

# Executor's Handbook



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| Name |  |
| Date |  |

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Approved Title  
Dealer Name  
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Address City, Province  
Address Postal Code  
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## What is an Executor?

While the person(s) that is named in the Last Will and Testament to administer a deceased estate is commonly referred to as an “Executor”, the legal term for this person(s) is “Personal Representative”. Each province has its own legislation, choosing their own title for this role. For example, in Ontario it is “estate trustee” and in Quebec it is “liquidator”. For the purposes of this handbook, we will refer to the role of personal representative as the commonly referred to term, “Executor” to encompass liquidators, estate trustees, trustees and administrators.

## Being requested to be an Executor

It is an honour to be asked to be an Executor of a person’s estate and it implies that you have been regarded as trustworthy and capable of carrying out the duties associated with this important task. It is also a serious responsibility that is subject to provincial law and regulation and carries with it a substantial amount of risk and liability. It is an onerous task and even a nominal estate can take 12 – 18 months to settle.

A person is not legally required to act as an Executor and can refuse the appointment. Additionally, there are a number of industry (IIROC and MFDA) related and dealer compliance rules that prevent advisors from accepting an appointment. It is essential to know the rules and if you become aware that a client has named you as an Executor you should immediately advise your dealer.

This handbook provides a solid overview of estate settlement procedures and will provide you with some useful information to understand the process and how an estate should be settled in a timely and competent fashion. It is important to note that this handbook is not legal advice and is not a substitute for the advice of legal counsel. As will be described, there are numerous legal aspects to settling an estate and an Executor needs to seek legal (and other professional) counsel to administer an estate.



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### Acknowledgement:

We would like to sincerely thank Michael Kulbak, Kulbak Trust Solutions for all his help in the updating and editing of this handbook.



## Glossary of Terms

Throughout this handbook you may come across terminology that is unfamiliar to you. Reference this glossary at any time you need clarification.

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| <b>Administrator (Administratrix if female):</b> | In the case of <b>intestacy</b> (when someone dies without a will) the individual appointed by the court with the legal authority to manage the estate's assets.   |
| <b>Beneficiary:</b>                              | This is the person named to receive goods or benefits under the Testator's Will or pursuant to the distribution of an estate due to intestacy.   |
| <b>Clearance Certificate:</b>                    | A document issued by Canada Revenue Agency that confirms that an estate of a deceased person has paid all amounts of tax, interest and penalties it owed at the time the certificate was issued. Let's the legal representative distribute assets without the risk of being personally responsible and liable for amounts of the deceased or estate. |
| <b>Estate assets:</b>                            | Estate assets are those over which the deceased had control and generally include such things as bank accounts, investment accounts, real estate and other personal belongings.  |
| <b>Executor (Executrix if female):</b>           | An Executor is the person named in a Will to carry out the testamentary requests and estate distribution of the deceased.  |
| <b>Fair Market Value:</b>                        | The price of an asset comparable in the marketplace or what it would reasonably be worth in an open, unrestricted, and non-artificial transaction.   |
| <b>Intestacy:</b>                                | Occurs when a person dies without a legal Will. Each jurisdiction has different rules regarding intestacy and distribution of the estate.  |
| <b>Non-estate assets:</b>                        | Assets over which the deceased had control but are not considered estate assets in the legal sense and are therefore not part of the Executor's responsibilities. These might include insurance policies, assets held in Joint Tenancy, and certain financial accounts registered under tax law.   |
| <b>Power of Attorney (POA) for Finances:</b>     | A Power of Attorney ( POA) for finances is a legal document which enables another party (known as the Attorney) to act on the Principal's (also known as the "Donor, "Grantor") behalf in the management and administration of their financial affairs. On death of the Principal, the POA becomes unenforceable.                                    |

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| <b>Power of Attorney (POA) for Health Care:</b>              | A Power of Attorney for health care is a legal document which authorizes an individual (known as the Attorney) to make health care decisions on behalf of the Principal (also known as the “Donor”, “Grantor”).  |
| <b>Principal (aka Grantor, Donor):</b>                       | A person granting Powers of Attorney to another party.   |
| <b>Probate:</b>  | Probate is the legal process in which the last will of the deceased is taken to the provincial probate court for approval. The court will approve the will (known in most jurisdictions) as “Letters Probate” unless the validity of the will is being challenged and/or there are other issues. For the court to provide approval, the will and additional documentation must be prepared in a specific format and an inventory of all the assets that pass through the estate are specified. Probate provides protection to both the third parties that are requested to transfer assets and the Executor(s) who are administering the estate. |
| <b>Probate Fees (Ontario – Estate Administration Taxes):</b> | These are the Provincial/Territorial fees paid on the value of estate and are designed to reflect the administrative costs of reviewing the estate and issuing Letters Probate although the actual fees are usually based on some percentage of the estate value. Certain assets may move outside the estate and not be subject to these fees. Refer to the ‘Estate and Non-Estate Assets’ section of this handbook to learn which type of assets are not subject to probate fees.   |
| <b>Testator (Testatrix if female):</b>                       | The Testator is the person who has left a Will.  |
| <b>Trust:</b>  | A Trust is a right of property held by one person for another. In the case of a Will, the Executor is assuming legal control of the estate assets for the benefit of the beneficiaries. The Executor has a legal responsibility to carry out the instructions of the Testator for the benefit of the beneficiaries of the estate.  |
| <b>Trustee:</b>  | A person or an organization that has been appointed to administer property or assets for the benefit of a third party.   |
| <b>Will:</b>   | The Will is the instrument by which a person, while alive, directs the distribution and treatment of their estate after their death. Wills are generally revocable at any time while the person is alive so it is crucial (and part of the probate process) to ensure that the Will in question is the most current.   |



## Section 1

### The Legal and Regulatory Environment

Taking on the role of Executor of an estate comes with serious risk, liability and legal implications. It is important to ensure that there are no professional and conflicts of interest reasons that may preclude the person named as Executor in the Will from accepting the Executor appointment.

