



Liquidating an Estate*

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A loved one dies and you have been appointed the liquidator of his or her estate. Are you fully aware of the magnitude of the task you've been given, the time you will have to spend on it, and the responsibilities you will have to assume? What exactly is involved in the liquidation of an estate?

The liquidator has several tasks and responsibilities to perform, which may vary depending on the size and complexity of the estate. Some of the factors that can impact the liquidation of an estate include the deceased's last place of residence, the place of residence of the heirs, the location of the assets, the deceased's testamentary provisions and marital status.

** The information contained in this document refers exclusively to the province of Quebec.*

Liquidator's duties and responsibilities

The liquidation of an estate involves several steps and must adhere to a number of rules. To best determine the qualities required in a liquidator, it is important that you have a general understanding of the liquidator's duties and responsibilities. Here is a brief overview.

Preliminary steps

➤ Funeral arrangements

It is up to the deceased person's closest relatives to make the funeral arrangements, if he or she has not done so, or if he or she did not expressly assign this task to the liquidator. The funeral costs are charged to the estate.

➤ Obtaining proof of death

➤ Searching for and obtaining the will and marriage contract

The liquidator must search the *Registres des dispositions testamentaires et des mandats de la Chambre des notaires du Québec* and the *Registres des testaments et mandats du Barreau du Québec* to find out whether the deceased person made a will and whether he or she has the most recent version.

If the deceased had a notarized marriage contract or civil union contract, the latter may contain a testamentary provision often known as the "surviving spouse" or "conventional appointment" clause. This clause names the deceased's spouse as his or her universal residuary legatee and has the same legal value as a notarized will. The liquidator must therefore conduct a thorough search of all places where the deceased's records were kept to determine whether or not there are testamentary provisions.

➤ Examination and analysis of testamentary provisions

➤ Obtaining a declaration of heirship if the person died without a will

The declaration of heirship is the official document, generally prepared and received by a notary, that identifies the legal successors when there is no will.

➤ Determination or appointment of the liquidator¹

➤ Register the liquidator in the *Register of personal and movable real rights* (RDPRM)

➤ Probate of the will, where applicable

If the will is not notarized, the liquidator must have it probated.

➤ Collection of information and documents (birth certificate, judgement of separation or divorce, deed of gift, waiver of partitioning of the family patrimony, property deeds, investment statements, life insurance policies, etc.)

➤ Inventory of safety deposit box, where applicable

➤ Communication with financial institutions involved

¹ See "Methods for appointing and replacing the liquidator" in the advice sheet entitled "The estate liquidator" (29302-002).

Short-term steps

- Thorough analysis of the various documents and verification of the information they contain
- Opening of an estate account at a financial institution
- Protection and preservation of assets

The liquidator must take all necessary steps to conserve or maintain the use of the assets. He or she must also make sure there is valid and sufficient insurance coverage on these movable and immovable assets (homes, rental properties, vehicles, household items, etc.).
- Safekeeping of valuables
- Verification of group and individual life insurance coverage as well as insurance on movable and immovable assets (vehicles, furnishings, etc.)
- Custody of securities
- Publication of notices
 - Appointment of the liquidator
 - Notice of closure of inventory
 - Notice of closure of a liquidator's account
 - Stipulation of exemption from seizure, where applicable
- Various authorizations and changes of address
- Notices to creditors and intermediaries

On behalf of the deceased person, the liquidator must contact financial institutions, life insurance companies, home and auto insurance companies, employers, credit card companies, the *Régie des rentes du Québec*, Service Canada (Old Age Security pension), the federal and provincial governments, the *Société de l'assurance automobile du Québec*, credit bureaus (Equifax, Trans-Union, etc.), public utilities, debtors and creditors, etc.
- Cancellation of services (residential lease, public utility services, banking and credit cards, Internet, telephone, cable, subscriptions, memberships, driver's license, social insurance, etc.)
- Cancellation of social media accounts (Twitter, Facebook, LinkedIn, Flickr, Yahoo, MySpace, MSN Hotmail, Gmail, PayPal, iTunes, Instagram, etc.), virtual bank accounts, and cloud services (CGI, Telus, Vertisoft, HP, etc.)
- Search for successors and legatees

The liquidator is responsible for identifying, contacting, and looking for successors and legatees, providing supporting evidence if necessary, and for establishing the inheritance.
- Explaining the will and the liquidation process to the successors and legatees
- Analysis of the deceased's financial situation
- Identification of the estate patrimony and preparation of the preliminary inventory

The liquidator is required to prepare an inventory of the assets in the estate in the manner stipulated in the *Civil Code of Québec*. If the liquidator refuses or neglects to do so, the successors can take legal recourse, failing which they may be held personally liable for the deceased's debts, beyond the value of the assets that they collect, in the event the estate is declared insolvent.

