



# THE EXECUTOR GUIDE



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## A GUIDE TO BEING THE EXECUTOR OF AN ESTATE

If you've been asked to act as an executor, you will be responsible for managing and distributing someone's estate after their death.

The executor guide will run you through the basics of the executor role, including what steps to take and whom you can turn to for help.

For advice tailored to your unique circumstances, contact us and we'll be happy to help you navigate the estate administration process.



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# THE EXECUTOR ROLE

AN EXECUTOR MANAGES A DECEASED PERSON'S ESTATE, WHICH INCLUDES DISTRIBUTING ASSETS AND ACCOUNTING FOR FINANCIAL ACTIVITIES. THEY ARE OFTEN APPOINTED IN A WILL, BUT IF THERE IS NO WILL A COURT MAY APPOINT AN EXECUTOR. YOU MIGHT ALSO HEAR THE ROLE REFERRED TO AS A PERSONAL REPRESENTATIVE, ESTATE TRUSTEE OR ADMINISTRATOR.

## Here are a few basics to get you started:

- An executor has four main obligations: to follow the will instructions, protect estate assets, deal fairly with beneficiaries and account for all of the estate's financial transactions
- If you have been named as executor, but either can't or don't want to perform the role, you can resign. Many wills allow you to appoint one or more replacement executors
- If you do act as executor, you may be entitled to compensation. Ordinarily, an executor is paid 2.5% of capital receipts, and 2.5% of capital disbursements. However, if the estate is especially difficult to manage, you can ask the court to grant more than these amounts. You may also choose to perform the role for free, perhaps if the deceased is a family member or close friend
- You may become personally liable while acting as executor if you mishandle estate assets or distribute them before the estate can pay its taxes. In that case you may be required to pay those taxes yourself. The same applies if the estate cannot repay its debts because of your actions. Being an executor comes with a lot of responsibilities
- You may need to represent the estate in court. This might mean defending the estate against a claim brought by creditors, filing a claim yourself against someone who owes money to the estate or representing the estate in a matter the deceased was involved with before their death

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# HOW TO ADMINISTER AN ESTATE

## Getting Started

An executor needs to do a few things before they can distribute the estate and these are outlined below. If you have questions at this stage, come talk to us—and be sure to bring any documents you have collected to the meeting.

### Locate the Will and Other Important Documents

- Review the most recent will and any codicils (amendments to the will)
- Obtain several notarized copies of the will
- Check for funeral directions, either in the will or in a "letter of instructions"
- Make sure you have all valid wills made by the deceased (e.g. corporate will, primary and secondary wills)
- Obtain a copy of the death certificate
- Review the deceased's documents, including insurance policies, leases, marriage or cohabitation agreements, employment agreements, partnership agreements, corporate documents and mortgage statements

### Reach Out to the Deceased's Family or Others Named in the Will

- Determine whether any dependent family members have immediate financial needs
- Assist with the funeral, if requested
- Arrange for someone to take care of pets
- If the deceased had minor children, contact guardians appointed in the will
- Respond to claims made against the estate by dependants

IN ONTARIO, THE SURVIVING SPOUSE HAS SIX MONTHS TO DECIDE WHETHER TO: (1) TAKE WHAT THE WILL LEAVES THEM; OR (2) ELECT FOR EQUALIZATION. EQUALIZATION TREATS THE DATE OF DEATH AS THE DATE OF SEPARATION AND THEN PROCEEDS AS THOUGH THE MARRIAGE HAD ENDED RATHER THAN ONE OF THE SPOUSES DYING.

OTHER DEPENDANTS—MINOR CHILDREN, DISABLED ADULT CHILDREN, ETC.—CAN MAKE AN APPLICATION WITHIN SIX MONTHS TO THE ESTATE FOR SUPPORT IF THE WILL EITHER LEAVES THEM NOTHING OR NOT ENOUGH TO MAINTAIN THEIR CURRENT STANDARD OF LIVING.