You must carry out your duties professionally, wisely and dispassionately. It is an unfortunate fact that Executors often encounter disgruntled beneficiaries who feel they have been treated unfairly and may apply pressure on the Executor so it is important to appreciate that your first and foremost responsibility is to the Testator and their estate wishes. It is likely that interested parties will be watching your actions carefully so it is crucial that you thoroughly understand your rights and obligations.

Wills and estates are a Provincial/Territorial concern and each jurisdiction will have statutes addressing these issues. It is important to note that while there is a great deal of agreement and overlap between the various pieces of legislation, there are definitely differences that can be material in particular cases.

#### **What if someone dies outside of Canada?**

If someone has died outside of Canada, contact the appropriate Canadian embassy or consulate <https://travel.gc.ca/assistance/emergency-assistance>. Contact the deceased's travel insurance provider for guidance and coverage details. Most funeral directors should also be able to provide assistance in arranging transportation.

“Executors often encounter disgruntled beneficiaries who feel they have been treated unfairly and may apply pressure on the Executor so it is important to appreciate that your first and foremost responsibility is to the Testator and their estate wishes.”

Here is a list of the relevant legislation for each Province/Territory. Though the following provides detailed and useful information, competent legal advice must be sought when determining the applicability of the law to a specific situation.

| Province Territory        | Legislation                       | Link   |
|---------------------------|-----------------------------------|--|
| Alberta                   | Wills and Succession Act          | <a href="http://www.qp.alberta.ca/documents/Acts/W12P2.pdf">www.qp.alberta.ca/documents/Acts/W12P2.pdf</a>   |
| British Columbia          | Wills, Estates and Succession Act | <a href="http://www.leg.bc.ca/39th1st/3rd_read/gov04-3.htm">www.leg.bc.ca/39th1st/3rd_read/gov04-3.htm</a>   |
| Manitoba                  | Wills Act                         | <a href="http://web2.gov.mb.ca/laws/statutes/ccsm/w150e.php">web2.gov.mb.ca/laws/statutes/ccsm/w150e.php</a>   |
| New Brunswick             | Wills Act                         | <a href="http://www.canlii.org/en/nb/laws/stat/rsnb-1973-c-w-9/latest/rsnb-1973-c-w-9.html">www.canlii.org/en/nb/laws/stat/rsnb-1973-c-w-9/latest/rsnb-1973-c-w-9.html</a>                 |
| Newfoundland and Labrador | Wills Act                         | <a href="http://assembly.nl.ca/legislation/sr/statutes/w10.htm">assembly.nl.ca/legislation/sr/statutes/w10.htm</a>   |
| Nova Scotia               | Wills Act                         | <a href="http://nslegislature.ca/legc/bills/60th_1st/1st_read/b023.htm">nslegislature.ca/legc/bills/60th_1st/1st_read/b023.htm</a>   |
| Ontario                   | Succession Law Reform Act         | <a href="http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90s26_e.htm">www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90s26_e.htm</a>                           |
| Prince Edward Island      | Probate Act                       | <a href="http://www.gov.pe.ca/law/statutes/pdf/p-21.pdf">www.gov.pe.ca/law/statutes/pdf/p-21.pdf</a>   |
| Quebec                    | Justice Quebec, Wills             | <a href="https://www.justice.gouv.qc.ca/en/your-money-and-your-posessions/wills">https://www.justice.gouv.qc.ca/en/your-money-and-your-posessions/wills</a>                                |
| Saskatchewan              | Wills Act                         | <a href="http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/W14-1.pdf">www.qp.gov.sk.ca/documents/English/Statutes/Statutes/W14-1.pdf</a>   |
| Northwest Territories     | Wills Act                         | <a href="http://www.canlii.org/en/nu/laws/stat/rsnwt-nu-1988-c-w-5/latest/rsnwt-nu-1988-c-w-5.html">www.canlii.org/en/nu/laws/stat/rsnwt-nu-1988-c-w-5/latest/rsnwt-nu-1988-c-w-5.html</a> |
| Nunavut                   | Wills Act                         | <a href="http://www.canlii.org/en/nu/laws/stat/rsnwt-nu-1988-c-w-5/latest/rsnwt-nu-1988-c-w-5.html">www.canlii.org/en/nu/laws/stat/rsnwt-nu-1988-c-w-5/latest/rsnwt-nu-1988-c-w-5.html</a> |
| Yukon                     | Wills Act                         | <a href="http://www.gov.yk.ca/legislation/acts/wills.pdf">www.gov.yk.ca/legislation/acts/wills.pdf</a>   |



## Section 2

# The Implications of Being an Executor

### Time Commitment

How long it will take to fulfill your role as Executor depends on the complexity of the estate. Some estates are wound up in 12 to 18 months. Others, however, are complex or encounter legal complications such as challenges from beneficiaries which can result in the process being drawn out into years. In other words, every estate will be different and will require different amounts of time, effort, and expertise, and careful consideration is necessary before assuming the task.

Regardless of the timeframe for settling an estate, the vast majority of the work and effort will usually be spent in the first few weeks with some lingering items such as filing of final tax returns or the disposition of some assets being deferred to the longer term.


### Minimizing Executor Liability and Risk Mitigation

There is a lot of risk and liability associated with being an Executor. As the Executor, you act on behalf of the estate and you may be liable for any loss, mistakes or negligence while administering the estate.

