last</b></p> <p><b>Part II. Other significant conditions contributing to death, but not related to the disease or condition causing it</b>  <u>Adenocarcinoma of the colon</u></p> <p>When issuing a certificate under section 38 of the Births, Deaths and Marriages Registration Act 1995.</p> <p>If death was the result of injury or poisoning (intentional or unintentional) set out details here. Describe how injury or poisoning occurred.</p> <p>If the deceased was at time of death suffering from an infectious disease, whether or not covered above, name the disease(s)</p> <p>I certify that the particulars and causes of death shown above are true to the best of my knowledge and belief, and that no relevant information has been omitted</p> <p>If applicable:</p> <p>I expect further information to become available and, if required by the Registrar of Deaths or the Director General, Ministry of Health, I am prepared to give additional information as to the cause of death for the purpose of a more precise statistical classification.</p> <p>Printed name of practitioner <u>The Medical Centre</u>    Address <u>The ST PORIRUA</u>    Qualifications <u>MD</u>    Signature <u>MJ</u> Date <u>28/3/02</u></p>		

keep the *Medical Certificate of Causes of Death* with the body during transportation.

The main reason that Terry decided to use the funeral home transport was that he had decided to have Florence's body embalmed. She had died in the middle of summer and her doctor advised that the warm weather would mean the body would soon become unpleasant. Terry had been instructed by Florence that she was to be taken home for a "wake" which would last for two days.

Terry's nieces went down to the funeral home after Florence was embalmed and dressed her in her favourite dress.

The funeral home discussed the cost of a coffin with Terry when he first asked them to pick the body up from the hospital. The funeral director said that the cost of coffins ranged from \$990 up to \$7000. Terry decided to buy the cheapest unpainted customwood coffin and decorate it himself. He painted it with the help of his nephews and nieces. Florence was laid in this coffin at the funeral home after she had been embalmed.

## C The cremation

Before Terry had Florence's body moved from the hospital he completed the *Application for Cremation* at the office of his local authority. Terry paid them \$495 which covered the \$433 cremation fee plus \$62 for the use of the crematorium chapel for a brief committal service. A time for the cremation at the council crematorium was allocated. Had Florence wished to be buried Terry would have had to complete the *Application for Burial* form found in Appendix One at the back of this booklet.

The *Application for Cremation* (Form A) was completed as follows:

FORM A

Cremation Regulations 1973

**APPLICATION FOR CREMATION**

Consecutive Number (to be inserted on receipt of Application) .....

I, (Full name of applicant)

Terrance Ian FERGUS.....

(Address)

10 The Glen, Porirua.....

(Occupation)

Retired.....

apply to the controlling authority of the ...Porirua... crematorium to undertake the cremation of the body of:

(Full name of deceased)

Florence Mary FERGUS.....

(Address)

10 The Glen, Porirua.....

(Occupation)

Retired.....

(Age) 82..... (Sex) Female.....

(Whether married, widow, widower or unmarried)

Unmarried.....

The true answers to the questions set out below are as follows:

1. Are you an executor of the deceased? Yes.....
2. Are you a relative of the deceased? Yes.....  
 (a) If so, state the relationship Brother.....  
 (b) If you are not an executor or near relative, state why this application is being made by you and not by an executor or near relative\*.....
3. Have the near relatives\* of the deceased been informed of the proposed cremation? Yes.....
4. If the application is not made by an executor, is there an executor of the deceased? ..... If there is an executor has he been informed of the proposed cremation? .....
5. To the best of your knowledge and belief has any near relative or executor of the deceased expressed any objection to the proposed cremation? No..... If so, on what ground? .....
6. What, to the best of your knowledge and belief, was the date and hour of the death of the deceased? Date: 22 March 2002  
 Hour: 10.20 pm.....

7. Where did the deceased die? (Give address and say whether own residence, lodgings, hotel, hospital, nursing home etc)  
Kene-puru Hospital, Porirua.....

8. Do you know or have you any reason to suspect that the death of the deceased was due, directly or indirectly, to –

(a) Violence Yes  No  (b) Poison Yes  No   
 (c) Privation or neglect Yes  No  (d) Illegal operation? Yes  No 

9. Do you know any reason whatever for supposing that an examination of the body of the deceased may be desirable?

No.....

9a. Do you know or have you any reason to suspect that the body of the deceased contains a cardiac pacemaker or other biomechanical aid? It didn't.....

10. Give the name and address of the ordinary medical attendant of the deceased. Dr T Treatment, The Medical centre, Main Street, Porirua.....

11. Give names and addresses of all the medical practitioners who attended the deceased during his/her last illness: As above.....

12. Who were the persons (if any) present at the time of death?

Dr T Treatment, Terrance Fergus.....

13. Was the deceased a member of a religious denomination whose tenets require the burning of the body to be carried out as a religious rite elsewhere than in an approved crematorium? No.....  
 If so, give the name by which that religious denomination is known.....

I HEREBY CERTIFY, with a view to procuring the cremation of the body of the abovenamed deceased, that all the particulars stated above are true, and that to the best of my knowledge and belief no material particular has been omitted.

Date: 24/3/02. Signature: J. Fergus.....

Witness to signature: G. Geeks.....

Name: Awenda Geeks.....

Occupation: Justice of the Peace.....

Address: 4 Main Road, Porirua.....

\* NOTE – the term "near relative" as used in this form, means the wife or husband of the deceased, a parent of the deceased, or a child of the deceased who is of or over the age of 16 years; and includes any relative of the deceased who usually resides with him.

The local authority also gave Terry a blank Certificate of Medical Practitioner form which he took to the doctor who attended Florence's death to complete.

An example of the form is shown on the next page.

**CERTIFICATE OF MEDICAL PRACTITIONER**

Consecutive Number (to be inserted on receipt of Application) .....

I am informed that the application is about to be made for the cremation of the body of:

(Full name of deceased)

(Address)

(Occupation)

Having attended the deceased before, and seen and identified the body after death, I give the following answers to the questions set out below:

1. On what date and at what hour did he/she die? .....
2. Where did the deceased die? (Give address and say whether own residence, lodgings, hotel, hospital, nursing home etc) .....
3. Are you a relative of the deceased? ..... If so, state the relationship .....
4. Have you, as far as you are aware, any pecuniary interest in the death of the deceased? .....
5. Were you the ordinary medical attendant of the deceased? ..... If so, for how long? ..... Years ..... Months ..... Weeks
6. Did you attend the deceased during his/her last illness? ..... If so, for how long? ..... Months ..... Weeks ..... Days ..... Hours
7. When did you last see the deceased alive? Say how many hours or days before death
8. A) How soon after the death did you see the body? .....
- B) What steps did you take to establish the identity of the deceased person? .....
- C) How did you establish the identity of the deceased person? .....
9. What were the causes of death? Period elapsing between onset of each condition and death
  - A) Immediate cause – the disease, injury or complication which caused death? .....
  - B) Morbid conditions (if any) giving rise to the immediate cause. (Place the conditions in chronological order beginning with the most recent) .....
  - C) Other conditions (if any) contributing to death – pregnancy, parturition, over exertion, dangerous occupation? .....

