

SERVICE LAW FIRM

78 Mary Street, P.O. Box 40, Stn. Main, Barrie, Ontario, L4M 4S9
Phone.: (705) 737- 2123, Fax.: (705) 737- 2194

DUTIES OF THE EXECUTOR

Introduction

The contents of this Memorandum deal in a general way with the duties of an Executor in the Province of Ontario. Please view the disclaimer for important details concerning the intended purpose of this information.

What Is an Executor?

An Executor is a person appointed in a Will who is responsible for administering an Estate. The first order of business upon a death is to determine the identity of the Executor. This information can be found by reviewing the Last Will and Testament of the deceased.

Duties of The Executor

In general, the Executor is responsible for all aspects of the administration of the Estate. This includes gathering in the assets of the deceased and distributing them in accordance with the instructions contained in the Will. Although this may seem an overwhelming process, it is not difficult provided that an Executor is well organized, maintains “to-do” lists, and keeps careful records. Proper organization of the Executor’s duties is the key to minimizing difficulties in the administration of the Estate.

The first duty of the Executor is to arrange for the funeral and burial of the deceased and to pay for these out of Estate assets. An Executor must keep in mind the size of the Estate when making funeral and burial arrangements, as overly lavish expenditures might attract personal liability to the Executor for wasting the assets of the Estate.

At an early stage, it is necessary for the Executor to thoroughly review the will and ensure that they fully understand the contents. For this purpose, it is advisable that they obtain legal advice.

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There are a number of normal, routine matters which must be attended to by the Executor. These include such simple things as re-routing the deceased's mail, destroying charge cards to prevent further use and cancelling magazine subscriptions.

The Executor is also responsible for gathering information about the various Beneficiaries named in the Will and other family members of the deceased. This would include such information as full names, addresses and birth dates. The information regarding family members who have **not** been included in a Will may provide an early warning to the Executor concerning potential challenges or other contentious issues which might arise with respect to the Will. This is another area in which a solicitor's review is very important.

It is the fundamental obligation of the Executor to gather in the assets of the deceased and distribute them in accordance with the Will. The mail can prove to be a valuable source of information concerning the assets of the deceased by means of receiving renewal notices for Guaranteed Investment Certificates, etc.

The Executor should prepare a detailed and careful list of the assets, a process known as preparing the Estate inventory. This will require:

- the contents of safety deposit boxes be recorded and all bank accounts be located and amounts verified;
- each bank must be notified of the death;
- any unpaid wages or benefits available through the deceased's employer or pension plan must be determined and gathered in;
- the Government must be contacted to find any potential benefits, such as a death benefit under the Canada Pension Plan due to the deceased
- if necessary, personal assets such as household goods, jewellery, automobiles and art work may be required to be appraised for the purposes of taking the Estate inventory.

The Executor is responsible for preparing a statement of original assets as of the date of death, detailing the nature of the assets, a description of each, and its value at that date. Careful records must be kept.

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In the course of gathering information concerning the assets of the Estate, the Executor should search for any life insurance policies. While not all policies will be payable to the Estate, it is normal for the Executor to file a proof of claim with respect to each policy and to ensure that the life insurance is paid to the beneficiary named.

It is also the Executor's obligation to determine the debts and other liabilities of the deceased and to include them in the original Estate inventory. Depending on the circumstances of the Estate, the Executor may elect at an early stage to advertise for creditors, or may elect to advertise at a later point in time.

At this stage, the formal work of administering the Estate begins. The Executor is responsible for maintaining the Estate accounts in accordance with the requirements of the Rules of Practice as set out in Rule 74.17. The Executor is also responsible for taking the necessary steps to ensure that the Will is Probated. Probating is a process whereby the Will is presented to the Court by way of an "Application for a Certificate of Appointment of an Estate Trustee with a Will". The result is a Court Order formally recognizing the Executor as such, and confirming that the Will presented is the Last Will and Testament of the Deceased. Probate is required in most Estates which are not considered to be small in total value of assets.

The most difficult aspect of Estate administration is the keeping of Estate accounts. Capital receipts and disbursements deal with the assets of the Estate that are received by the Executor and distributed in accordance with the Will. These are kept separate from revenue receipts and revenue disbursements which are made in accordance with the terms of the Will as these mostly deal with the Estate tax return. Accounting issues may become quite complicated, such as in a Will in which requires that the Executor dispose of revenue received in a different manner than capital received. However, in the majority of Estates, capital receipts/disbursements and revenue receipts/disbursements will be the sole categories of accounts needed. Investment account records will only be needed where investments are made on behalf of the Estate.

In many Estates, it is entirely possible for the Executor to maintain the accounts themselves. If there is some question that the Executor may have, or the Estate is large

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and/or contains numerous assets, consulting an accounting professional is strongly recommended.

It is said that there are only two certainties in life - death and taxes. It should come as no surprise to the Executor, therefore, that the Government has managed to find a way to combine the two. There will be several tax returns which the Executor is obliged to file on behalf of the deceased and the Estate. These include the last return for the deceased, with respect to the last year of life, and any Estate tax returns required to be filed. An Estate tax year-end must be selected, and a tax professional should be consulted to determine if any tax advantages may be achieved through appropriate post-mortem Estate planning. In most cases, the accountant who is assisting the Executor with their Estate administration accounting duties can also provide the necessary tax advice.

An accounting professional will also assist in obtaining a Clearance Certificate from Revenue Canada, which is another Executor's obligation. In the absence of a Certificate, an Executor may incur personal liability with respect to taxes owed by the deceased or by the Estate.

At an appropriate time, an Estate distribution plan is prepared. It is the obligation of the Executor to ensure that any specific bequests are honoured, as well as making a fair and equitable distribution of the residue of the Estate in accordance with the terms of the Will. In this regard, it may be necessary to re-value assets, particularly if there has been a change in value since the date of death. For the purposes of administration, decisions may also be taken concerning the sale of some or all of the assets of the Estate.

In the normal circumstances, copies of the Estate accounts will be provided to each of the residual Beneficiaries, together with a request that they approve a proposed distribution of assets. They will also be asked to provide a release to the Executor with respect to the activities of the Estate to the present date. In the event that not all beneficiaries can agree, or some fail to provide a release, it will be necessary for the Executor to "Pass the Accounts of the Estate". This is a Court application whereby the accounting records of the Estate, in accordance with the attached schedule, are

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presented for approval to the Court, together with the claim for Executor's compensation. This is served on each Beneficiary entitled to be heard and the application argued before the Court if that becomes necessary.

Eventually, the Executor will complete the distribution of all of the assets of the Estate, and having obtained all of the necessary tax clearances, the duties will be at an end.

