

A HOW-TO GUIDE

I've been named an executor in a will. What do I have to do?



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CHAPTER I

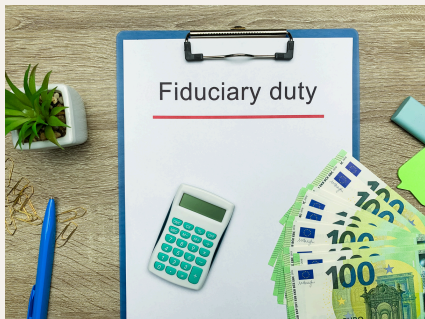
What does an estate trustee do?

Estate trustees have a very important job that comes with a lot of responsibility. As an estate trustee, you can be expected to:

- arrange for the funeral and burial or cremation
- stop payments that end on death, like social assistance and disability insurance payments
- cancel driver's licence, social insurance and OHIP cards
- find and value all assets in the estate
- apply for probate if needed
- pay any taxes and debts that are owed
- file tax returns
- distribute the property in the estate based on what the will says

The process you follow is called “administering” or “winding up” the estate. On average, it can take anywhere from one to 2 years to administer a simple estate.

If more than one person is named as estate trustee, check to see what the will says about how decisions about the estate should be made. If the will doesn't say anything, then all estate trustees must agree before any decision is made.



How do I get started?

The person who appointed you as their estate trustee may have given you a copy of their will or told you where to find it. If they didn't, some common ways to try and find the will are to:

- Look through personal items at home or in a safety deposit box.
- Ask family and friends.
- Ask anyone who has a Power of Attorney.
- Ask their professional advisors, including lawyers, financial planners, and accountants.
- Place an advertisement in the Ontario Reports and local newspapers asking if anyone knows about the will.

What if I don't want to be an Executor?

The procedure for relinquishing the role of executor is quite complex. If you wish to step down from your position as an executor, it is crucial to consult with a lawyer promptly to initiate the removal process. By continuing to act as an executor, you may be deemed to have accepted the responsibility.

In the event an executor desires to be relieved of their duties, they must petition the Court for release from their obligations. This is outlined in section 37 of the Trustees Act, which states:

37 (1) The Superior Court of Justice may remove a personal representative upon any ground upon which the court may remove any other trustee, and may appoint some other proper person or persons to act in the place of the executor or administrator so removed.

If an alternative or co-executor is named in the will, the court will not need to appoint another person to act in this role.

CHAPTER II

All About Probate

What is probate?

Probate is the Court procedure for:

- Official validation of the Will by the Court as the authentic final Will of the deceased (if a Will exists).
- Designation of the individual who will serve as the executor of the estate, regardless of the presence of a Will.

Probate is the Court process that gives the estate trustee the authority to act on behalf of the deceased and administer the deceased's estate.

Should you hire a lawyer to help with probate?

You don't have to hire a lawyer to handle the legal process of probating an estate, but it's often a good idea to do so.

You can try to handle the application yourself, but dealing with the courts and the paperwork can be very complicated and confusing.

If you're not experienced, your application might get rejected (most self-filed applications are rejected at least once), which can cause significant delays. These delays can end up costing you money and causing stress, especially now that interest rates have gone up. Beneficiaries might lose out on income and have to pay more in interest because of any delays in probating or managing the estate.

A well-prepared application can speed up the process, reducing both costs and stress.

If you think the actions of the estate trustee might be challenged or closely examined (like if a sibling who's a beneficiary but not a co-executor might question things), it's a good idea to get professional help with probate and all other parts of managing the estate.

Information required for probate:

You will need the following for probate:

1. Original signed Will if available, or confirmation that the deceased died without a will.
2. Death Certificate
3. Information about the deceased person:
 - full name (including middle names) of the deceased
 - date of death
 - last address of the deceased
 - occupation or former occupation of the deceased
4. Information about the proposed executors:
 - full name (including middle names) of each proposed executor
 - relationship of each executor to the deceased
 - occupation or former occupation of each executor
 - address, phone number and email addresses of each executor
5. Information about deceased person's relatives: for each living child, sibling and parent provide:
 - full names (including middle names) of each living child, sibling, and parent
 - relationship of each of the above relatives to the deceased
 - occupation or former occupation of each of the above relatives
 - address, phone number and email address of each of the above relatives
 - confirmation as to whether any of the above relatives are mentally incapacitated
6. Information about the estate:
 - full list of assets (required for small estates)
 - approximate value of each asset (bank accounts, investments, automobiles, property, etc. - required to calculate Estate Administration Tax)
 - information regarding pensions (if applicable)
 - confirmation of CPP payments (amount and when last payment was received)

