



“I Am the Executor! What Do I Do?” ...

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For many people being asked to be the executor of an estate is regarded as a great honour. When called upon to act, those people quickly learn that being an executor can be onerous and time consuming, not to mention that the executor may be exposed to personal liability.

To illustrate the scope of an executor’s responsibilities, the following is a general list of what is required of an executor. If you are named as a deceased person’s executor you should want to consult with a lawyer in your province for specific information and advice regarding the estate you have been appointed to administer.

Preliminary steps

- ▶ Locate Will and consult with or retain a lawyer (as necessary).
- ▶ Meet with family members.
- ▶ Determine burial wishes, arrange, or participate in, burial arrangements.
- ▶ Investigate the overall financial and tax situation of the deceased.
- ▶ Investigate the debts owing at the date of death, such as credit cards, taxes, utilities, loans, mortgages, etc.
- ▶ Consider if a court application for probate¹ is necessary or should be sought.
- ▶ Consider the ability of the estate to meet payment obligations such as probate fees, income taxes, liabilities, legal and accounting fees, and other expenses.
- ▶ Make arrangements for the handling of incoming payments payable to the deceased (i.e., interest and dividends).
- ▶ Obtain specific information on all classes of people impacted by the estate including beneficiaries, intestate successors, spouses, common law partners, dependants and so on, as mandated by the laws of the province of the deceased.
- ▶ Commence communications with estate beneficiaries.
- ▶ Review property, automobile and other insurance and ensure coverage is sufficient and current.
- ▶ Consider and implement a strategy for on-going management of any private business.
- ▶ Investigate the estate assets by writing to financial institutions, brokers, life insurance companies, employers or pensions.
- ▶ List contents of any safety deposit boxes held at financial institutions.
- ▶ Determine which assets, if any, pass outside the Will (i.e., insurance payable to named beneficiaries, registered plans payable to named beneficiaries and assets held in joint tenancy).
- ▶ Arrange cancellations and redirections for memberships, subscriptions, mail, pensions, annuities, medical plan coverage, driver's licence, etc.

Preparing and filling a probate application

- ▶ Assemble an inventory of deceased's assets and liabilities, with valuations as at the date of death.
- ▶ Assemble a beneficiary listing, with full names, addresses, ages (if under age of majority in your province) and gifts to each beneficiary.
- ▶ Instruct a lawyer to prepare an application for probate.
- ▶ Execute a completed application, arrange payment of applicable court and probate fees, submit the application and receive the grant of probate.

Income tax

- ▶ Instruct a professional accountant to prepare all necessary income tax returns, including unfiled returns for years prior to death, return(s) to the date of death, and all required estate ("trust") returns for the period subsequent to the date of death
- ▶ Review, sign and file all required income tax returns.
- ▶ Request a tax clearance certificate from the Canada Revenue Agency before making the final distribution of assets to the beneficiaries.

¹ In all provinces an application for probate except in Ontario which is an application for certificate of appointment of estate trustee with a will.

Administering the estate after probate

Take care to consider the likelihood of claims against the estate by persons entitled to do so under provincial legislation. For instance in most provinces, dependants may bring an application to vary the terms of the will if adequate provision has not been made for them.

- Complete claim forms for residual benefits/death benefits coming to the estate (i.e., life insurance, company, government (Canada Pension Plan)).
- Open an estate bank account, through which all receipts and disbursements will be processed.
- Close out/liquidate, as appropriate, all bank accounts, brokerage accounts, investment certificates and securities.
- Empty the safety deposit box.
- Settle estate debts due at death, and pay liabilities incurred since death.
- Arrange investment of any large sums of money which are being held for distribution at a later date.
- Arrange transmission of title to the executor, or transmission and transfer of title to beneficiaries, for specific assets.
- Arrange sale of property such as personal possessions, collections, real property, etc.
- Settle all income taxes as assessed.
- Submit requests for and obtain appropriate clearance certificates from the Canada Revenue Agency.
- Arrange delivery of specific bequests to beneficiaries, including cash legacies.
- Determine if executor fees are to be claimed, and if so, calculate executor fees.
- Prepare accounts of the executor and submit to beneficiaries for approval.
- Obtain releases and discharges from beneficiaries, as necessary.
- Distribute the estate to residual beneficiaries or in some cases, to trusts established in the Will.

Deadlines to be careful about

Spousal election

In most provinces a person, on the death of his or her spouse or common-law partner, can choose to take what the Will provides for him or her. The surviving spouse may also be able to choose to take what would otherwise have been his or her entitlement on a marriage breakdown instead of or in addition to what he or she is entitled to under the Will. Care should be taken to ensure that any required notices are provided to the deceased's spouse and/or common-law partner in a timely manner and that distributions from the residue of the estate do not occur until a valid consent is received from the spouse and/or common-law partner or the applicable deadline has passed without a court proceeding having been commenced. The deadlines for making the election are as follows:

- Alberta, Saskatchewan, Manitoba, Nova Scotia - within six months of the grant of letters probate.
- New Brunswick - within four months of the death of the deceased spouse.
- Newfoundland and Labrador - within one year of the death of the deceased spouse.
- Ontario - within six months of the death of the deceased spouse for a matrimonial property claim by married spouse and within six months of the grant of letters probate for a support claim by married and common-law spouses.

Dependant's claims

In certain provinces certain dependants of the deceased may have the right to make an application to court for a greater share of the estate than what the Will provides for them. The time periods within which the dependant can file a claim are as follows:

- ▶ Alberta, Manitoba, Newfoundland and Labrador, Northwest Territories, Nunavut, Nova Scotia, Ontario, Saskatchewan - six months from the grant of letters probate.
- ▶ British Columbia - 180 days from the grant of probate.
- ▶ New Brunswick - four months from the death of the deceased.

Conclusion

The work of an executor is not simple. It can be onerous and time consuming. If the executor makes mistakes and causes a loss to the estate, he or she may be personally liable for that loss. Fortunately, there are many professional available to guide and help you through this process. Please see your advisor for details.

The general list set out above is intended to serve as a guide to the responsibilities and duties of an executor. It is not all inclusive and not intended to constitute legal advice. Please see your legal advisor for details.

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