Here are some pointers to reduce potential liability:

- Perform your own due diligence before accepting the Executor appointment
- Determine if the estate is insolvent (liabilities are greater than assets) and review for current and or pending litigation
- Evaluate what you can and cannot do in terms of personal, regulatory and professional obligations
- Establish lines of communication with beneficiaries to reduce complaints and allegations of bias. Outline the communication process, timelines and milestones to manage expectations
- Be transparent with beneficiaries but realize that not all parties specified in the will are entitled to the same information and documentation
- Review the will carefully to understand the remuneration clause; communicate fee structure to beneficiaries and costs that are or are not covered under the compensation arrangement
- Contemplate and engage a team of professionals, Realtors, Financial Advisors, Lawyers, Accountants, IT professionals, family members, Insurance Brokers
- Compile a list of the deceased's assets using the items listed in the will or any codicil, reviewing all household items, incoming mail (physical and electronic), insurance coverage, current and prior tax returns, and consider missing and dormant assets. Be aware that there may be digital assets ( i.e., loyalty program rewards, gift cards, crypto currency accounts, E-wallets, etc.)
- Examine personal computers, laptops, tablets, phone Apps for potential digital and estate assets
- Look for and advertise for creditors
- Take pictures and videos of residences and all personal property during the initial inspection
- Protect all assets, including changing the locks of all real property
- Notify all insurance providers to ensure insurance coverage is maintained for all real and personal property
- Maintain accurate records of all estate transactions and document all decisions made
- Ensure you diarize and meet all tax and estate filing deadlines
- Do not distribute funds until you obtain a clearance certificate from the CRA, otherwise the Executor could be personally exposed
- Obtain a signed release(s) for each distribution to beneficiaries





“If you have begun acting as the Executor and then decide to step back, it will probably prove difficult to renounce the role.”

## Record Keeping

Gathering and maintaining full and detailed records is crucial for an Executor. There are four important reasons for this:

- **Value of Assets (Ontario)** – As the Executor, there could be an immense amount of assets to be valued and distributed. It is important to compile a complete list of assets and their total value for reference. In the assessment of the Estate by the government, a list of assets and total value of Estate Information may be requested. In the province of Ontario, the 'Estate Information Return' form is required.
- **Proof of Activities** – There will be a substantial amount of paperwork involved in settling an estate, particularly in the short term. Bank statements, Investment Account Statements, receipts from government bodies, invoices from outside professionals, statements from Canada Revenue Agency, etc. will be involved. As an Executor, you may be called upon to provide proof that you have been fulfilling your duties competently and in the best interest of the estate. The more comprehensive and organized the files, the more comfortable you will be in weathering any scrutiny.
- **Tax** – When an estate involves business interests, you will probably be required to file at least **two** tax returns for the deceased and the estate, and it is important to have all relevant information at hand to ensure that all tax laws are complied with and that the deceased and the estate receive any tax advantages available.
- **Good Business Practice** – There will be numerous duties and responsibilities stretching out over months of time and the potentially complex task will be made much easier if a comprehensive records and filing system is in place.

## Accepting or Rejecting the Role of Executor

After reading this booklet and making enquiries, you may decide that you are not up to the task. This is certainly understandable where the time commitment is excessive, the nature of the responsibilities too complex, or perhaps family tensions prove to be problematic. If the Testator is still alive when the appointment is made, then you can certainly request that the person name someone else. If the Testator has passed away and the Will names an alternate Executor, then that person may be able to assume the role. If the Will does not name an alternate Executor, the legislation may allow for a new Executor to be named. If you have begun acting as the Executor and then decide to step back, it will probably prove difficult to renounce the role. In all cases, it is highly recommended to consult a competent lawyer.

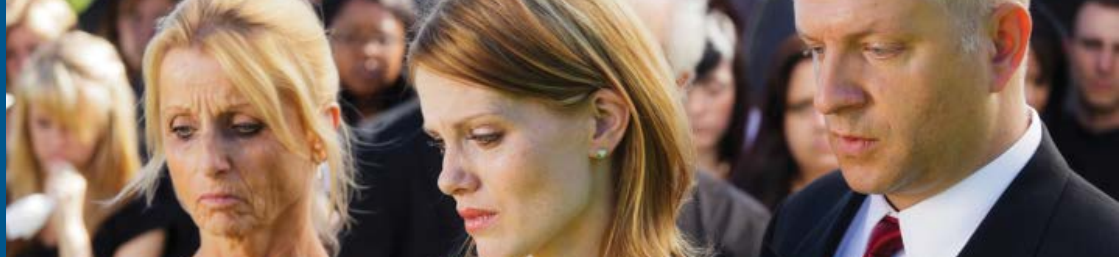
## Compensation for the Executor and Outside Parties

Acting as an Executor is an important and time-consuming part of the proper workings of a smooth estate transition process and allows for the reasonable compensation of those assuming the duties. Many wills contain a clause stating how or if the Executor is to be compensated. Yet, such clause often does not exist as the assumption is that family members will act as an Executor without being compensated.

The Provincial/Territorial legislation is rather vague on compensation and only provides guidelines and uses terms such as fair and reasonable. Many provinces/territories have a different approach to compensation.

For example, in Ontario, the generally accepted compensation guideline is based on 2.5% of capital and income receipts and 2.5% of capital and income disbursements of the estate plus an annual care and management fee of the average value of the estate of 40 basis points.

Any out-of-pocket expenses realized by the Executor required in carrying out his or her duties of the estate will be reimbursed by the estate. We will talk about using outside assistance later, but provided the services of these professionals are necessary and reasonable, these costs will be covered by the estate and paid as incurred.



## Section 3

### Overview of an Executor's Initial Duties

Below is a general overview of some of the key items you will need to address at the initial stages of your new role as Executor. For further support material and resources such as actionable checklists, please refer to *'Section 10: Resources for the Executor'*.