State how far your answers as to the cause of death and the duration of such causes are founded on your own observations or on the statements made by others. If on the statements made by others, give their names and their relationship to the deceased.

10. What was the mode of death? (State whether syncope, coma, exhaustion, convulsions, etc) ..... What was its duration? (State number of days, hours or minutes and state how far your answers as to the mode of death is founded on your own observations or on the statements made by others. If on statements made by others, give their names and their relationship to the deceased).....
11. Did the deceased undergo any operation during the final illness or within one year before death? ..... Nature of operation ..... By whom performed .....
12. By whom was the deceased nursed during his/her last illness? (If the death occurred in a hospital, this question may be answered by referring generally to the nursing staff in a specified ward, but otherwise give specific names and say whether professional nurse, relative etc. If the illness was a long one, this question should be answered with reference to the period of four weeks before death). .....
13. Was the deceased attended during his/her last illness by any medical attendant besides yourself? .....
14. In view of the knowledge of the deceased's habits and constitution do you feel any doubts whatsoever as to the character of the disease or cause of death? .....
15. Do you know, or have you any reason to suspect that the death of the deceased was due, directly or indirectly, to:
 

(a) Violence	Yes/No	(b) Poison	Yes/No
(c) Privation or neglect	Yes/No	(d) Illegal operation?	Yes/No
16. Have you any reason to suppose a further examination of the body to be desirable? .....
17. Have you given the certificate required for the registration of death? .....

**I HEREBY CERTIFY** that the answers given above are true and accurate to the best of my knowledge and belief, and that there is no circumstance known to me which can give rise to any suspicion that the death was due wholly or in part to any other cause than disease (or accident) or which makes it desirable that the body should not be cremated.

Date: ..... Signature: .....

Name: .....

Registered Qualification: .....

NOTE—This certificate must be handed or sent in a closed envelope by the medical practitioner who signs it to a Medical Referee.

The attending doctor sent this directly to the local authority's Medical Referee (but he could also have given it back to Terry in a sealed envelope). The Medical Referee then completed a *Permission to Cremate* (Form F) and gave one copy back to Terry and sent another on to the crematorium.

## D Dealing with Work and Income

After Florence died Terry phoned his case manager at Work and Income and made an appointment to apply for a Funeral Grant to cover Florence's funeral expenses.

He took a copy of the *Medical Certificate of Causes of Death* down to his local Work and Income office as well as a copy of Florence's latest bank statement and their last rates statement from the local council. The funeral director provided a letter stating the services Terry had agreed to and the total cost of those services.

A Funeral Grant can't be formally approved until Work and Income receive verification from Births Deaths and Marriages of the registration of death and this cannot happen until after a date has been set for the burial or cremation. However, Work and Income agreed to pay the Funeral Grant in advance to Terry on the condition that if the Grant was declined, he would pay it back in full. All arrangements were now complete in order to carry out Florence's wishes. Terry confirmed the time of cremation with the crematorium staff and arranged for a short service to be held at the chapel annexed to the crematorium.

## E The funeral service

After arranging the cremation, Terry placed a death notice in the local newspaper detailing the time and place of the service at the crematorium and inviting friends to visit Florence at their home prior to her cremation.

When Terry took Florence's body home for the wake, he signed a *Transfer of Charge of Body* form (BDM 39) at the funeral home. If a body is taken from a funeral director or crematorium, the law requires that the person taking charge of the body signs this form. If Florence's body had been transferred to the care of another person, another *Transfer of Charge of Body* would have to be completed.

The total cost of the funeral service was \$4,495 (see page 30) or \$2,675 more than the Funeral Grant which may be available from Work and Income. The extra cost will have to come out of Florence's estate.

Florence's casket was taken from her home in her nephew's van well in time for the service. A copy of the *Medical Certificate of Causes of Death* was kept with the body on the trip as were the necessary cremation Forms A, B and F to give to the sexton.



Florence was taken into the crematorium chapel by family. As they had already enjoyed the opportunity of saying their farewells to Florence at the wake they were content with the brief committal service before her coffin was taken for cremation. Three days after the cremation Terry picked up the ashes from the crematorium and scattered them over the sea near the place where she and Terry were born in accordance with Florence's last wishes.

Terry called Births, Deaths and Marriages on 0800 22 52 52 and requested a *Notification of Death for Registration* form (BDM 28). He completed it and sent it to the Registrar of Births, Deaths and Marriages along with the *Medical Certificate of Causes of Death*.

Along with the *Notification* and *Medical Certificate of Causes of Death*, Terry enclosed a cheque for \$26.00 and requested a *Death Certificate* so he could wind up Florence's financial affairs and confirm the Funeral Grant with Work and Income.

## Section Four – Dealing with the Estate

### A The role of the ‘personal representative’

The personal representative of the deceased will either be an ‘**executor**’ named in a will or an ‘**administrator**’ when there is no will and someone has assumed responsibility to deal with the affairs of the deceased. This person must first deal with the body, complete the necessary paperwork, obtain any funeral grants that are available and arrange the funeral.

After the funeral the personal representative must first attend to the financial affairs of the deceased. This will include:

- a) ‘getting in’ any assets of the deceased
- b) paying the funeral expenses
- c) paying any debts left by the deceased and
- d) distributing the balance of any property according to the law.

If the deceased made a will, the personal representative will be the executor named in the will. If they died without making a will then the personal representative will be the administrator, normally a close relative who assumes this responsibility and often someone who is entitled to benefit from the estate under the rules of intestacy (see page 25 for more information about these rules).

### B What is the “estate”?

The estate is all of the property by the deceased. It includes anything of value: their personal possessions, money in bank accounts, shares owned in companies, proceeds from insurance policies and any real estate they own (i.e. house and land). But sums must be deducted for funeral expenses, taxes, debts and other liabilities incurred by the deceased, before any surplus can be distributed to family or those entitled under a will.

**Property that is in “joint ownership” does not form part of the estate of the deceased person but passes by operation of law to any surviving owner(s).**

A common example of joint ownership is the family home which is often held by a husband and wife in no particular defined shares. When one spouse dies, the survivor will own the property outright without any need to go to the High Court as discussed below. The example found on page 31 shows what a survivor must do in order to change ownership in a jointly owned house from joint names to the sole name of the survivor.



## Small estates

To be able to deal with a large estate a representative would usually have to apply to the High Court for a **grant of probate** (if there is a will), or for **letters of administration** (if the deceased died without having made a will). But where the estate is sufficiently small it will not be necessary to apply to the Court such an order.