EXECUTOR DUTIES CHECKLIST

WHERE TO BEGIN:



- Locate the Will and review it for specific instructions concerning the funeral.
- Assist with funeral arrangements if required.
- Obtain multiple original copies of the proof-of-death certificate, as most organizations that you deal with as executor require original documentation.
- Begin gathering other key documents related to the estate. (Contact us for a list of documents to obtain).
- Open an estate bank account to deposit income and pay expenses, to transfer balances.
- Ensure the family's immediate financial needs can be met.
- Review any marriage contracts, family law issues or dependant relief issues.
- Arrange for Canada Post to redirect the deceased's mail to your mailing address.

IDENTIFYING, VALUING AND PROTECTING ESTATE ASSETS:

- Investigate any jointly held accounts to determine if the deceased retained beneficial ownership and if the account forms part of the estate.
- Arrange valuations of real estate, personal property, and any vehicles.
- Coordinate a review and valuation of the investment portfolio.
- Determine entitlement and apply for Canadian Pension Plan Death Benefits, Survivor's Benefits and Child(ren)'s Benefits.
- Notify the deceased's previous employer and determine whether there are any survivor pension benefits, insurance proceeds or other income owing. Review and identify any digital assets (e.g. Paypal, Cryptocurrency) held by the deceased.
- Locate any personal property held outside the home in storage or repair.
- Identify any foreign assets and determine whether a foreign Will exists to administer them.
- Cancel passports, driver's license, any utilities, social media accounts, loyalty/points cards, subscriptions, such as magazines, and request refunds, if applicable. (Contact our office for a free template of a cancellation letter.)

- Secure residence and contents (home, car, other property).
- Continue or arrange for gardening and/or snow removal contracts.
- Review and verify the adequacy of insurance coverage.
- Notify financial institutions, insurance companies, brokers and employers of the deceased's passing.
- Confirm outstanding balances and cancel any credit cards.
- Identify and list contents of safety deposit box(es).
- Locate and obtain title documents for real property, mortgages, and other physical or investment assets.



ADMINISTRATION OF THE ESTATE:

- Prepare a complete summary of estate assets and liabilities
 - Arrange with a lawyer for probate of the Will. A probated Will is acknowledged by the courts to be the deceased's Last Will and Testament. It confirms the executor and acknowledges his or her authority to carry out the terms of the Will. Most financial institutions require probate before they will release a deceased person's assets because it assures the institution is transferring the assets to the person lawfully entitled to receive them.
 - Prepare and file an Estate Information Return (required in Ontario) with the Ministry of Finance within 90 days of probate.
 - Apply for and collect any life insurance and other insurance benefits. (Contact our office for a free template of a letter to the insurance company.)
 - If the deceased was receiving a foreign pension, notify the foreign jurisdiction to cancel the entitlement and make a claim for any death benefit, if applicable. Cancel any automatic bank account deposits/withdrawals.
 - Close any bank accounts and transfer any balances to the estate bank account.
 - Remove contents of any safety deposit box after providing required estate documentation; return keys and close safety deposit box.
 - Notify the federal government to cancel Old Age Security and Canada Pension Plan (CPP) payments, GST/ HST credits and child tax benefits. Note: CPP, Quebec Pension Plan (QPP) and Old Age Security benefits will still be paid to the deceased for the month of death. If the deceased was receiving GST or HST quarterly credits, the estate is entitled to them if the cheque was issued before the date of death.
- If the cheque was issued after the date of death, the payment must be returned with notification of the date of death.
 - Cancel health insurance coverage, if necessary.
 - Terminate any lease, rental, or sublet arrangement.
 - Settle all claims and debts and arrange for publication of a Notice to Creditors prior to distribution of estate assets, if necessary. (Contact our office for a free template of a creditors' notification.)
 - Review Will and determine the division of estate assets. Consult with beneficiaries regarding distribution (e.g. in cash or in-kind), where appropriate.
 - Identify any time periods or restrictions imposed on the distribution of the estate (for example, family law considerations or claims/litigations).
 - Pay all debts and settle any legitimate claims prior to final distribution of assets.
 - Deliver personal effects, securities and legacies to beneficiaries, obtaining receipts for each distribution.
 - Assist in establishing any trusts stipulated in the Will.