#### Plan the funeral

Ordinarily, it is the responsibility of the Executor to arrange for the funeral of the deceased. This is made easier where the deceased has provided specific details about the ceremony, interment, etc. in the Will. In the absence of specific directions, it is usually prudent to consult with the immediate family and perhaps the deceased's religious guide to determine the most appropriate approach. The estate will be responsible for any funeral costs. If the Executor does not have access to the deceased's cash to pay for the funeral, ensure that the payor (typically beneficiaries) are reimbursed in a timely manner. Obituaries are often produced to run in local newspapers and online forums. If there are no instructions on the announcement in the Will or letter of wishes consult the family on creating the obituary but be cognizant that the Executor may assume this task. The estate will cover the advertising costs. Ensure to obtain multiple death certificates (not necessarily copies) from the funeral home.

#### Notify creditors


One of the responsibilities of the Executor is to pay any legal debts incurred by the deceased that are outstanding. Some of these debts might be quite apparent but there may be other creditors of which you are unaware. Provincial/Territorial law varies on this point, but generally it is advised to make an advertisement in the local newspaper notifying creditors of the death which allows any creditors to bring forward their claim over a specified time period. A lawyer familiar with the jurisdiction should be approached.

#### Collect documents

There are many pieces of hard and electronic documentation that need to be collected and compiled to allow the Executor to carry out their duties effectively. The Executor should seek out electronic and paper files and review archived documentation. Consider having all physical and electronic mail forwarded to a different address (physical and digital) that only the Executors have access to. The Executors will need to gain access to the deceased's safety deposit boxes to obtain any additional personal property or paperwork; ideally, more than one Executor and family member should be present and a full inventory of the contents made. The Executor will need to provide the deceased's bank, financial advisors and a myriad of other institutions and individuals with legal proof that they are empowered to act as the Executor.

**The Will.** This is the most important document and every effort must be made to locate it. It will typically be found among the deceased's important papers but if not, the safety deposit box or the deceased's lawyer will be likely locations.

**Proof of Death.** There are two different death certificates that need to be considered. There is the one from the funeral home and another from the province/territory in which the deceased resided. Proof of death will need to be presented to a myriad of institutions and individuals over the course of settling the estate. The funeral home director can provide the Executor with several original death certificates. Many organizations will not accept photocopies, so originals must be obtained. At least one Provincial/Territorial Death certificate should be applied for since there may be certain institutions that will require this and do not accept the funeral director's document.



“One of the responsibilities of the Executor is to pay any legal debts incurred by the deceased that are outstanding.”

## □ Notify beneficiaries

When it has been determined who has an interest in the estate, those parties should be contacted in writing, informing them of your position and right to act as well as their entitlements. A copy of the Will should be provided if appropriate and where it exists. Where a beneficiary is either a minor or legally incompetent, their legal guardian should be contacted.

## □ Freeze accounts and secure assets

As the Executor, you will be assuming control of all of the deceased's assets. As a result, all the interested parties will have to be contacted, and in some cases, proof of your capacity as Executor could be requested. As the key controller of assets, here are examples of accounts that need to be frozen and re-assigned as estate accounts:

**Bank Account(s):** Any accounts outstanding will need to be frozen and re-assigned as estate accounts. This will enable you to accept any estate revenues coming in and make any necessary estate disbursements. You will need to meet the appropriate person at the bank/trust company/credit union to set up the account and provide you with banking privileges.

**Investment Accounts:** The deceased may have had investment accounts with various financial institutions. These institutions must be contacted to be made aware that the account holder has passed away. When provided with the appropriate documentation, they will create an estate account with the trustee having the ability to control the account.

**Pensions:** If the deceased was the recipient of a private pension from a previous employer, the pension administrator needs to be contacted so they can determine how to proceed. If the deceased left a spouse, then in most cases that spouse will be eligible for a survivor pension, typically some proportion of the original pension. Proper documentation will be required.

**Digital Assets:** The deceased may have had **crypto** assets and the Executor will need to determine if they have the private keys or passwords such that they can access the crypto wallets and exchange accounts. Furthermore, the Executor needs to understand the portability requirements of the crypto asset and the implications, if any, of the custodian dealing with a Canadian Executor.

## □ Redirect mail, email and text messages

It is a good idea to have the deceased's mail (hard and electronic) and text messages redirected to an address and account that the Executor can easily access. This will save time as well as be a conduit in the determination of the deceased's affairs and which people and institutions need to be notified about the death. This may also help the Executor access accounts that require multi-factor authentication.



## Section 4

### The Estate

As an Executor, your primary responsibility is to distribute the deceased's estate pursuant to their wishes as laid out in their Will, so it is important to determine what constitutes the estate.

Generally, estate assets are those over which the deceased had control and usually include such things as bank accounts, investment accounts, real estate and other personal belongings.

On the other hand, there are often assets over which the deceased had control but are not considered estate assets in the legal sense and are therefore not part of the Executor's responsibilities. These might include insurance policies, assets held in Joint Tenancy, and certain financial accounts registered under tax law.

When considering estate versus non-estate assets, it is crucial to appreciate the differences in taxation versus probate. As a reminder, probate is a Provincial/Territorial tax or fee imposed on the value of an estate. Therefore, non-estate assets are not subject to probate fees. In many cases, however, assets will be subject to income tax regardless of their estate status, and the Testator's estate will be responsible for the tax. Here are a few examples:

- The Fair Market Value of Registered Retirement Savings Plans (RRSPs)
- The Fair Market Value of Registered Retirement Income Funds (RRIFs)
- The Fair Market Value of a Registered Term Annuity where there is no surviving spouse

It is very important to take note of the nature of the assets under review, and tax advice should be sought.