The test is:

Did the deceased person die

- a) without leaving a house or land (excluding Maori land) and
- b) without any sum of money in an individual bank, insurance company or employer account (one **fundholder**) in excess of \$15,000?

If the answer to both these questions is 'no' then there will be no need to apply to the High Court in order to get access to these funds.

Family can generally obtain this money by completing an “indemnity” and providing the bank, insurance company or employer with a certified copy of the *Death Certificate*. The rules governing this area of law can be found in section 65 of the Administration Act 1967 (which is available to view at [www.legislation.govt.nz](http://www.legislation.govt.nz)).

## Larger estates

If however, money was held by one fundholder (e.g. a bank) and the account(s) totalled more than \$15,000, the personal representative must apply to the High Court for either a **grant of probate** (where there is a will) or **letters of administration on intestacy**. Both these applications are reasonably complex undertakings and legal costs can range from \$1,500 to \$3,000. Family should consult a solicitor or Public Trust for help.

With these facts in mind, a person might ‘organise’ their estate prior to death so that money is held in joint accounts (in which case it will pass to the surviving account holder automatically) or in accounts at different banks in amounts less than \$15,000. This may save the expense of a High Court application after they die.

## C Where there is a will

Family should check the deceased’s personal papers for a will. If none is found, contact should be made with the Public Trust or the deceased’s lawyer to confirm the existence of any will. It may be necessary to place an advertisement in the local Law Society publication asking if other lawyers hold a will for the deceased. The cost of such an ad is around \$50.

If a deceased relative has made a will and the estate is sizeable then the executor may have to apply for a grant of probate (see above). The family should contact a lawyer or Public Trust for legal advice and assistance.

Where the deceased left a small estate things are much less complex but in either case the will must still be followed. The person(s) appointed as executor must follow the instructions on how the body is to be disposed of and how the estate is to be distributed.



## **D Where there is no will – the “rules of intestacy”**

If a relative died without leaving a will, this is called an **intestacy**. In the case of a small estate, one of the next of kin will usually take responsibility for ‘getting in’ the assets of the deceased, paying the funeral costs and other bills of their dead relative and distributing the surplus estate to surviving relatives. This person is called the personal representative or “administrator” of the estate.

In the case of intestacy, the estate must be divided according to the **rules of intestacy contained in the Administration Act 1969**.

### **1. Where there is a surviving spouse, civil union or de facto (including same sex) partner (as defined in the Property (Relationships) Act 1976)**

The surviving spouse or partner takes all the personal chattels, plus \$155,000 plus one third of the balance of the estate. The other two thirds go to any children of the deceased.

If there is a deceased child or children, then their share will go to their surviving children/grandchildren in equal shares. Where there are no children/grandchildren of the deceased, the spouse gets two thirds of the balance and the remaining one third goes to any surviving parent of the deceased.

The surviving spouse gets the entire estate if there are no children and no surviving parent.

### **2. Where there is no surviving spouse or partner**

If there is no surviving spouse the whole estate goes equally to the children of the deceased. This includes any children **formally adopted by** the deceased (see below).

If there are no children of the deceased the entire estate goes to the surviving parents of the deceased. (Note: if there is a deceased child or children, then their share will go to their surviving children / grandchildren in equal shares.)

If there are no children, grandchildren or surviving parents, the entire estate goes to the brothers and sisters of the deceased in equal shares. (The share of any deceased sibling goes to their children in equal shares.)



If there is no spouse, children, parents, brothers, sisters, nephews or nieces, the estate is divided equally between maternal and paternal grandparents or their surviving families.

If there is no surviving family on either side, the estate goes to the Crown.

## **Status of Children Act 1969**

Under the provisions of the Status of Children Act 1969, children born to unmarried parents have the same rights to an estate interest as those born to married parents. The personal representative should check the private papers of the deceased to ensure that there are no children who may be entitled to benefit from the estate as a result of the provisions of this Act. It would also be appropriate to check with the deceased's solicitor or any close advisor that may have special knowledge as to the existence of such a person.

**Children who are the subject of an adoption order have no rights to a share of the estate of their natural parents but are entitled to a share of their adoptive parents' estate.**

## **Property (Relationships) Act 1976**

As of February 2002, de facto couples are treated the same as married couples when dividing property on intestacy. There is no distinction made between heterosexual and same sex couples.

Under this Act, the deceased's surviving partner has two options. They can either take property left by the deceased partner under a will (or under the rules of intestacy), or they can choose to have the property divided according to rules set out in the Property (Relationships) Act.

There are time frames for choosing one of these two options, and if a choice has not been made within this time frame, then property will automatically be divided according to the will (or the rules of intestacy).

**If the personal representative is unclear of the entitlement of surviving partners they should obtain legal advice from a lawyer or Public Trust.**

## **E ‘Getting in’ the assets of the estate**

Before any of the deceased's creditors can be paid, the person acting as the personal representative of the estate will need to 'get in' the assets of the estate.

This will involve contacting financial institutions and employers to determine whether money is being held by these organisations that belongs to the deceased. It may also involve arranging for auctioneers to sell items of property that are not specifically left to any person stipulated in the deceased person's will.

It is important at this stage to discuss with those who are entitled to benefit from the estate, what items should be kept aside for distribution after creditors have been paid.

## **Bank accounts, insurance proceeds and wages outstanding**

Information about these matters will usually be found in the deceased's personal papers or with their lawyer. Most banks and insurance companies will have a standard document which they require the personal representative to sign before they will release any funds belonging to the estate. These organisations will want to know that the person they are dealing with has authority to deal with the deceased's estate – i.e. that the person is named as executor under a will or has assumed responsibility as the administrator of the deceased's estate.

A statutory declaration with a copy of the death certificate attached should provide sufficient evidence to the institution that the personal representative has the required status.

### **Statutory declaration**

I, Terrance Ian Fergus, Retired of Porirua solemnly and sincerely declare that:

1. I am the youngest brother of Florence Mary Fergus who died at Kenepuru Hospital on the 27<sup>th</sup> day of March 2002.
2. At the date of her death, Florence Mary Fergus was single and lived with me at 10 The Glen, Porirua.
3. Attached and marked "A" is the death certificate of Florence Mary Fergus.
4. Florence Mary Fergus died leaving a will but the size of her estate does not require an application to the High Court for grant of probate. Attached and marked "B" is a true copy of her will.
5. I am the executor of her will and act as the personal representative of her estate.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Declared at Porirua this 5<sup>th</sup> day  
of May 2002 before me:

*T Fergus*

*G Geks JP of Porirua*

The standard document that banks provide will include an "indemnity" clause which provides that the person acting as the personal representative accepts personal liability should someone else subsequently show that they acted without the required authority and that the bank should not have dealt with them. The personal representative accepts this responsibility when they sign the indemnity.

Proceeds obtained from these organisations should be banked and clearly accounted for.