COMMUNICATION WITH BENEFICIARIES AND MANAGING EXPECTATIONS:

- Communicate directly with beneficiaries, gather information, and set expectations (this should happen early in the process). Send a copy of the Will to each beneficiary entitled to receive a copy.
- Provide regular updates to beneficiaries regarding the status of administration to avoid any misunderstandings and potential legal action on their part.
- Provide each residual beneficiary with a copy of the estate summary document

TAXES :

- Obtain prior year(s) tax returns and determine whether any years are outstanding.
- Forward a copy of the will and death certificate to Canada Revenue Agency (CRA) for their records and update the mailing address on file.
- Contact CRA to cancel any future tax instalment payments, and determine if any tax instalments have been paid.
- Obtain a disability tax certificate form for the deceased (if applicable), complete and file with CRA.
- Locate medical expenses, charitable donations, income receipts, deductible expenses and/or investment statements.
- Prepare and file any outstanding prior year(s) tax returns and the final or terminal return(s) for the year of death. Note: The final or terminal return for the deceased covers the period from January 1 of the year of death to the date of death. If the date of death occurred between January 1 and October 31, the tax return is due by April 30 of the following year. If the date of death was between November 1 and December 31, the tax return is due six months after the date of death. Any taxes owing must be paid at this time. If the taxes owing are not paid by the due date, interest will be added to the final tax bill. If the return is filed late, penalties will also be charged.
- In addition, once the terminal returns are filed, it may be advantageous to file an Estate T3 Trust Income Tax and Information Return depending on the amount of income that has accumulated in the Estate after the date of death. This T3 Trust Income Tax Return is due 90 days from the first anniversary of the date of death, although an earlier year-end may be selected.
- Obtain Tax Clearance Certificate(s) from the CRA (Revenue Quebec, if applicable) once all the Notice of Assessment(s) are received, confirming that all tax liabilities have been settled.

DISTRIBUTION :

- Arrange for a rollover or transfer of registered accounts (RRSP, TFSA), if necessary.
- Initiate sale of assets to prepare for the estate's distribution.
- Begin distributing residual assets/cash to beneficiaries according to the terms of the will, obtaining receipts from each beneficiary; ensure sufficient funds are retained to pay outstanding debts and taxes.
- Prepare accounts for passing or approval by beneficiaries. Prepare releases and obtain signed approval from each beneficiary.
- If beneficiaries approve accounts, confirm that all releases have been received.
- If accounts are to be audited by the Court, contact a lawyer to prepare the application and all necessary notices.
- Calculate and pay any executor's compensation once approval is received from the beneficiaries or the Court. As executor, you may be entitled to receive financial compensation. The fee may be stipulated in the Will or agreed upon by the beneficiaries or approved by the court. At a minimum, you are entitled to reimbursement of any expenses incurred while carrying out your duties.
- Upon receipt of final clearance from CRA, make final distribution to beneficiaries.
- Arrange for closing of the estate bank account after confirming all payments and cheques have cleared.
- Prepare a final report to the beneficiaries in writing on all aspects of the administration.
- Have each adult beneficiary approve the accounting and sign a release form



ABOUT US

We are Zaidi Legal Professional Corporation. We provide advice about estate law: wills and estate planning, and full services to trustees and beneficiaries. We focus on providing advice that is practical, cost-effective, and results-oriented.



Winner of the Canadian Choice Awards 2024 - Estate Planning Lawyers category.

WHAT CAN YOU EXPECT?

Expert advice, great service. Your probate and estate issues resolved without worry, hassle or delay.

-  ESTATE PLANNING AND DRAFTING
-  ESTATE LITIGATION
-  PROBATE SERVICES
-  ESTATE TRUSTEE SERVICES



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