This complex step is crucially important as it informs the deceased's successors, legatees by particular title, and creditors of the solvency of the estate.

As such, creditors will be able to know whether they will be paid in full or in part, and successors will be able to decide whether or not they want to accept their share of the estate.

The inventory lists the assets that the liquidator is required to administer. It must include detailed descriptions and the values of the assets, as well as their condition, failing which the liquidator will be presumed to have taken possession of them in good condition. The inventory also lists the debts of the estate.

The liquidator must produce and publish a notice of closure of inventory in the *Registre des droits personnels et réels mobiliers*, as well as in a newspaper distributed in the area of the deceased's last known address. He or she must also inform the heirs and successors, legatees by particular title, and known creditors of the registration of the notice of closure of inventory and the place where the inventory can be consulted.

The liquidator may be exempted from producing the inventory only with the consent of all heirs and successors. In that case, the heirs and successors may be held personally liable for the estate's debts, beyond even the value of the assets that they stand to collect from it.

2 Confirmation of matrimonial regime and waiver or not of partitioning of the family patrimony

The partitioning of the family patrimony is one of the short-term steps that must be completed as part of the liquidation of an estate, in order to determine the financial situation of the estate (credits/debts).

Once the family patrimony has been liquidated, the same must be done for the matrimonial regime. Assets that were not previously shared between the spouses and that are part of a divisible whole could be partitioned according to the applicable matrimonial regime². The liquidator must also settle the benefits granted by the marriage contract.

Medium-term steps

3 Repatriation and interim management of assets

The liquidator must take all necessary steps and administrative and technical formalities to place the assets of the estate under his or her control and supervision, and to obtain information about the deceased's debts.

Given the authority granted to the liquidator, he or she has control over all assets of the estate, including bank accounts, insurance policies with no designated beneficiary, annuities, and other financial products. Once all debts have been paid and administrative measures completed, the liquidator is also responsible for distributing these amounts to the legatees.

4 Collection of income (interest, rent, dividends, accounts receivable, etc.)

The liquidator collects income and proceeds from the assets under his or her management, as well as any amounts due to the estate, in particular from social programs (retirement pensions, old age pensions, SAAQ, CSST, GST and QST credits, employment insurance, etc.), employers, life insurance companies (policies with no designated beneficiary), holders of loans granted by the deceased, etc.

5 Collection of pensions, registered retirement savings plans and funds (RRSP, SSP, RPP, RRIF), and life insurance benefits with no designated beneficiary

6 Analysis of portfolios and liquid assets

7 Development of an asset management strategy

The liquidator is authorized to invest the funds under his or her management in compliance with the rules relating to investments presumed to be sound. However, a will commonly contains a clause stipulating that the liquidator is free to make any type of investment, without being restricted to presumed sound investments.

8 Evaluation of movable and immovable assets

9 Identification of the estate's assets and liabilities

10 Analysis of legal and fiscal actions required

11 Analysis of impacts of the partitioning of the family patrimony, the matrimonial regime, compensatory allowances, and survival of support obligations

12 Administer estate property

13 Continuation of the activities of the deceased's operating companies and management companies

The liquidator must continue to use and operate the deceased's assets, without altering the disposal thereof.

14 Payment of urgent debts (depending on solvency of the estate)

² Depending on the matrimonial regime, this will result in either a credit under the inventory assets or a debt under the inventory liabilities. Where applicable, liquidation of the matrimonial regime also enables identification of the assets that are part of the estate.

- Communication with successors, legatees, and intermediaries
- Application to the provincial government for the certificate authorizing partial distribution of property

Long-term steps

- Partitioning of the family patrimony and the matrimonial regime, where applicable
- Identification of decisions to be made regarding the sale of certain assets

The liquidator could, for example, sell assets that are cumbersome, likely to depreciate quickly, perishable, or costly to maintain in order to preserve the value of the estate; he or she could also sell a bequeathed asset if the remaining assets in the estate are insufficient to pay off the debts.
- Registration of assets in the estate's name and production of declarations of transmission
- Analysis of tax implications and recommendations

From a tax standpoint, upon an individual's death, the latter is deemed to have disposed of all of his or her assets at fair market value. Taxes may be payable in the event an asset has appreciated in value since it was first acquired (capital gain). However, there are exceptions to this rule, in particular, life insurance benefits or assets bequeathed to the spouse, which are generally subject to a tax rollover.