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## Make a List of the Names and Addresses of Beneficiaries

- Discuss expectations with beneficiaries, including when you plan to distribute assets and when you hope to finish administering the estate
- Provide each beneficiary with a copy of the will or the provisions that affect them. Continue to meet with and update beneficiaries throughout the estate administration process

## Wrap Up Day-To-Day Affairs

- Redirect the deceased's mail to your address
- Notify the deceased's banker, lawyer, accountant and other professional advisors of the death. If the deceased was employed at the date of death, notify their employer
- Cancel or return the deceased's Social Insurance Number (SIN), passport, driver's licence, health card and other identification
- Cancel subscriptions and request refunds if available. This might include home care, gym memberships, cable and internet services, insurance, and newspapers
- Contact Service Canada to notify them of the date of death

## Locate and Secure Assets

- Arrange for the safe storage of personal valuables (cash, jewelry, etc.) and documents
- If the deceased home will be empty, often check and advise home insurance company
- Empty and close the deceased's safety deposit box

## Managing Estate Assets

It's important to manage and protect estate assets so that you can distribute them properly later. Often, you will need to apply to the Court for a Certificate of Appointment of Estate Trustee—often referred to as probate. This process involves proving the validity of the will and granting legal authority to an executor to manage and distribute the deceased's assets.

**PROBATE CAN BE COMPLICATED; MEET WITH ONE OF OUR ASSOCIATES, SO WE CAN GUIDE YOU THROUGH THE PROCESS, FORMS AND MANY OBLIGATIONS THAT ARE TYPICALLY HANDLED AND GUIDED BY A LAWYER.**

## Make a List of Estate Assets and Debts

- Determine whether the deceased had any registered investment plans (e.g. RRIF's and RRSP's)
- Contact financial institutions where the deceased had accounts and get details

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- Check for debts owed to the deceased
  - Check for loans taken out by the deceased
  - Arrange for transfer of assets passing outside the estate, such as registered investments, insurance policies, jointly held accounts and land held in joint tenancy
  - After completing your list, have the assets valued  
If the assets include artwork, consider meeting with an art appraiser

### **Collect Money Owed to the Estate, if Any**

- Collect the deceased's Canada Pension Plan death benefit
- Contact employer to arrange for payment of wages or pension benefits
- Collect life insurance benefits

### **Determine Whether Probate Is Required**

- Meet with an estate's lawyer to determine whether probate is required
- Have the lawyer submit the will for probate, if necessary
- Pay any estate administration taxes or "probate fees" out of the estate fund

### **Maintain Investments and Estate Assets**

- Store all physical items in a safe place
- Ensure that significant assets are covered under an insurance policy
- Monitor investments and meet with an investment advisor for help managing significant investments

### **Distributing Assets**

Some wills let the executor choose whether to sell assets or keep them in their current form. However, if a will includes a gift of a particular piece of property, the executor is typically not allowed to sell it unless required.

### **Distribute Gifts as Instructed in the Will**

- Transfer title documents for real estate into name of beneficiaries
- If distributing shares, arrange for re-registration in the beneficiary's name
- Transfer cash to beneficiaries
- Distribute the residue of the estate as instructed
- Request receipts from beneficiaries for all distributions

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## **Help Set Up Trusts Created by the Will**

- If the trust includes significant assets, consider meeting with a trust company
- Transfer trust assets to the trustee named in the will
- If you are not the trustee, meet with the named trustee to go over the terms of the trust

## **Finalizing the Estate**

### **Prepare Accounts of Estate Financial Activities**

- Submit estate accounts to each beneficiary for approval
- Request an executor release from each beneficiary
- File estate income tax returns for the year(s) after the date of death

### **Calculate Executor Payment**

- Unless the will instructs otherwise, pay yourself an executor fee as stipulated by law or as stipulated in the will
- Calculate annual management fees—typically, this is an annual payment of 0.4% of the average value of estate assets for that year
- Reimburse yourself for reasonable out of pocket expenses

### **Contact the Lawyer You Worked With Throughout the Process**

- Request a bill for your lawyer's services and pay lawyer from the estate fund
- If accounts require a court audit, ask your lawyer to arrange an appointment and prepare the application and all notices

### **Once the Estate Has Been Settled, Close All Accounts**

- Ask your financial institution to close the estate account you opened
- Notify beneficiaries and family that you have finished administering the estate



# GETTING STARTED

Looking for advice? We can help. Give us a call and we can help you understand your responsibilities and options.

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