Blank copies of this statutory declaration, as well as a declaration for a personal representative where there is no will, are provided in the appendices to this resource.

## Furniture and other personal chattels

The personal representative will need to check whether any furniture items or large appliances such as fridges or washing machines are being paid off by hire purchase. Those persons entitled under the will or intestacy could possibly take over these finance agreements by **an assignment** if their credit rating is acceptable and they are able to meet the payments.

Many finance contracts have life insurance components included as a standard term. Check with the finance company to see whether any cover exists that could result in repayment of the finance agreement on the death of the debtor.

The personal representative should discuss with those entitled to benefit from the estate how items of personal property are to be disposed of. It would be appropriate for valuations to be obtained for apparently valuable items of property to ensure that any distribution is made pursuant to an independent assessment of the value of the estate.

## Motor vehicles

Before motor vehicles are sold, the personal representative should check to see if they have been used as security for any loan made by a finance company or bank. This can be checked with Auto Check on 0800 843 847 (\$35 will be charged to your credit card) or 0900 843 847 (\$35

will be charged to your phone account) or by checking the Personal Property Securities Register online at [www.ppsr.govt.nz](http://www.ppsr.govt.nz) (which costs \$1 per search but you must register first). There is no free service available for checking this information but such charges can be met from the assets of the estate since they are part of the process of administration.



Any loan secured over the vehicle must be paid off before sale. It may be possible to arrange a family member who wishes to buy the car from the estate to take over the finance agreement. The personal representative should talk to the finance company about this option.

The personal representative should also notify the Land Transport Safety Authority of the new owner's details and will need to ensure change of ownership forms (MR 13A and B) are completed. These forms are available from the AA or NZ Post.

## **F Paying the debts of the deceased**

Before making any distribution of the estate, the person acting as the personal representative needs firstly to pay the funeral expenses of the deceased person.

They will also need to contact any creditors to check to see what funds are owed by or are owing to the deceased. Those who should be contacted would include:

- the person's bank(s)
- their landlord
- their employer
- Work and Income New Zealand (if they are retired or receiving a benefit)
- their power supplier and telecommunications provider
- any hire purchase creditors.

It will be necessary to arrange for a final reading of the power meter and to get access to the home of the deceased to remove personal belongings and clean the premises if the deceased rented accommodation.

Written notice of termination of the rental agreement should be given to the landlord as should notice of disconnection to power and telecommunications suppliers.

The person acting as personal representative should redirect all mail to their own address and keep an inventory of the deceased's belongings and an account of any money paid on behalf of the estate. Receipts for all payments should be kept with these records.

Many institutions will have a standard form similar to the one found on page 25 which formally sets out the authority of the personal representative to act for the estate. If the deceased left a will, the person making the statutory declaration should be the executor of the will and a true copy of the will needs to be attached to the declaration.

This form can be used to get information about the deceased's debts.

The statutory declaration found on page 25 must be made in front of a Justice of the Peace, solicitor or Registrar of the Court. Making a false declaration is a criminal offence and is punishable by up to five years imprisonment under section 110 of the Crimes Act 1960.

## **G Completing the deceased's tax returns**

The final task before distributing the estate of the deceased is to complete any relevant tax returns. The personal representative runs the risk of being held personally liable to the Inland Revenue Department if they distribute all of the estate without first paying off any tax liability the deceased had.

The following discussion assumes that the final tax return is a straightforward and simple case. Where the estate is complex the return should be completed by an accountant or tax expert. The cost of this can be charged to the estate.

Depending on when the person died, the representative may need to complete more than one return. If the death occurred shortly after 31 March a return will probably be required for the year just ended as well as the period following 1 April to the date of death. If a return has already been made by the deceased for the previous tax year, then only the period from 1 April to the date of death will need to be returned. If the estate continues to “accrue” income after death, the personal representative will also have to prepare an ‘Estate or Trust income tax return’ (IR6) detailing income earned by the estate after the date of death. This form can be completed online by going to [ird.govt.nz](http://ird.govt.nz) and typing ‘IR6’ in the search box.

Contact should be made with IRD in order to get the previous year’s tax return. This will give good insight into the sources of income that the deceased normally had.

**The personal representative can only distribute the “surplus” estate after all creditors and testamentary expenses have been paid off. This includes debts to IRD.**

The balance remaining on a student loan will be written off once IRD views the death certificate. However, the estate is liable for any outstanding child support owing. This must be paid unless there are no funds available from the estate.

IRD can be contacted on 0800 227 774. More information is available on their website [www.ird.govt.nz](http://www.ird.govt.nz).

## **H Claims against the estate**

A personal representative who distributes an estate without considering creditors’ claims runs the risk of assuming personal liability in respect of a claim by a bona fide creditor of the deceased.

To protect themselves against such claims a personal representative can advertise in a newspaper circulating in the locality in which the deceased lived, giving creditors at least one month to bring claims to

their notice. If no claims are brought within the period stipulated, the representative may proceed to distribute the estate without incurring liability.

A simple advertisement along the following lines would suffice:

**Notice to creditors of Florence Mary Fergus**

I, Terrance Ian Fergus, of 10 The Glen, Porirua, am the executor of the estate of Florence Mary Fergus who died at Kenepuru Hospital on 27 March 2002.

Creditors of Florence Mary Fergus are advised to contact me at the above address within one month of the date specified below, with any claim they may have against the estate of the deceased.

*T Fergus*  
20 May 2002

There are a number of other circumstances whereby claims can be made against the estate of the deceased. This might occur where the deceased has promised to leave someone something in their will in return for work that person did before the deceased died. This is called a **testamentary promises** claim and is brought under the Law Reform (Testamentary Promises) Act 1949 by anyone claiming such a promise was made.

A **family protection** claim can also be made by family members who feel that they have been wrongfully excluded from the will. These claims are made under the Family Protection Act 1955 and can be brought by the spouse of the deceased, their children, grandchildren or parents.

Family protection claims and testamentary promises claims that are not brought to the attention of the personal representative within 6 months of the grant of probate or letters of administration will not result in personal liability for the representative if a distribution is made after this period elapses.

## Section Five – Dealing with Florence’s estate

The first thing Terry did following Florence’s funeral was to register her death with the Registrar of Births, Deaths and Marriages.

Once he had received the death certificate, Terry completed the statutory declaration found on page 25 and took it to Florence’s bank. On the basis of the information supplied and a further form the bank required Terry to complete, the bank paid the \$640 balance of her account to Terry.

He paid off Florence’s Farmers card and transferred her energy shares into his name and sold them.

