



## Deceased Estate Exemptions

This Commissioner's Practice explains when a land tax exemption will be granted for land that forms part of a deceased estate.

### Background

An executor, administrator or trustee of a deceased estate is liable for land tax under the *Land Tax Assessment Act 2002* (LTA Act).<sup>1</sup>

Land owned by a person as executor, administrator or trustee is assessed separately from other land beneficially owned by that person.<sup>2</sup>

*Private residential property* includes a lot on which there is a private residence.

*Primary residence* means an individual's sole or principal place of residence.<sup>3</sup>

### Continued exemption after death

Under section 23 of the LTA Act, private residential property owned by an executor or administrator of a deceased estate is exempt from land tax for one year if the property was used as the deceased's primary residence when they died.

### Right to reside exemption

Under section 22 of the LTA Act, private residential property is exempt from land tax if it is owned by a trustee of a deceased estate and a beneficiary using the property as their primary residence is expressly entitled under the will to use the property as a place of residence.<sup>4</sup>

### Right to future ownership exemption

Under section 23A of the LTA Act, private residential property is exempt from land tax if it is owned by a trustee of a deceased estate and a beneficiary using the property as their primary residence is entitled under the will to ownership of that property at a fixed or ascertainable future time.

### Commissioner's discretion

If an exemption applies to a portion of land under sections 22 or 23, the Commissioner may apply discretion to exempt the remaining portion of the land.<sup>5</sup> The Commissioner may also exempt land under section 23 for a second year after the deceased's death, or for the first year after the deceased's death if the land does not qualify under section 23 because the estate derived income from the property.<sup>6</sup>

See Commissioner's Practice [LT 21 'Commissioner's Discretion'](#).

<sup>1</sup> LTA Act s 9 and definition of *trustee*: Clause 1 of the Glossary to the LTA Act.

<sup>2</sup> LTA Act s 11.

<sup>3</sup> See Commissioner's Practice [LT 4 'Primary Residence'](#).

<sup>4</sup> This includes where the beneficiary has a life estate in the property.

<sup>5</sup> LTA Act s 20(1)(a).

<sup>6</sup> LTA Act s 20(1)(b).

## Commissioner's Practice

1. Once Probate or Letters of Administration have been granted, the Commissioner will recognise the executor or administrator of a deceased estate as the owner of the estate's land for the purposes of land tax. This applies retrospectively from the date of the deceased's death.
2. An executor or administrator may only apply for a deceased estate exemption after Probate or Letters of Administration have been granted over the estate.
3. None of these exemptions apply to property after it is distributed out of the estate.

### One-year exemption

4. Land is exempt for the assessment year immediately following the person's death to allow the executor or administrator sufficient time to wind up the person's estate if:
  - 4.1 the executor or administrator owns the property at the first 30 June after the deceased died and
  - 4.2 no income was derived from the property from the date of the person's death until the end of the assessment yearand either
  - 4.3 the property was exempt because it was the owner's primary residence<sup>7</sup> in the assessment year in which they died or
  - 4.4 the deceased started residing in the property during the assessment year in which they died and the property would have been exempt if they had been living at the property on 30 June in the previous assessment year.

#### *Example*

Paul owned and resided in his home before his death on 30 July 2020. Paul's will names Gracie as his executor.

Gracie is recognised as executor on 15 May 2021. As 30 June 2021 is the first land tax assessment date since Paul's death, Gracie can apply for an exemption for Paul's home for the 2021/22 year.

5. An executor or administrator may apply for a deceased estate exemption before the end of the assessment year if the estate is not expected to derive income from the property in the assessment year.
  - 5.1 If the property then generates rent or other income in the assessment year, the executor or administrator must notify the Commissioner by the following 30 September. A penalty may be imposed if notice is not provided.<sup>8</sup>
  - 5.2 The notice must include any information required to make a reassessment.
  - 5.3 If the amount of income was nominal and was derived from a family member who resided at the property for maintenance or caretaking purposes, the Commissioner will generally apply discretion to grant the exemption.