## Section 5

### The Will

As a general principal, a person has testamentary freedom in regards to how they choose to distribute their estate upon their death, and a carefully drafted Will can usually back this up.

However, it is important to appreciate that even the best Wills are often challenged by disgruntled parties.

Here are a few instances where a Will might be declared wholly or partially invalid:

**Bequests are made that breach some other area of the law.** Family law will generally take precedence over a Will where the court feels that a family member has been harmed or disadvantaged. This would certainly be the case if there was a dependent child that was not taken care of through the Will. The courts will then step in to ensure that the child receives support from the estate. This principal applies to spouses as well. Family law also recognizes that a person cannot 'write their spouse' out of the Will, and the court will act to ensure that the spouse receives an equitable share of the estate.

**Imposition of a Trust.** Some parties might try to make the case that the deceased and the estate owed them something. An example might be where one child has remained at home and abandoned a career to take care of a parent. If the parent subsequently leaves their estate to someone else, the stay-at-home child may seek compensation from the estate.

**Lack of Capacity.** It is assumed under law that a person drafting their Will is of a 'sound and disposing mind'. This is rather subjective and will be decided by the court on the facts at hand. Challenges to Wills often hinge on this and the plaintiffs will attempt to show that the Testator did not really appreciate what they were doing or perhaps will try to show that the Testator was subject to some sort of coercion or pressure from other parties.

In any case, if legal challenges are mounted against an estate, the Executor should immediately seek out legal counsel.



## Section 6

### Seeking Outside Assistance

Settling an estate is a serious responsibility and must be done competently and professionally to satisfy the legal requirements as well as the beneficiaries.

This will often require assistance from outside professionals. There is nothing wrong with engaging and paying outside professionals provided that it can be shown that their expertise was required and that the compensation was reasonable. Even the simplest of estates can provide legal, tax, or accounting challenges. Professionals you may want to obtain expertise from include:

- ▶ **Lawyers.** Wills and estates are subject to Provincial/Territorial law and there are differences from jurisdiction to jurisdiction. It is prudent to seek out legal counsel when settling an estate. The more complex the estate, the more likely it is that legal assistance will be needed. However, even if the estate is simple in nature, there may be a time in the estate settling process when you could benefit from consulting with a lawyer.
- ▶ **Accountants.** Particularly where an estate involves business interests, it is prudent to consult with an Accountant. The deceased will often have had an Accountant that they dealt with and this person should be familiar with the deceased's financial affairs. This should help to clarify and expedite sorting out their finances. The Executor will probably be required to file at least two tax returns on behalf of the deceased and the Estate, and an Accountant can provide professional assistance in this area.
- ▶ **Property Assessors.** The need to have asset valuations can arise in various estate settlement situations, for example:
- ▶ **Estate Equalization.** The Testator may specify that a piece of real estate go to one beneficiary and that another beneficiary receives an equitable share in cash or other assets. In this case, it is necessary to determine the value of the real estate without an actual sale, therefore, an expert needs to be brought in to estimate the Fair Market Value.
- ▶ **Tax Settlement.** It is assumed under tax law that when a person dies that all their assets are disposed of at Fair Market Value. Consequently, it is often necessary to get a professional opinion on value when an asset is not going to actually be sold. This could apply to assets such as real estate, or in a more complicated scenario, a business interest.
- ▶ **IT Professionals.** So much of one's affairs are conducted electronically and to be able to access the required information and other assets and/or liabilities may require IT expertise. IT professionals can assist in the aggregation of digital assets, including social media accounts, points and rewards programs.



“ Even the simplest of estates can provide legal, tax, or accounting challenges.”

## Contact Information

|  |  |
|--|--|
| <b>Accountant</b>                            |  |
| Name   |  |
| Phone  |  |
| Email address                                |  |
| <b>Assessor</b>                              |  |
| Name   |  |
| Phone  |  |
| <b>Real estate assesor/Business valuator</b> |  |
| Name   |  |
| Phone  |  |
| Email address                                |  |
| <b>Chartered business valuator</b>           |  |
| Name   |  |
| Phone  |  |
| Email address                                |  |
| <b>Lawyer</b>                                |  |
| Name   |  |
| Phone  |  |
| Email address                                |  |
| <b>Financial Institution/Broker</b>          |  |
| Name   |  |
| Phone  |  |
| Email address                                |  |
| <b>Insurance Broker</b>                      |  |
| Company Name                                 |  |
| Contact Name                                 |  |
| Work Phone                                   |  |
| Email Address                                |  |
| Website Address                              |  |
| <b>IT Professional</b>                       |  |
| Company Name                                 |  |
| Contact Name                                 |  |
| Work Phone                                   |  |
| Email Address                                |  |
| Website Address                              |  |



## Section 7

### Tax Considerations

It is a common saying that the only things that are inevitable in life are death and taxes, and in death the two come together.