He then completed the simple accounting record below to provide the rest of the family with information on what money had been received and what had been paid:

Accounts of the Estate of Florence Mary Fergus				
Date	Payment/Receipt	DR	CR	Bal
28 March 2002	Porirua City Council (cremation and chapel fee)	\$495		\$495 DR
28 March	Guardian Funeral Home (embalming, hearse, basic coffin)	\$4000		\$4495 DR
28 March	Placemakers	\$98		\$4593 DR
28 March	Dominion Post	\$60		\$4653 DR
29 March	Catering (various)	\$250		\$4903 DR
5 April	Births, Deaths and Marriages	\$26		\$5019 DR
15 April	BNZ (bank account)		\$3541	\$1478 DR
25 April	Work and Income		\$1663	\$185 CR
3 May	Energy shares (sale)		\$800	\$985 CR
5 May	Farmers card	\$900		\$85 CR
6 May	Terry Fergus	\$85		NIL

As per Florence’s will, Terry gave his youngest niece all of Florence’s jewellery. He also gifted other small items of personal property to various family members to provide them with small mementos of Florence’s passing.

Terry contacted IRD and obtained the necessary form to complete her final tax return.

The final task that he had to complete was to transfer the property which they had jointly owned into his sole name.

## A Transmission of jointly owned property

It is highly recommended that survivors of joint land consult a lawyer for assistance transferring land into their own names as it can be a confusing process and Land Information New Zealand will not provide advice about transmissions other than that which is available on their website ([www.linz.govt.nz](http://www.linz.govt.nz)). However, there is no requirement that a lawyer complete the transmission and Terry can do it himself by completing the necessary forms.

Terry will need to complete the following:

- a) Lodgement form
- b) Application for Transmission (Survivorship)
- c) Application for Transmission (Survivorship) statutory declaration – Form 15
- d) Statutory declaration of person executing – Form 27
- e) Statutory declaration of witness – Form 28
- f) Proof of identification

These documents should then be filed at the nearest Land Information New Zealand Processing Centre – see Appendix C for your closest Centre. The cost of transmission of title in property which is not subject to a mortgage is \$60. Once the transmission has been recorded by LINZ, a “post registration” title search will need to be done to confirm the transaction has been completed. Title searches can be done on-line or at Processing Centres as well as by solicitors or search agents.

### a) Lodgement form

Page One												
Lodging Details				Dealing / SUD Number: (LINZ Use only)								
Lodging Details				Priority Barcode/Date Stamp (LINZ use only)								
Landline User ID: _____ LODGING FIRM: <b>Terrance Fergus</b> Address: <b>10 The Glen</b> <b>Porirua</b> Uplifting Box Number: _____ ASSOCIATED FIRM: _____ Client Code / Ref: _____				HEREWITH	Survey Plan (#)	Title Plan (#)	Traverse Sheets (#)	Field Notes (#)	Calc Sheets (#)	Survey Report	Plan Number Pre-Allocated or to be Deposited: _____	
				Rejected Dealing Number: _____								
Other (state) <b>Statutory declaration</b>												
Priority Order	CT Ref.	Type of Instrument	Names of Parties	DOCUMENT OR SURVEY FEES	MULTI-TITLE FEES	NOTICES	ADVERTISING	NEW TITLES	OTHER	RE-SUBMISSION & PRIORITY FEE	FEES \$ GST INCLUSIVE	
1	4D/21	TSM	Fergus	50.00							\$50.00	
2												
3												
4												
5												
6												
Land Information New Zealand Lodgement Form Fees Receipt and Tax Invoice GST Registered Number 17-022-895 LINZ Form P005 LINZ Form P005 - PDF				Annotations (LINZ use only) Original Signatures? _____				Subtotal (for this page)		\$50.00		
								Total for this dealing		\$50.00		
				Less Fees paid on Dealing #				Cash/Cheque enclosed for		\$50.00		

**b) Application for Transmission (Survivorship)**

**FORM 15**

**APPLICATION FOR TRANSMISSION (SURVIVORSHIP)**

**Section 122, Land Transfer Act 1952**

**Land registration district**

Wellington

Barcode

**Unique identifier(s)  
or C/T(s)**

All/part

**Area/description of part or stratum**

4D/21

All

Lot 1 DP 68811

**Applicant**

Surname must be underlined

Terrance Ian Fergus

**Estate or interest claimed**

Fee simple

**Application**

**The Applicant applies** to the Registrar to **register the Applicant as proprietor(s)** of the estate or interest referred to above in the land comprised in the above certificate(s) of title or computer register(s), on the grounds set out in the statutory declaration in the Annexure Schedule.

Dated this 6th day of June 2002

**Certified correct** for the purposes of the Land Transfer Act 1952

*T Fergus*

The Applicant

# Application for Transmission (Survivorship) statutory declaration

## Form 15 Annexure Schedule 1

### APPLICATION FOR TRANSMISSION (SURVIVORSHIP) STATUTORY DECLARATION

I, Terrance Ian Fergus of 10 The Glen, Porirua, Retired, solemnly and sincerely declare that:

1. I am the survivor of Florence Mary Fergus, deceased, a certified copy of the entry of whose death in the Register of Deaths is annexed to this schedule and marked "A".
2. The deceased and the person named as Florence Mary Fergus in the certificate of title or computer register referred to in the attached application were one and the same person.
3. At the time of her death, the deceased and I were registered as the proprietors as joint tenants of the estate or interest claimed in the attached application in our own right and free from all trusts and equities.
4. I truly believe myself to be entitled to be registered as proprietor of the estate or interest claimed in the attached application, by virtue of my survivorship of the deceased.

and I make this declaration conscientiously believing the same to be true by virtue of the Oaths and Declarations Act 1957.

Declared at Porirua  
this 6<sup>th</sup> day of June 2002  
Before me

T Fergus

G Geks  
Justice of the Peace

Terry includes Florence's death certificate with this statutory declaration and his witness certifies it is "Exhibit A".

Each statutory declaration needs to be witnessed by a Justice of the Peace, a solicitor or a Registrar of the Court.

R.G. 112 Certified Copy of Entry of Death in the Registrar-General's Office	
Place of Registration: WELLINGTON	
1. When died	27 March 2002
2. Where died	Kenepuru Hospital - Porirua Porirua
3. Usual place of residence	
Description of Deceased	
4. Name and surname	Florence Mary FERGUS
5. Profession or occupation	Retired
6. Sex and age	F 74 Years
Causes of Death	
7. Causes of death and intervals between onset and death	Pneumonia 5 days
8. Medical attendant by whom certified and date last seen alive	Dr T Treatment 27 March 2002
Parents	
9. Name and surname of father	Thomas FERGUS
10. Name and surname of mother	Mary FERGUS
11. Maiden surname of mother	BROWNLEE
12. Profession or occupation of father	Coachbuilder
Burial	
13. When and where buried	30 March 2002 Cremated - Porirua
Where Born	
14. Where born and how long in New Zealand	Packakariki 74 Years
If Deceased was Married	
15. Where married	(A) (B)
16. At what age married	This is the annexure marked <u>A'</u> referred to in the annexed affidavit of <u>Terrance FERGUS</u> sworn at Porirua this <u>6<sup>th</sup></u> day of <u>June</u> <u>2002</u> before me:
17. To whom married	
18. Age of widow	
19. Ages and sex of living issue	G Geks JR PORIRUA
Certified to be a true copy of the above particulars included in an entry of death in the records of the Registrar-General's office.	
Given under the seal of the Registrar-General at Lower Hutt.	
the 10th day of May 2002	
The fee for this certificate is	
98142J-600 pads/177 W	
CAUTION—Any person who (1) falsifies any of the particulars on this certificate, or (2) uses it as true, knowing it to be false, is liable to prosecution under the Crimes Act 1961.	

