

**AN EXECUTOR'S GUIDE TO
ADMINISTERING AN ESTATE**

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Introduction

As an executor, you are responsible for settling an estate according to the deceased's final wishes as expressed in the Will. This includes finding, and if necessary, probating the Will, protecting and distributing assets and paying outstanding debts and income taxes.

You will typically engage the services of a lawyer and an accountant to do most of the legal and tax work. At Warnock Kraft Anderson, we strive to give thorough and timely service. Our estate paralegal Karen Weiss should be your first point of contact for any questions or concerns. Her email is karen@wkalawyers.ca and her phone number is 403-948-0009 ext 126. If need be she will involve your lawyer. You will be copied with all correspondence, and any questions or concerns you have will be dealt with promptly.

Legal Fees

To probate an estate, our legal fees are \$4,000.00, plus 1% of the value of the estate, plus G.S.T. and out of pocket expenses such as probate fees payable to the Court, couriers, Land Titles etc. If probate is not required, the legal fees will be considerably less.

Grant of Probate

A probated Will is an Alberta Court's stamp of approval that confirms the executor, and acknowledges his or her authority to carry out the terms of the Will. **Most financial institutions holding more than \$30,000.00 of the deceased's assets require probate before they will release a deceased's assets. A house or farm land that is not owned jointly also requires probate.**

When the value of the deceased's assets is relatively small, the financial institution may release funds if the executor signs a Bond of Indemnity in lieu of obtaining probate on the Will.

Dealing with the Beneficiaries

To maintain the best possible relationship with the beneficiaries, it is a good idea for you to be proactive, and to keep them informed as the administration progresses. When you are in regular contact with the beneficiaries, they have a better understanding of the work you are doing.

Once you have obtained a copy of the Will and the funeral has taken place, an executor would typically arrange a meeting as quickly as possible with the beneficiaries to provide a copy of the Will, and to discuss: duties and obligations to them, their expectations of you, and the process you will follow in settling the estate. If regular meetings with beneficiaries are not possible or practical, providing regular written updates or e-mails to all concerned is a prudent idea.

You can discuss the extent of the deceased's assets and **remind the beneficiaries that income tax may significantly reduce the amount of certain investments, especially RRSPs, RRIFs and income properties.**

Ongoing updates about the estate are key because you will probably eventually want the beneficiaries to sign releases confirming that they accept their allotted funds in full satisfaction of their entitlement under the Will.

Avoiding Conflict Over Executor's Fees

An executor is entitled to charge a fee for administering the estate. **The fee is payable out of the estate. The fee is often 3-5% of the value of the estate.**

If a higher fee is justified because of the complexity of the estate, a prudent executor should keep a detailed log or diary, by date, of the time spent on each aspect of estate administration to illustrate the number of hours involved.

If the executors are the main beneficiaries, taking an executor's fee is generally **not** advisable, **because all executor fees are taxable as income; inheritance funds are not.**

Common Issues of Estate Administration

Expenses Allowed by Banks Before Probate is Granted by the Court

When a financial institution is advised of their customer's death, the deceased's accounts will be frozen with a few exceptions. These exceptions vary between financial institutions, so you should confirm what the deceased's institution will allow. But generally they allow payment for: funeral expenses. Property taxes, income taxes, public utility bills, and car and house insurance payments may be allowed, but again you should check with the financial institution.

Canada Pension Plan

Canada Pension Plan benefits will be paid to the deceased during the month of death, and these cheques or direct deposits can be deposited into the deceased's bank account.

The CPP death benefit is a one-time payment to the estate of a deceased Canada Pension Plan contributor. The amount of the death benefit depends on how much, and for how long, the deceased paid into the Canada Pension Plan.

The deceased's spouse and/or children may be entitled to monthly survivor benefits if they meet the eligibility requirements. The surviving spouse, including a common-law spouse, must generally be at least 35 years old to receive an immediate survivor benefit (unless raising one or more dependent children), and the children must be either under 18 or between 18 and 25 and attending school full time.

Old Age Security

Old Age Security will be paid to the deceased during the month of death, and this cheque or direct deposit can be deposited into the deceased's bank account.

Joint Bank Accounts

Joint accounts are often, but not always, the property of the co-owner. Typically, if the account was set up between spouses, there is an assumption that the funds belong to the survivor on the death of the first spouse. However, if the account was set up between the deceased and an adult child, then the assumption is that the funds are held in trust for the estate of the deceased. It is possible, however, in each of these situations, that the deceased may have documented his or her intention to have the joint account treated in a different manner.

Please ask questions of all parties concerned and look for documentation about the deceased's intentions, and get that information to your lawyer.

Estate Bank Account

Unless there are just a few ongoing expenses to be paid, you should typically open an estate bank account to manage the estate's assets, and to pay the estate's expenses and liabilities. Discuss this with your lawyer at the first meeting.

You can open an estate bank account at any bank or financial institution, whether or not the deceased was a client of that bank. Depending on the financial institution you deal with, you may be able to open an estate bank account before you obtain probate. However, generally no funds can be released until the bank receives probate.

Cheques on the estate bank account must be signed by the sole executor or jointly by all the estate executors.

