

TRANSFERRING

Advice Sheet



“I am the Executor! What do I do?”

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 is no honour at all; an executor’s job can be onerous, time consuming and risk personal liability. To illustrate the scope of an executor’s responsibilities, the following is a general listing of what is required of an executor. If you are named as someone’s executor, after his or her death you will 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.
- Consider if a court application for probate is necessary.
- Consider the ability of the estate to meet payment obligations such as probate fees, income taxes, liabilities, fees, 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, common law partners, 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 strategy for on-going management of any private business.
- Investigate the specific and nature of the estate assets by writing to financial institutions, brokers, life insurance companies, employers.
- 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 jointly).
- Arrange cancellations and redirections for memberships, subscriptions, mail, pensions, annuities, medical plan coverage, driver’s licence.

Preparing and Filing 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 benefit.
- Instruct lawyer to prepare application for probate.
- Instruct lawyer to advertise for creditors, as necessary.
- Execute completed application, arrange payment of applicable court and probate fees, submit application and receive grant.

Income Tax

- Instruct accountant to prepare all necessary income tax returns, including unfiled returns for years prior to death, returns to the date of death, and all required estate “trust” returns for the period subsequent to the date of death and up to the date of distribution.
- Review, sign and file all required income tax returns.

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 the dependants.

- Complete claims 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 disbursement will be processed.
- Close out/liquidate, as appropriate, bank accounts, brokerage accounts, investment certificates and securities.
- Empty 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 for a specific reason, such as awaiting expiry of time limit for certain types of claims against the estate.
- Arrange transmission of title to executor, or transmission and transfer of title to beneficiaries, for specific assets.
- Arrange sale of property such as personal possessions, collections, real property.
- Settle all income taxes as assessed.
- Submit request to income tax authority for appropriate Clearance Certificates.
- Arrange delivery of specific bequests to beneficiaries, including cash legacies.
- Determine if executor's fees are to be claimed, and if so, calculate executor's fees.
- Prepare executor's accounts and submit to beneficiaries for approval.
- Obtain release and discharges from beneficiaries.
- Obtain Clearance Certificate from Canada Revenue Agency.
- Distribute estate to residual beneficiaries / in some cases, where trusts are to be established, the executor will have to establish them in accordance with the Will.

Deadlines to be Careful About

Spousal Election

In most provinces a spouse, on the death of his or her partner, can choose to take what the Will provides for him or her. The surviving spouse can also choose to take what would otherwise have been his entitlement on a marriage breakdown instead of the entitlement under the Will. Care should be taken to ensure that distributions from the residue of the estate do not occur unless this election has been made. 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.

Dependent's Claims

In most provinces the deceased's dependants have the right to make an application to the 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, British Columbia, Manitoba, Newfoundland and Labrador, North West Territories, Nunavut, Nova Scotia, Ontario, Saskatchewan - six months from the grant of letters probate.
- New Brunswick - four months from the death of the deceased spouse.

Conclusion

The work of an executor is not simple. It can be onerous and time consuming. If you make mistakes and cause a loss to the estate, you may be personally liable for that loss. Fortunately, there are many specialists 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 advisor for details.