## d) Statutory declaration of person executing

Form 27

### STATUTORY DECLARATION OF PERSON EXECUTING

Regulation 16(3)(a), Land Transfer Regulations 2002

I, Terrance Ian Fergus of 10 The Glen, Porirua, Retired, solemnly and sincerely declare that:

I executed the transmission (survivorship) instrument dated 6 June 2002 and lodged for registration under number (unknown).

The signature purporting to be my signature name is in my own handwriting.

I am of sound mind, and I did freely and voluntarily sign the instrument.

And I make this declaration conscientiously believing the same to be true by virtue of the Oaths and Declarations Act 1957.

Declared at Porirua  
this 6<sup>th</sup> day of June 2002  
before me

*T Fergus*

G Geks  
Justice of the Peace

## e) Statutory declaration of witness

Form 28

### STATUTORY DECLARATION OF WITNESS

Regulation 16(3)(b), Land Transfer Regulations 2002

I, Gwyn Geks of 10 Rawhiti Street, Porirua, Justice of the Peace, solemnly and sincerely declare that:

I am the witness who attested the signing of the transmission (survivorship) instrument dated 6 June 2002 and lodged for registration under number (unknown).

The name purporting to be my name as attesting witness is in my own handwriting.

I personally know or have established the identity of Terrance Ian Fergus, the person signing the instrument and whose signature I witnessed.

The name purporting to be the signature of Terrance Ian Fergus is in his or her own handwriting.

Terrance Ian Fergus appeared to be of sound mind and did freely and voluntarily sign the instrument.

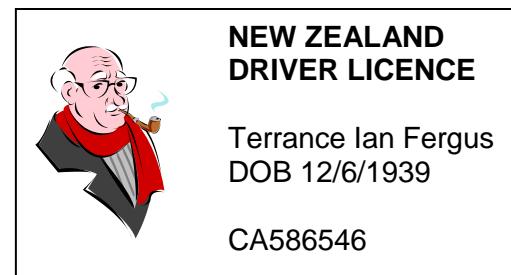
And I make this declaration conscientiously believing the same to be true by virtue of the Oaths and Declarations Act 1957.

Declared at Porirua  
this 6<sup>th</sup> day of June 2002  
before me

*G Geks*

*W Bevan*  
Barrister and Solicitor of the High Court of New Zealand

## f) Proof of identification



Appendix B

Place barcode here

### ID (Photo preferred)

Type: driver's licence, passport, other (specify) \_\_\_\_\_

Name in full: Terrance Ian Fergus

Residential Address: 10 The Glen, Porirua

Postal (if different to above): \_\_\_\_\_

Phone number and email address: 04 237 1234

I am authorised to lodge this dealing and the information I have given is true and correct

(signed) T Fergus

Personal information provided in this form is being collected by Land Information New Zealand (c/- 160 Lambton Quay, Wellington) and will be held and used for verifying your identity when lodging dealings in Landonline. The provision of this information is not mandatory or required by law but failure to provide this information will mean that dealings lodged on Landonline may be delayed or rejected while your identity is verified. Pursuant to the Privacy Act 1993, you have the right of access to, and correction of, personal information provided in this form.

### NOTES FOR ESTABLISHING IDENTITY WHEN DEALING WITH PRIVATE REGISTRATION

- Photocopy the identification on to the top of this form (if applicable).
- Make client aware that in some instances a statutory declaration may be required (e.g. for witnessing, Regulation 16(3) etc or if there is any doubt as to the signature of the individual concerned when compared with previously lodged document).

### Duties for LINZ personnel

- An annotation should be entered in Landonline to establish that the dealing is a private registration.
- Make a Supporting Document of this form attached to the dealing at lodgement.

Accepted by \_\_\_\_\_ Verified by \_\_\_\_\_

## **Appendix A**

Statutory declaration for executor where probate not needed

Statutory declaration for personal representative where no will and no grant of administration needed

## **STATUTORY DECLARATION – WILL ATTACHED**

I, ..... of .....

.....

solemnly and sincerely declare that:

1. I am the ..... of .....  
who died at ..... on .....
2. At the date of his/her death, ..... was single /  
married and lived at .....
3. Attached and marked "A" is the death certificate of .....
4. ..... died leaving a will, but the size of the estate  
does not require an application to the High Court for grant of probate. Attached and marked  
"B" is a true copy of his/her will.
5. I am the executor of his/her will and act as the personal representative of his/her estate.

And I make this declaration conscientiously believing the same to be true by virtue of the Oaths  
and Declarations Act 1957.

Declared at .....

this .....day of ..... 20.....

before me

A person authorised to take a statutory declaration under the Oaths and Declarations Act 1957

## **STATUTORY DECLARATION – NO WILL**

I, ..... of .....

.....,

solemnly and sincerely declare that:

1. I am the ..... of .....  
who died at ..... on .....
2. At the date of his/her death, ..... was single /  
married and lived at .....
3. Attached and marked "A" is the death certificate of .....
4. ..... died without a will and the size of the estate  
does not require an application to the High Court for grant of Letters of Administration.
5. I believe I am entitled to act as the personal representative of his estate and will indemnify  
any third party against all claims made against them arising from the transfer of any property  
to me as personal representative of his estate pursuant to section 65 of the Administration  
Act 1967.

And I make this declaration conscientiously believing the same to be true by virtue of the Oaths  
and Declarations Act 1957.

Declared at .....

this ..... day of ..... 20.....

before me

A person authorised to take a statutory declaration under the Oaths and Declarations Act 1957

## Appendix B

### Making a will

Many people put off making a will because they are concerned that it be expensive to have a lawyer draw one up for them. While a will is a legal document, it does not have to be written or witnessed by a lawyer. There is nothing to stop a person writing their own will. However, it is not recommended that a person write their own will if they own a significant amount of property. A will may be more easily challenged if it has not been written by a lawyer.

Anyone 18 or over who is of “sound mind” can make a will. They are called the “**testator**”. A “**beneficiary**” is anyone who is left property under the will. The “**executor**” is the person who has the duty of carrying out the provisions of the will.