Safety Deposit Boxes

You will need the key to the deceased's safety deposit box so you can list the contents and obtain any life insurance policies or other important documents it may contain, such as the Will. A bank representative will help the executor to list the contents of the box. To do so, make an appointment, and take a Funeral Director's Statement of Death, and any copy of the Will found at the deceased's house.

Depending on the financial institution, the original Will might not be released until they receive a letter from your lawyer.

Life Insurance Policies

Once you have a copy of life insurance policies, either you or your lawyer can contact the company to initiate payment. You will be required to provide proof of death together with your written request.

If there is a named beneficiary, the proceeds from the policy will usually be available in about 30 days, and paid directly to the named beneficiary. If the deceased named their estate as the beneficiary, there could be a considerable delay before any funds are released to the estate as probate is required to release the funds.

Income Tax

The Canadian Income Tax Act stipulates that on the death of the deceased person, there is a "deemed" sale of all investment assets which pass to beneficiaries other than the spouse of the deceased. By virtue of this deemed sale, the property is considered to have been sold by the deceased immediately before death for proceeds equal to the fair market value of such property. The purpose is to make taxable in the year of death, any untaxed capital gains that occurred during the deceased's lifetime. **The tax liability can be substantial.**

RRSPs and RRIFs

When an investor dies, the fair market value of his or her RRSPs and RRIFs is generally included in their income on their final tax return which results in a **nearly 40% tax hit.**

However, in certain circumstances, a plan can be “rolled over” to a surviving spouse or common-law partner’s RRSP or RRIF, and is not taxed in the deceased’s final return.

Under the Income Tax Act you, as executor, are required to file the following income tax returns:

1. Returns for any taxation year prior to the year of death not previously filed;
2. A T1 return for the year of death covering the period January 1st to the date of death, (the “Terminal Return”);
3. A T3 estate year return covering income received on the assets you are handling from the date of death to either the end of the calendar year or the estate year (365 days later), whichever period you elect; and
4. In the year of final distribution, a return for the period beginning with the estate year to the date of distribution (called a T3 Final Distribution Return).

It is recommended that you use an accountant to prepare these returns. If you do not have an accountant, your lawyer will recommend one.

Tax Clearance Certificate

We usually recommend that your accountant apply to the Canada Revenue Agency for a Tax Clearance Certificate. A Clearance Certificate is a written confirmation that all tax liabilities of the deceased have been paid. If you distribute assets of the estate prior to receiving a Clearance Certificate, you could be personally liable for any taxes owing if there are no longer sufficient funds remaining in the estate to cover the payment. In a large estate, an interim distribution or distributions are often made to the beneficiaries, after your accountant estimates potential taxes owing, and a generous tax holdback is made for a final distribution after a Clearance Certificate is obtained.

Distributing the Estate

Investments, GICs, Stocks, Bonds, Mutual Funds

Your lawyer will contact the deceased’s investment firm to determine what is required to liquidate the investments, and pay the estate or a beneficiary designated in the Will.

Principal Residence

If the deceased owned a home that was not held in joint names you will typically sell it and distribute the proceeds to the beneficiaries as set out in the Will. This will be discussed at length with your lawyer. If the house is to be sold, you can list it with the realtor of your choice.

Final Distribution of Remaining Assets

After all expenses, fees, taxes and debts have been paid, the remaining assets of the estate are called the residue. Your lawyer typically makes cheques to the beneficiaries and obtains releases from them saying that they are satisfied with your handling of the estate.

Executor's Checklist

PRELIMINARY STEPS

- Locate and examine the will; review for specific instructions concerning the funeral.
- Make funeral arrangements, if necessary.
- Obtain original copies of proof of death certification.
- Forward mail, discontinue telephone, newspaper, magazine subscriptions, etc.
- Arrange for care and adoption of pets.

SAFEGUARDING THE ESTATE ASSETS

- Verify that adequate insurance is in place to protect all real estate assets.
- Advise all property insurance companies of the death.
- Re-direct utility bills to executor
- Ascertain the banks and financial institutions where the deceased held accounts.
- Arrange for safekeeping of deceased's valuables.
- Arrange for the residence to be emptied and cleaned, and if required, locks to be changed.

INVENTORY ESTATE ASSETS AND ASSEMBLE

- Search for assets, contact banks and investment firms.
- Locate all real estate titles, life insurance plans, investment certificates, stocks, bonds, property deeds, etc.
- Investigate all debts owed by the deceased.
- List contents of safe-deposit box.
- Cancel CPP and OAS benefits, Alberta Seniors Benefit and Alberta Health Care, if applicable.
- Cancel credit card accounts; destroy credit cards.
- Cancel social insurance card, passport, driver's license, and all other personal information.

Your First Meeting With Your Lawyer

At your first meeting, your lawyer will give an overview of the process and whether probate is necessary. He will give you a questionnaire to take home and complete with information such as: the deceased's social insurance number, names and address of all close relatives, major assets, life insurance policies, vehicle registration, etc. If available, please bring all Wills and Powers of Attorney, bank account statements, investment statements, house title, and any important agreements such as divorce papers, prenuptial agreements, and company minute book if the deceased owed a business.

At Warnock Kraft Anderson we strive to make the estate administration process a little more bearable in sad circumstances, and will always stand ready to provide thorough and timely service.