As an Executor, you will definitely be encountering the Canada Revenue Agency (CRA) and the Income Tax Act (ITA). As noted earlier, one of your responsibilities will be to ensure that all valid creditors of the deceased's estate are satisfied before the estate can be distributed and the CRA will certainly be at or near the top of the list. Returns for the deceased taxpayer definitely differ from those who are alive with different rights and obligations. It is best to seek out the assistance of a competent accountant to ensure that the rules are followed and that any tax advantage is obtained. Below are a few areas of tax for you to consider:

#### 1. Deemed Disposition on Death

Under Canadian tax law, it is assumed that when a person dies, all of their assets have been disposed of at Fair Market Value at that time. This will, of course, trigger capital gains (or losses) that must be reported for tax purposes. This can have serious tax implications where the tax cost of an asset (such as real estate or securities) is very low but the current market value is very high. The resulting tax bill can be large enough that an asset that was intended to be kept in the family must be sold to satisfy the tax bill. There are a few measures that might be taken to avoid or at least defer this tax liability:

##### Spousal Rollover

This is one of the most important tax deferral mechanisms available to Canadians. When a legal spouse is alive and the other spouse dies, it is assumed under tax law that the surviving spouse assumes the asset at its tax cost rather than at its Fair Market Value. This serves to defer any taxable disposition until the widow or widower dies. Tax law assumes that this 'rollover' happens automatically but there may be situations where it makes sense to opt out of the rollover and recognize the capital gain. This is a strategy that can be used to soak up unused capital or non-capital loss balances in the hands of the deceased, which are otherwise lost. Consult with a tax expert to learn more about spousal rollovers.

##### Principal Residence Exemption

This is one of the most generous tax avoidance measures available to the average Canadian. The rules are very specific, but in general this tax measure says that a taxpayer may protect the gain on the disposition of their Principal Residence from capital gains taxation. Consequently, if a person dies, regardless if they have a spouse, they can avoid any tax on the increase in value in their Principal Residence. When dealing with a person's estate, the Principal Residence Exemption needs to be considered and reported on the final return, whether or not there is a taxable portion of the gain on deemed disposition.

##### Deferral of Tax on Death of a Taxpayer

It is possible to elect to defer the payment of taxes caused by a deemed disposition at death. Ten equal instalment payments are required in this case. The first instalment must be made by the day the taxes were otherwise due.

Use Form T2075 Election to Defer Payment of Income Tax, Under Subsection 159(5) of the Income Tax Act by a Deceased Taxpayer's Legal Representative or Trustee. A tax specialist would be best to assist the Executor with this.

Although interest will be charged by the CRA, this option may provide much-needed relief when high value, low liquidity capital assets must be disposed of to pay taxes on deemed disposition.





### Utilization of Capital Losses

At the time of death, the deceased may have unused capital losses that are a result of the deemed disposition rules or losses that were previously incurred and carried forward from previous years. These capital losses can reduce the amount of capital gains included on the deceased's terminal tax return, but in the year of death, they can also be used to reduce any type of taxable income (subject to any capital gains exemption claimed by the deceased). Furthermore, unused capital losses can be carried back to the year prior to death and applied against any income in that year as well. If the Executor is unsure if the deceased had any unused capital losses, they could request a history of the deceased's unused capital losses from CRA.

## 2. The Tax Returns

As an Executor you will be responsible for filing at least one and perhaps several tax returns on behalf of the deceased and estate depending on the date of death. In the absence of self-employment income, here are important dates to consider:

- ▶ **Terminal Returns:** The final tax return, also known as the terminal return, must be received by CRA as follows:
  - **Death Occurred between January 1 to October 31:** file by April 30
  - **Death Occurred between November 1 to December 31:** File within six months after date of death (May 1 to June 30). Note however that balances due for the surviving spouse, who may file at the same time, must be paid on or before April 30 to avoid interest charges.
  - **Death of a self-employed person: Death Occurred January 1 to December 15:** file by June 15. If death occurred in the period December 16 to December 31, file six months after date of death. Again, balances due for the surviving spouse, who may file at the same time, must be paid on or before April 30 to avoid interest charges.
  - **Prior filed returns for the deceased:** The due dates above remain the same; but Taxpayer Relief Provisions may be applied to file late or amended returns in the prior 10 years, and to waive penalties and interest in hardship cases.
- ▶ **Special Privileges & Relief Options:** Executors who are filing final returns may take advantage of two important special privileges for deceased taxpayers that will provide additional relief:
  - **Rights and Things Returns.** These additional returns can be filed to claim personal amounts in full on each return – terminal and rights or things – and to split between returns and claim other benefits to the best advantage of the taxpayer on each return. Besides an additional personal return used to report things like old age security (OAS) benefits due and payable before the date of death, uncashed matured bond coupons, bond interest earned to a payment date before death, but not yet paid or reported and unpaid dividends declared before the date of death, there are two other returns that can be filed:
    - **Optional return for partner or proprietor**
    - **Optional return for Graduated Rate Estate**

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“Returns for the deceased taxpayer definitely differ from those who are alive with different rights and obligations.”

### 3. Estate Returns

Where the estate has earned income on assets not distributed to the beneficiaries, a separate trust tax return must be filed. Note that a Graduated Rate Estate or GRE of an individual is the name of the estate that arose on and as a consequence of the individual's death. It can run for no more than 36 months after the death. A T3 Trust return must be filed. Be sure to seek the services of a qualified professional for assistance.

### 4. Special Considerations on Terminal Returns

Terminal tax returns differ from ordinary tax returns in various respects. For example, depending on the nature of the income earned by the deceased, up to an additional three tax returns might be filed that will provide additional tax advantage as explained above. As well, additional tax advantage can be provided through the treatment of capital losses carried forward. It is advised to seek out the advice of tax specialists when planning to file final tax returns.

#### [CRA Clearance Certificate](#)

You will definitely want to receive a clearance certificate from the CRA as proof that the deceased and estate have fulfilled their obligations.

### 5. Probate Fees/Estate Administration Taxes

Probate fees, at least in theory, represent the administrative costs incurred in settling an estate. In some jurisdictions, it is a flat fee and in others, it is a percentage of assets. In jurisdictions in which it is a percentage, it is calculated on the “gross value” of the estate. Gross value of an estate in most jurisdictions is determined by taking the fair market value of all assets of the estate and subtracting the liabilities that have been secured against real property. Then a percentage rate (which varies between provinces and territories) is applied against that amount.