A will must be in writing and signed by the person making the will. The signature must be witnessed by two other people who are with the testator when it is signed and see each other sign. These witnesses cannot be beneficiaries under the will and must be over the age of 18. These witnesses do not need to be Justices of the Peace or lawyers.

Before making a will, think carefully about what you want to happen after you die. Your executor should be someone over 20 who will be capable of dealing with your affairs and you feel confident will follow your wishes. You should consider carefully who will be the beneficiaries of your property and think about how you want your property to be distributed.

Many people include in their will directions about funeral arrangements and whether they wish their organs to be donated for medical use. If there are dependant children, usually a testator will name who they wish to look after the children (called a “testamentary guardian”).

A simple will form is included on the next page for those who wish to make their own. It is recommended that advice is sought from a lawyer or Public Trust about making a will. Public Trust will prepare wills for free if they are named as executor. They also have an online will service which costs \$69.95 (at July 2006) at [www.ptnz.co.nz](http://www.ptnz.co.nz).

# Will

This is the last will of .....  
who lives at .....  
and whose occupation is .....

1. I revoke all former wills and testamentary dispositions.
2. I appoint .....  
who lives at .....  
and whose occupation is .....  
to be executor of my will and testamentary guardian of my infant children. I direct that he/she pay all of my debts and distribute the balance in accordance with this will.
3. I direct that my body be .....
4. I give the following gifts to the following people:  
.....  
.....  
.....  
.....

5. The balance of my estate is to be given to:  
.....  
.....  
.....

6. In the event of all of the above gifts failing to vest I direct that my estate go to  
.....

As witness my hand this ..... day of ..... 20.....

Signed by the abovenamed .....  
in our presence and attested by us in his/her presence as witnesses:

Signature .....	Signature .....
Name .....	Name .....
Address .....	Address .....
Occupation .....	Occupation .....

## Appendix C

### Forms required for transmission of property

These need to be lodged with the correct LINZ processing centre (the closest one to the property being transferred) by either

- mailing (with the lodgement form and the cheque for the fee) to the appropriate processing centre or
- delivering the document to the processing centre on any working day between the hours of 9.00am and 4.00pm.

It is suggested you deliver the documents personally. If the documents are rejected because you have completed them incorrectly, there is a \$20 re-submission fee for each incorrect document.

The lodgement form is also available as a PDF document on the LINZ website at [www.lnz.govt.nz](http://www.linz.govt.nz) (search "lodgement form").

*Auckland Processing Centre*  
Oracle Tower  
56 Wakefield Street  
Private Bag 92016  
Auckland

*Hamilton Processing Centre*  
Corner Victoria and Rostrevor Streets  
Private Bag 3028  
Hamilton

*Wellington Processing Centre*  
Mayfair House  
44-52 The Terrace  
PO Box 5014  
Wellington

*Christchurch Processing Centre*  
Torrens House  
195 Hereford Street  
Private Bag 4721  
Christchurch

*Dunedin Processing Centre*  
John Wickliffe House  
Princes Street  
Private Bag 1929  
Dunedin

The phone number for each office is 0800 665 463 (0800 ONLINE).

# Page One

Landonline User ID: \_\_\_\_\_

LODGING FIRM:  
Address: \_\_\_\_\_  
Uplifting Box Number: \_\_\_\_\_

Dealing / SUD Number:  
(LINZ Use only)

Priority Barcode/Date Stamp  
(LINZ use only)

HEREWITH

Survey Plan (#)

Title Plan (#)

Traverse Sheets (#)

Field Notes (#)

Calc Sheets (#)

Survey Report

Plan Number Pre-Allocated or  
to be Deposited: \_\_\_\_\_

ASSOCIATED FIRM:  
Client Code / Ref: \_\_\_\_\_

Other (state): \_\_\_\_\_

Priority Order	CT Ref:	Type of Instrument	Names of Parties	DOCUMENT OR SURVEY FEES	MULTI-TITLE FEES	NOTICES	ADVERTISING	NEW TITLES	OTHER	RE-SUBMISSION & PRIORITY FEE	FEES \$ GST INCLUSIVE
1											
2											
3											
4											
5											
6											

Land Information New Zealand Lodgement Form

Annotations (LINZ use only)

Subtotal (for this page)

Total for this dealing

\$0.00

Fees Receipt and Tax Invoice  
GST Registered Number 17-022-895  
LINZ Form P005

Original Signatures? \_\_\_\_\_

Less Fees paid on Dealing #

\$0.00

## Form 15

### APPLICATION FOR TRANSMISSION (SURVIVORSHIP)

Section 122, Land Transfer Act 1952

Land registration district

	Barcode
--	---------

Unique identifier(s)  
or C/T(s)

All/part

Area/description of part or stratum

--	--	--

Applicant

Surname must be underlined

--

Estate or interest claimed

--

Application

The Applicant applies to the Registrar to register the Applicant as proprietor(s) of the estate or interest referred to above in the land comprised in the above certificate(s) of title or computer register(s), on the grounds set out in the statutory declaration in the Annexure Schedule.

Dated this      day of	20
------------------------	----

Certified correct for the purposes of the Land Transfer Act 1952

--

The Applicant

**Form 15  
Annexure Schedule 1**

**APPLICATION FOR TRANSMISSION (SURVIVORSHIP)**

**STATUTORY DECLARATION**

I, ..... of .....

solemnly and sincerely declare that:

1. I am the survivor of ....., deceased, a certified copy of the entry of whose death in the Register of Deaths is annexed to this schedule and marked "A".
2. The deceased and the person named as ..... in the certificate of title or computer register referred to in the attached application were one and the same person.
3. At the time of his/her death, the deceased and I were registered as the proprietors as joint tenants of the estate or interest claimed in the attached application in our own right and free from all trusts and equities.
4. I truly believe myself to be entitled to be registered as proprietor of the estate or interest claimed in the attached application, by virtue of my survivorship of the deceased.

and I make this declaration conscientiously believing the same to be true by virtue of the Oaths and Declarations Act 1957.

Declared at .....

this .....day of ..... 20.....

before me

**Form 27**

**STATUTORY DECLARATION OF PERSON EXECUTING  
Regulation 16(3)(a), Land Transfer Regulations 2002**

I, ..... of .....

....., .....

solemnly and sincerely declare that:

I executed the transmission (survivorship) instrument dated ..... and lodged for registration under number .....

The signature purporting to be my signature name is in my own handwriting.

I am of sound mind, and I did freely and voluntarily sign the instrument.

And I make this declaration conscientiously believing the same to be true by virtue of the Oaths and Declarations Act 1957.

Declared at .....

this .....day of ..... 20....

before me

A person authorised to take a statutory declaration under the Oaths and Declarations Act 1957

**Form 28**

**STATUTORY DECLARATION OF WITNESS**

**Regulation 16(3)(b), Land Transfer Regulations 2002**

I, ..... of .....

