

DUTIES OF EXECUTORS (Estate trustee with a will)

The duties of an executor are extensive, and can last a long time. The key to successful performance of the task is disciplined, consistent effort.

With 7 – 10 days of death

1. **The Will.** Locate the will(s) and codicil(s). There may be multiple wills. Review the will. Get legal advice if required on what it means. **Determine if you want to act. You do not have to act just because you are named in the will – you can renounce the role - but if you want to renounce you must do so before you take any action as executor.** Do you have a conflict of interest? Do you want to make a Family Law Act or dependent's relief claim instead of inheriting under the will? Do you object to any portion of the will or want to challenge it? Can you work with the co-executors (if any)?
2. **The funeral.** The executor has the right and duty to arrange for the funeral and burial of the deceased. The executor is not obliged to follow the wishes of the deceased, the family, or religious law, but the cost must be reasonable.
3. **Death certificates.** Obtain funeral director's proof of death certificate.
4. **Secure assets.** Take control as quickly as possible of any valuable, perishable, or 'mobile' assets. Pets? Livestock? Crops?
5. **BEGIN TO KEEP COMPLETE, ACCURATE RECORDS.** Executors must keep good records, and this obligation starts immediately.

Within 30-60 days of death

6. **Collect information.** Begin to collect as much information as possible on income, assets, liabilities and creditors of the deceased (including guarantees).

Are there assets outside of Ontario? Are there debts owed to the deceased? Get 3+ years of tax returns. Collect information on co-executors (if any), trustees (if any) and beneficiaries (including full legal names, relationship to the deceased, and contact information, and as appropriate, marriage certificates, marriage contracts, divorce & support orders, and death certificates). Any adopted children? Any children outside marriage? Any minor or incapable beneficiaries? Any non-resident beneficiaries? Any charities as beneficiaries? If so, confirm proper name and location.

7. **Lawyer.** Retain a lawyer (who will act for you, the executor). Choose one you are comfortable with. Get preliminary advice on the will, your role, the lawyer's role, legal fees, probate, and executor's compensation.
8. **Validity.** Determine validity of the will. Properly executed? Properly witnessed? No marriage after the will? Alterations to the document?
9. **Meaning.** Understand the terms of the will. Determine who gets what. Compare to family tree. Are there any class gifts, and if so, who is in the class? Can charitable gifts be carried out? Any issues of uncertainty or inconsistency? Will it be necessary to apply to the Court for directions?
10. **Guardianship.** Are there issues related to guardianship of children? Will a formal application be required?
11. **Co-executors.** If there are co-executors, document an agreement on roles and responsibilities. Who will do what? When?
12. **Notices. Advertise for creditors,** if appropriate. Notify CRA, pension. Cancel credit cards, driver's license, SIN card, passport, health insurance and where appropriate services including phone, cable, internet.
13. **Secure assets.** Take control, if possible, protect, insure. Arrange for safekeeping. Get valuations of assets, or commence process of having them valued. Did the deceased own a business or professional practice? If so, secure competent management to operate or wind up.
14. **Retain accountant.** Ensure that they have the appropriate expertise, particularly with respect to the tax returns that will be required. Will you require US tax advice? Determine who will be handling bookkeeping for the estate – executor, law firm, accounting firm?
15. **Probate.** Determine if probate required. If so, provide the required notice to beneficiaries, secure funds for Estate Administration Tax, prepare and file the application.
16. **Keep Records.** Detailed records of time and money.

First 90 days after appointment as Estate Trustee

(approximately 60-120 days of death)

- 17. Obtain certificate of appointment.** Secure court appointment as Estate Trustee.
- 18. EAT Return.** File Estate Administration Tax return within 90 days of certificate of appointment.
- 19. Open bank account.** Open an estate bank account. Close the deceased's accounts and transfer funds.
- 20. Notices.** Provide notice of appointment as Estate Trustee, as required to creditors, asset holders, governments, pension, etc.
- 21. Gather assets.** If appropriate, file claims for life insurance, transfer title to investments, RRSPs. Arrange for sale of assets. File for CPP death benefit.
- 22. Manage debts and liabilities.** Is the estate insolvent? If so, consider assignment into bankruptcy. If not, begin to resolve outstanding liabilities and a plan for eventual payment of others. Secured debts? Mortgages? Guarantees? Pay taxes (income, property, other), insurance, credit cards, utilities.
- 23. Law suits.** Was the deceased a party to a law suit, as plaintiff or defendant? Determine whether to continue, and if so, develop a plan.
- 24. Keep Records.** Keep good accounts, and records of time and effort, steps taken and decisions made.

Within 6 months of death

- 25. FLA.** Determine if a married spouse of the deceased will be electing to take under the *Family Law Act* instead of under the will. If there was a spouse who might elect under the FLA, **do not distribute any of the estate within 6 months of death.**
- 26. Income tax.** File the income tax return for the last year of life. Determine if a 'rights and things' return will be required.

Within 6-12 months of death

1-6 months after Certificate of Appointment

- 27. Personal belongings.** Transfer personal belongings to beneficiaries in accordance with the will. Obtain receipts.
- 28. Continue process of transfer/sale of assets.** Vehicles? Cancel insurance on goods once transferred or sold.
- 29. Arrange roll-overs.** As appropriate, roll-overs of RRSP and RRIF to spouse.
- 30. Taxes.** Prepare and file appropriate returns in all jurisdictions required (US taxes?). Claim GST credit. Child tax benefit?
- 31. Interim distribution?** Consider, and if appropriate make, interim distribution to beneficiaries.
- 32. Keep Records.** This obligation continues. Keep good records.

After 12 months after death

- 33. Taxes.** Secure clearance certificate from CRA.
- 34. Accounts.** Finalize estate accounts. Provide to the beneficiaries. Determine if it will be necessary to apply to Court to pass the accounts. If so, prepare and file application.
- 35. Distribute.** Distribute the estate to the beneficiaries. Secure receipts and as appropriate releases.
- 36. Compensation.** Pay the approved compensation to the executor. Report as taxable income of the executor.