Like any estate debt, probate fees must be paid before any estate assets can be distributed. Noted below is an example of how to calculate the probate amount.


Consider an individual in Ontario who died with an estate value of **\$500,000** CAD in 2021.

- \$0 per \$1,000 for the first \$50,000 of the estate
- \$15 per \$1,000 for the remaining \$450,000 of the estate
  - $\$500,000 - \$50,000 = \$450,000$
  - $\$450,000 \div \$1,000 = \$450$
  - $\$450 \times \$15 = \$6,750$
- The total is payable to the Minister of Finance is \$6,750

The more common reasons for performing probate planning include:

- Avoid or reduce probate fees
- Minimize legal, Executor and trustee fees
- Avoid the delays in the probate process
- Avoid public disclosure of estate assets

Given the income tax percentages compared to the probate fee percentages, it typically makes more sense to ensure that income tax planning has been contemplated and then consider probate planning.



Signature

## Section 8

### Insurance Considerations

As an Executor you will probably be encountering insurance issues, and, depending on the nature of that insurance, be directly involved.

#### Life Insurance

If the deceased had insurance on his/her life, then that coverage was probably revealed by either general knowledge or through the discovery of an insurance contract when reviewing the deceased's documents. The Executor's role in dealing with the insurance will depend on the nature of the insurance contract:

##### **The estate as beneficiary**

If the estate is named as the beneficiary, then the Executor will be directly involved and is responsible for contacting the insurance company and providing evidence of death as well as their legal capacity to receive the benefit on behalf of the estate. It should also be noted that the insurance benefit would be part of the estate subject to probate.

##### **Some other party as beneficiary**

If some other party is beneficiary, then the Executor does not play a role apart from informing the beneficiary and providing proof of death where required.

##### **\$10,000 Tax-Free Death Benefit**

A maximum of \$10,000 can be received tax-free if it is a death benefit from the deceased's employer in recognition of his or her years of service. If the estate, spouse, or beneficiary receive such an amount, the Executor should ensure that the first \$10,000 is indicated as being tax-free when the income tax returns are filed.

#### Disability, Long Term Care or Other Personal Insurance Coverage

In the case where other types of insurance coverage are discovered, the Executor will need to contact the insurance providers to inform them that the insured is deceased.

#### Property Insurance

For insurance on property such as a home, vehicle, boat, etc., the Executor will need to contact the insurance providers to inform them of the death and will also need to arrange for interim coverage while the estate is being settled.

Note: These organizations may ask for copies of the Death Certificate, and in some cases the Will, so it is important to ensure several copies are made.



## Section 9

### Distributing the Estate

When all other estate responsibilities and liabilities have been settled, bequests can then be distributed to the beneficiaries.

However, there are several very important steps that need to be taken before the distribution begins. As previously mentioned, a Clearance Certificate should already have been received from the Canada Revenue Agency. The Executor is personally liable for taxes payable so no distributions should be made without that Clearance Certificate. As well:

Prepare a final accounting of the estate settlement process. Each beneficiary should be provided with this to provide evidence that you carried out your duties fully and competently. The accounting should clearly lay out any disbursement made by the estate in the settlement process as well as any compensation that the Executor would be receiving.

Receive signed releases from each beneficiary acknowledging their understanding of the estate settlement. A lawyer should be brought in to draw up the release. If a beneficiary refuses to sign the release, legal advice should be sought before distributing any assets.

### Transfer of Assets to the Beneficiaries

Once all the proper measures have been taken, the assets will be legally transferred to the beneficiaries. As the Executor, you will have assumed control of the estate assets and you will be directly involved in the final transfer process:

#### Financial Assets

These will typically include the amount in bank accounts and investment accounts at financial institutions. The proper documentation and various tax forms will have to be filled out and signed by the parties. The estate departments at financial institutions will be well-versed in the details of this process and should be approached to assist in the final transfer.

#### Real Estate

Depending on the nature of ownership (Joint Tenancy, Sole Ownership, Tenancy in Common), various different documentation will be required but typically Letters Probate will be necessary evidencing your legal rights as Executor. The Land Registry Office in the jurisdiction where the real estate is located should be contacted to ensure proper legal transfer is made.



## Section 10

### Resources for the Executor

While assuming your role as Executor, please refer to the following resources to help you along the way.

#### An Executor’s checklist of initial duties

| Action   | Required | Done |
|--|----------|------|
| Plan the funeral   |          |      |
| Send death notification letters (refer to Death Notification Checklist) and consider immediacy |          |      |
| Apply for Probate  |          |      |
| Notify creditors   |          |      |
| Locate the Will  |          |      |
| Notify beneficiaries   |          |      |
| Obtain proof(s) of death   |          |      |
| Freeze accounts and secure assets  |          |      |
| Re-direct the mail   |          |      |
| Secure Email and Digital Account Passwords   |          |      |
| Request Phone Access PINs  |          |      |

## Resources for the Executor (continued)

Where the deceased was a sole homeowner and the property must be maintained until the estate is settled, other responsibilities need to be considered immediately, and in many cases, arrangement for continuing service and payment from the estate need to be established.

| Action   | Required | Done |
|--|----------|------|
| Dealing with pets  |          |      |
| Home Insurance   |          |      |
| In-home care workers   |          |      |
| Maintenance workers  |          |      |
| Newspapers   |          |      |
| Other home services such as Meals on Wheels                                      |          |      |
| Property Taxes   |          |      |
| Social media accounts such as Facebook, LinkedIn, Twitter, Google+, Instagram... |          |      |
| Utilities (heat, electricity, water, telephone)                                  |          |      |
| Change Locks and secure alarm codes  |          |      |
| Dispose of Medication  |          |      |
| Secure Valuables   |          |      |
| Attribute keys to locks and property   |          |      |
| Take a detailed inventory, pictures and videos                                   |          |      |
| Compile items to sell or donate  |          |      |