The liquidator must make tax decisions in the best interest of the entire estate.
- Updating of accounting information, finalized of the inventory of property and publication of the notice of closure of inventory
- Communication with successors, legatees, and intermediaries
- Determining whether successors and legatees accept or refuse the succession (right of option)

The liquidator must make sure that all legatees, whether by particular title, by universal title, or universal, exercise their option to accept or refuse their bequest(s). A legatee has this option for each bequest that is granted to him or her. As such, he or she could accept a bequest by particular title and refuse a universal bequest. However, he or she may not accept a bequest conditionally or partially.
- Payment of debts and legacies by particular title and beginning the distribution of property to heirs

The liquidator must pay the estate's debts, i.e., the deceased person's debts (mortgage, personal loan, rent, credit card balances, etc.), the estate costs (funeral expenses, income tax, etc.), or debts arising from a legal obligation (matrimonial debts or support payments), from the assets of the estate.

The liquidator must confirm the validity of any payment requests he or she receives and ensure that they are not prescribed by law. The rules in the *Civil Code of Québec* governing the payment of debts and legacies by particular title differ depending on the solvency of the estate.

If the estate has sufficient assets to reimburse all creditors and legatees by particular title, the liquidator will pay all debts, followed by the legacies by particular title, and then the legacies by universal title and/or universal legacies.

If there is not enough money in the estate to pay all debts or legacies, the liquidator must draw up a comprehensive inventory, serve notice to the interested parties, and have a payment proposal approved by the court.

To limit his or her personal liability, the liquidator should not, in principle, distribute the legacies or even pay the estate's debts before obtaining the certificate from the provincial government authorizing the partial distribution of the assets. In general, the provincial government will authorize the liquidator to distribute approximately 75% of the value of the estate.
- Transfer of registered retirement plans and funds (RRSP, SSP, RPP, RRIF)
- Production of tax returns and payment of income tax (T-1 and TP-1; T-3 and TP-646)

As the estate's legal representative, the liquidator is required to produce tax returns for the years prior to the death, where applicable, as well as the year of the death. This step is crucial as income tax is often the largest debt to be paid, mainly because of the taxation rules applicable upon the death of a taxpayer (capital gains tax). The liquidator will also have to produce annual tax returns for the estate.
- Preparation of financial statements and/or annual reports

➤ At the end of the first year, and at least once a year thereafter, the liquidator must submit a report of his or her management to the heirs, creditors, and legatees by particular title who are still unpaid. The report must be detailed enough so as to verify its accuracy. The reporting costs are charged to the estate.

➤ Obtaining notices of assessment from federal and provincial governments

➤ Distribution of tax forms to legatees

➤ Application for certificates authorizing the financial distribution of assets from federal and provincial governments

The liquidator must obtain clearance certificates prior to the final distribution and remittance of assets to the heirs. The clearance certificates are issued only once tax returns have been filed for the deceased individual, contributions have been made, and the file has been analyzed to the satisfaction of federal and provincial tax authorities.

Therefore, it is important for the liquidator (and heirs) to obtain these clearance certificates, which release the liquidator of all liability in this regard.

➤ Preparation of a final account and drafting of a proposal for partition

The final account indicates the net assets or deficit of the estate. It also lists any unpaid debts and bequests, where applicable. It must also contain a detailed description of the liquidator's administration. If the estate cannot be settled amicably, it will be settled in court.

If stipulated in the will or requested by a majority of the heirs, the liquidator must include a proposal for partition in the final account.

Once the account is accepted by the heirs, the liquidator is discharged and relieved of his or her obligation. He or she will then turn over the property still under his or her control to the heirs. When the value of property vested or bequeathed to a minor child exceeds \$25,000, the liquidator has the responsibility to report it to the Public Curator.

➤ Obtaining releases from heirs and arrange final distribution of assets

➤ Publication of a notice of closure of the account in the *Register of personal and movable real rights* (RDPRM)

➤ Closing of the estate account

➤ Setting up any trusts that have been provided for and transferring funds to them

Conclusion

The liquidation of an estate is a long, delicate, and complex process fraught with responsibility, which very often involves complicated legal, fiscal, and administrative issues. In fact, the *Civil Code of Québec* stipulates several rules and formalities that need to be respected in order to minimize exposure to risks and not compromise the rights of creditors and legatees. Moreover, the liquidator must demonstrate loyalty, honesty, objectivity, and impartiality toward all interested parties in the performance of his or her duties, and must respect the wishes of the deceased person as well as all laws in effect. Do not hesitate to consult a National Bank expert, who, along with a team of highly qualified professionals, can help you to make the best possible decisions.

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