..... solemnly and sincerely declare that:

I am the witness who attested the signing of the transmission (survivorship) instrument dated ..... and lodged for registration under number .....

The name purporting to be my name as attesting witness is in my own handwriting.

I personally know or have established the identity of .....  
the person signing the instrument and whose signature I witnessed.

The name purporting to be the signature of ..... is in his or  
her own handwriting.

..... appeared to be of sound mind and did freely and  
voluntarily sign the instrument.

And I make this declaration conscientiously believing the same to be true by virtue of the Oaths  
and Declarations Act 1957.

Declared at .....

this ..... day of ..... 20....

before me

A person authorised to take a statutory declaration under the Oaths and Declarations Act 1957

photo ID  
copied to Here

Place Barcode Here

**ID (Photo Preferred)**

Type: driver's licence, passport, other (specify) \_\_\_\_\_

Name in Full:.....

Residential Address:.....

Postal: (If different to above) .....

Phone Numbers & e-mail address:.....

I am authorised to lodge this dealing and the information I have given is true and correct  
(SIGNED)

Personal information provided in this form is being collected by Land Information New Zealand (c/- 160 Lambton Quay, Wellington), and will be held and used for verifying your identity when lodging dealings in Landonline. The provision of this information is not mandatory or required by law but failure to provide this information will mean that dealings lodged in Landonline may be delayed or rejected while your identity is verified. Pursuant to the Privacy Act 1993, you have the right of access to, and correction of, personal information provided in this form.

**NOTES FOR ESTABLISHING IDENTITY WHEN DEALING WITH PRIVATE REGISTRATION**

- Photocopy the identification on to the top of this form (if applicable).
- Make client aware that in some instances a statutory declaration may be required.  
(Eg for witnessing, Regulation 16(3) etc. Or if there is any doubt as to the signature of the individual concerned when compared with previously lodged document)

**Duties for LINZ personnel**

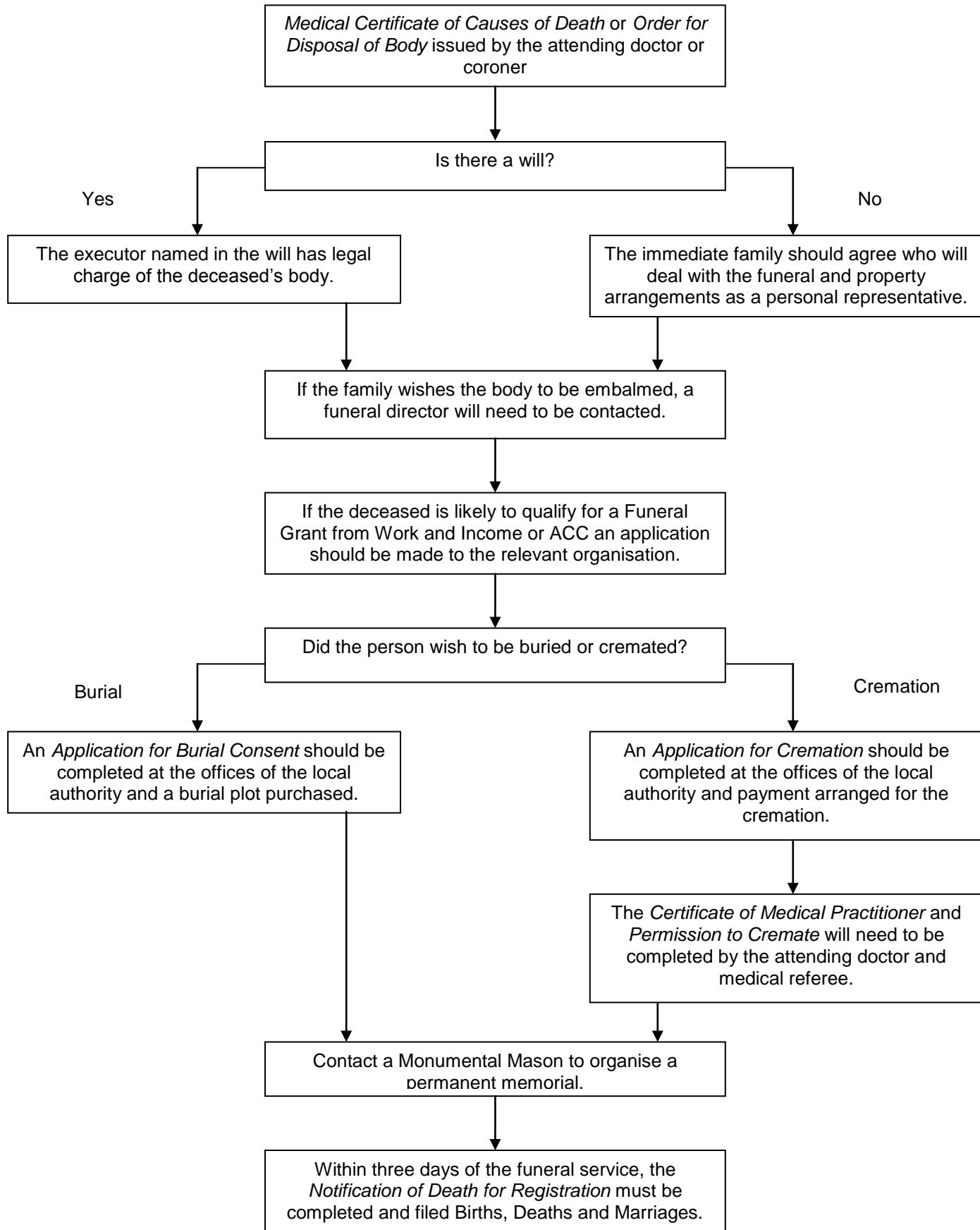
- An annotation should be entered in Landonline to establish that the dealing is a private registration.
- Make A Supporting Document of this form attached to the dealing at lodgement.

Accepted By \_\_\_\_\_

Verified By \_\_\_\_\_

## APPENDIX D

### Flowchart - Dealing with the deceased's body



# A Guide to Death, Funerals and Small Estates

**Family who have just lost a loved one** may want to be actively involved in the funeral service of the deceased. **Money problems** may mean the family cannot afford to engage a funeral director to complete the final arrangements.

This booklet provides some **basic “tools” to assist families** who want to proceed with a funeral service without the help of a funeral director.

The booklet shows what **forms need to be completed** in order to cremate a body.

It uses a **case study example** involving an elderly family member who has a small estate and wishes to not let “lawyers and undertakers” get their hands on what little property she has to leave to her family.

Hopefully this **“self help” resource** will be of some use to people whose circumstances fit within the simple example given and who feel they have the confidence to complete the documentation needed to dispose of the deceased’s body and wind up their estate.

There are **many more complicated situations** that this booklet does not address. Those needing extra help should contact a lawyer or Public Trust for assistance.