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<sup>7</sup> Under the LTA Act section 21.

<sup>8</sup> LTA Act s 23(3).

## Exemptions for beneficiaries in residence

### Right to reside or life tenancy

6. Private residential property is exempt for an assessment year if:
  - 6.1 the property is owned by a trustee who was the executor or administrator of the will<sup>9</sup> and
  - 6.2 the will specifically identifies an individual as entitled to either a life tenancy for the property or a right to use the property as a place of residence<sup>10</sup> and
  - 6.3 that individual is using the property as their primary residence at midnight 30 June in the previous assessment year.
7. Once granted, the exemption will continue until either the life tenancy or right to reside expires, or until the individual stops using the property as their primary residence.

#### Examples

Harry owned and resided in his home before his death. Harry's will explicitly stated that his sister, Emma, is to have a life estate in his home. The property will be exempt as long as Emma uses it as her primary residence.

Sue owned a holiday home before her death. Sue's will explicitly stated that her nephew, Ray, had a right to reside in that property for two years before it was to be sold. The property will be exempt for up to two years, provided that Ray is using it as his primary residence.

Beth owned a rental property which was vacant when she died. Her will named her cousin, Ivan, as one of five beneficiaries who share equally in her estate. The executor agrees to give Ivan a right to reside at the rental property as part of his share in the estate. Although Ivan moves into the property, it is not exempt because the will did not specifically entitle him to a right to reside at that property.

### Right to future ownership

8. Private residential property is exempt for an assessment year if:
  - 8.1 the property is owned by a trustee who was the executor or administrator of the will<sup>11</sup>
  - 8.2 the will specifically identifies an individual as the beneficiary entitled to whole or part ownership of that property at a fixed or ascertainable future time, such as when a beneficiary reaches a stipulated age<sup>12</sup> and
  - 8.3 the beneficiary is using the property as their primary residence at midnight 30 June in the previous assessment year.

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<sup>9</sup> For the purposes of this exemption, the executor or administrator begins holding the land as trustee when they have finished paying all just debts, funeral and testamentary expenses of the estate.

<sup>10</sup> It is not sufficient for the beneficiary to be entitled to a share of the residuary estate and the property be part of that residuary. When an executor grants a life tenancy, right of residence, or right to future ownership using a power under the *Trustees Act 1962*, the land will not be exempt. See *Caratti v Commissioner of State Revenue* [2017] WASCA 128.

<sup>11</sup> As per footnote 8.

<sup>12</sup> As per footnote 9.

9. If a beneficiary is entitled to future ownership of a portion of the property, the exemption applies to that portion only.
10. Once granted, the exemption will continue until either the fixed or ascertainable future time specified in the will is reached, or the beneficiary stops using the property as their primary residence.
11. If the beneficiary is not using the property as their primary residence at 30 June in any year, the trustee must notify the Commissioner by the following 30 September. A penalty may be imposed if notice is not provided.<sup>13</sup>

*Example*

Yasmin's will stated "Damien will become entitled to ownership of 1 Example Place, Baldivis when he turns 25". Damien was 20 when Yasmin died.

Yasmin's executor permits Damien, as beneficiary, to occupy the property as his primary residence until ownership passes to him on his 25<sup>th</sup> birthday.

As the will identifies a specific beneficiary, specific property, and a fixed or ascertainable time in the future when the beneficiary will be entitled to the property, an exemption will apply until Damien either turns 25 or stops using the property as his primary residence.

### Date of effect

This Commissioner's practice takes effect from 27 October 2021.

Marcelyn Nicolaou  
COMMISSIONER OF STATE REVENUE

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### Commissioner's Practice history

Document	Issued	Dates of effect	
		From	To
LT 22.0	27 October 2021	27 October 2021	15 March 2026

<sup>13</sup> LTA Act s 23A(3).