## Document Checklist

Here is a list of important documents you will need to collect as the Executor of an estate. The following document checklist will help you keep track of the documents you will need and those you have already obtained or need to obtain.

| Document                       | Needed | Obtained | Document                      | Needed | Obtained |
|--------------------------------|--------|----------|-------------------------------|--------|----------|
| Annuity Statements             |        |          | Divorce Documents             |        |          |
| Articles of Incorporation      |        |          | Driver's License              |        |          |
| Bank Account Statements        |        |          | Group Insurance Contracts     |        |          |
| Bank Cards                     |        |          | Health Card                   |        |          |
| Birth Certificate              |        |          | Investment Account Statements |        |          |
| Business Contracts             |        |          | Investment Certificates       |        |          |
| Business Leases                |        |          | Leasing Contracts             |        |          |
| Child Support Documents        |        |          | Life Insurance Contracts      |        |          |
| Credit Card Statements         |        |          | Loan Documents                |        |          |
| Credit Cards                   |        |          | Marriage License              |        |          |
| Disability Insurance Contracts |        |          | Mortgage Contracts            |        |          |

## Resources for the Executor (continued)

| Document   | Needed | Obtained | Document                                 | Needed | Obtained |
|--|--------|----------|--|--------|----------|
| Net Worth Statements (Individual and Balance Sheets for Business or Holding Companies) |        |          | Registered Investment Account Statements |        |          |
| Partnership Agreements   |        |          | Separation Documents                     |        |          |
| Passport   |        |          | Social Insurance Card                    |        |          |
| Pension Contracts  |        |          | Tax Assessments                          |        |          |
| Powers of Attorney   |        |          | Tax Returns<br>Trust Documents           |        |          |
| Proof of Death<br>• Funeral Home<br>• Provincial/<br>Territorial                       |        |          | Vehicle Insurance                        |        |          |
| Property Insurance Contracts   |        |          | Vehicle Leasing Contract                 |        |          |
| Property Insurance Statements  |        |          | Vehicle Ownership                        |        |          |
| Real Estate Deeds  |        |          | Will                                     |        |          |





## Contacting the Government – Pensions and Entitlements

### Veteran's Affairs Canada

Where the deceased was a veteran of military service, there may be government financial assistance available. If the deceased was a recipient of the War Veteran's Allowance, there may be support available for a surviving spouse or children. The Last Post Fund serves to provide assistance for eligible veterans who lack the financial resources to pay for an honourable and appropriate funeral and burial. Coverage is subject to a financial means test. Details of the services provided and eligibility can be accessed at:

[www.veterans.gc.ca/eng/bereavement/gravevac](http://www.veterans.gc.ca/eng/bereavement/gravevac)

### Contacting Service Canada to cancel Canadian Pension Plan (CPP) and Old Age Security (OAS) benefits

In regards to government pensions and payments, typically there will be two government payments received by an older person, CPP and OAS. Even if the deceased had not actually been receiving benefits due to their age, Service Canada should be notified.

A useful guide on how to proceed in cancelling OAS and CPP can be found at:

[www.servicecanada.gc.ca/eng/services/pensions/cancel.shtml](http://www.servicecanada.gc.ca/eng/services/pensions/cancel.shtml)

### CPP Death Benefit

The CPP program provides for a lump-sum benefit for pensioners on death of \$2,500. This is designed to help pay for final expenses such as the funeral. The benefit should be applied for in writing within 60 days of death. The funeral director will most likely be very familiar with the process but the application can be accessed at:

[www.servicecanada.gc.ca/eng/services/pensions/cpp/death-benefit.shtml](http://www.servicecanada.gc.ca/eng/services/pensions/cpp/death-benefit.shtml)

## Death Notification Checklist

Here is a helpful checklist of important parties that may need to be contacted and notified of the Testator's death:

| To Be Notified   | Required | Done |
|--|----------|------|
| Accessible Parking Permits                                     |          |      |
| Credit Bureau  |          |      |
| Credit Bureau (Equifax)  |          |      |
| Credit Bureau (TransUnion)                                     |          |      |
| Credit Card Companies  |          |      |
| Deceased's employer  |          |      |
| Department of Vital Statistics                                 |          |      |
| Driver's Insurance   |          |      |
| Driver's License   |          |      |
| Elections Canada   |          |      |
| Magazine subscriptions   |          |      |
| Passport Office  |          |      |
| Private Insurance Companies (Life, Disability, Property, Auto) |          |      |
| Private pension Administrators                                 |          |      |
| Provincial Territorial Health Insurance                        |          |      |
| Service Canada (CPP, OAS)                                      |          |      |
| Social Insurance Number  |          |      |
| Veteran's Affairs Canada where applicable                      |          |      |

In regards to death notification, please refer to these helpful resources: **Sample Death Notification Letters**

Access pre-written death notification letters available from Snapshots at:

<https://docmgt.dynamic.ca/documentdownload/getdocument/1874>



We hope this handbook has given you a better understanding of the responsibilities and obligations involved in becoming an Executor. It may also have given you an opportunity to reflect on your own estate and testamentary wishes.

Although planning your estate is an area some prefer to avoid, it is extremely important to take the time to ensure you have a thorough, well-thought-out and current Will in place. You will be doing your family, and certainly your Executor, a great favour by dealing with this very important aspect of life.

Ask your advisor to send you the following from Snapshots:

- **Digital Estate Planning Guide,**
- **Estate planning checklist,**
- **Will planning checklist,**
- **Funeral checklist,**
- **Personal and Financial Logbook, and more.**

Snapshots: Putting Financial Advice in the Picture

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