

Being an Executor



This booklet is about putting your affairs in order and planning for the future. Inside you will find information on:

- What is an executor?
- What to do when someone has asked you to be their executor?
- Where can I get more help?



THIS BOOKLET PROVIDES PUBLIC LEGAL INFORMATION ONLY.
IF YOU NEED LEGAL ADVICE YOU SHOULD CONTACT A LEGAL PROFESSIONAL.

FREE

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Glossary of Terms

- Administrator:** The person who applies to and is appointed by the court to take charge of an estate, in accordance with the Estate Administration Act. This can occur when there is no valid will, or if there is a will and no executor is named or able to take charge of the estate.
- Affidavits:** A written statement that contains important facts you want the judge in court to know about.
- Assets:** What you own. Assets can include things such as money, land, investments, and personal possessions such as jewelry and furniture.
- Beneficiary:** A person who, under the terms of the will, receives a benefit, a specific item or sum of money, a life interest in the assets of the estate or a share of the residue.
- Bond:** A bond insures the value of the estate.
- Debts:** What you owe. Also called liabilities. At death, these may include credit card balances, loans, and mortgages.
- Estate:** All of the property and belongings you own at your death. The estate does not include property you own with someone else in joint tenancy, or joint bank accounts. The estate does not include insurance policies, RRSPs or RRIFs, or other things you own which specifically name someone as your beneficiary.

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What is an Executor?

An executor is the person named in a will to carry out the directions contained in the will. The executor is responsible for settling the person's affairs after death. The person's estate passes temporarily to the executor.

The executor locates all of the person's assets, pays the funeral costs, debts and taxes, and then distributes the remaining money and property according to the instructions in the will. The executor is accountable to the beneficiaries. For example, the executor must let the beneficiaries know when he or she is applying for probate, and must keep records and give all beneficiaries a final statement of accounts.

Being an Executor

Being an executor takes time, energy and careful attention to detail. An executor can get help from friends and family members and also from a lawyer or accountant if necessary. However, the executor is the person who is legally responsible. An executor will make the decisions, watch over everything, and keep accurate records.

A Senior's Experience: I found out after my brother died that he had named me executor. He didn't ask me first. Although I loved my brother, I didn't want the job. I was 78 years old. Also, I live in Alberta and he lived in BC. It was going to be too difficult. So I signed a Renunciation of Probate form, and the alternate executor took over.

How difficult is it to be an executor?

Your job as an executor may be more difficult if:

- there are many beneficiaries,
- the person who died owned a business,
- the person had investments and debts,
- the will includes a trust,
- the will is challenged by someone who feels left out of the will.

A Daughter's Experience: I was executor of my mother's estate. It was quite simple because she had distributed many of her possessions before she came to live with us. I didn't have any trouble except that she left specific amounts of money to the beneficiaries and there wasn't enough money to go around. When I made my will, I put in percentages instead of actual amounts. I didn't take a fee for being executor because it was for family and it didn't take long to do the job.



Do I have to act as executor?

If someone asks you to be an executor and you don't want to do the job, you can say no. You can also resign after the person has died. However, the law says that in order to resign in this way you must not have intermeddled in the estate. It is best to decide early on if you do not want the job, before you make decisions that affect the estate.

If there is a co-executor, he or she can take over. You must sign a "Renunciation of Probate" form. This form says you are resigning and you have not interfered in the estate.

If there is no co-executor, the alternate executor can take over. If there is no alternate named in the will, someone will have to apply to become administrator of the estate. It is best to agree to act as executor only if you feel you can do the job well. Being an executor takes time.



Does an executor get paid?

Any expenses the executor has while settling the estate are paid for out of the estate. Examples of expenses are photocopying, postage, and long-distance phone calls.

Sometimes the will states the executor's fee. This is the maximum the executor can receive. If the will does not list any fee, the executor may take up to five percent of the gross value of the estate and five percent of the income. The amount depends on how much work is involved and whether the executor hires professional help or does it all him or herself. In cases where the executor continues to act over a long period, the executor may also receive an annual care and management fee of .4% of the estate.

Sometimes the will leaves the executor a special gift for doing the job. In this case, he or she will get an executor's fee as well, but only if the will says so. The executor may prefer to take a gift rather than a fee because a fee is taxable but the gift ie. jewelry, cash, or real estate given under the will is not.

Often an executor does not accept a fee. This is common if the executor is a spouse, family member, or close friend. An executor who is also a **beneficiary** may apply for a fee, unless the will says that this cannot happen. If there is more than one executor, the fee is split, but not always equally.

The executor applies for the fee when he or she prepares the accounts for the beneficiaries to approve. If the beneficiaries do not agree with the proposed executor fee, they can require the executor to show his or her accounts to a Registrar of the Court, who will set the fee.

What if I have disagreements with the other executor?

If the executors do not agree, it may cause problems. For example, if one executor wants to sell the house and the other disagrees, there will be no sale.

If you have serious disagreements with other executors you may need to contact a lawyer. Disputes may have to be settled in court.

If there is more than one executor, you are legally responsible for what the other executor does. For example, if the other executor takes funds from the estate, you have to make up the loss. You can then sue the other executor.

When does my responsibility as executor end?

The executor remains responsible for looking after the estate if assets or debts turn up years later. Even if the estate has already been distributed, you will be legally responsible for dealing with them. There is no set time when the responsibilities of the executor are finished unless the court formally discharges you. In practice, most people say it takes about a year to complete the work of executor for a straightforward estate.

Should I get help from professionals?

Many executors do the work themselves. Others may hire a lawyer to do some or all of the work. Probate is considered legal work and only lawyers can do it on behalf of an executor.

Some executors may hire a lawyer to handle complex business matters and an accountant to prepare the final tax return.

A lawyer or Notary Public can help you if you need to provide **affidavits**, a written oath that swears the information you give is true. Professional fees are paid out of the estate. Ask beforehand about costs.

If the will was made in another province, is it still valid?

If someone dies in BC, but had a valid will in another province, an executor may be able to act on the will. The process may be more complicated. It is always a good idea to make a new will when you move to another province.

Ten Steps

Here are ten steps the executor may take when the person dies. The order of the steps will depend on the situation.

1. Locate and read the will.

The will may have instructions about the person's wishes for organ donation, burial or cremation, and/or funeral or memorial service.

When you agree to act as an executor, make sure you have an up-to-date copy of the will. Keep it in a safe place where you can find it easily. Keep a written record of all your activity as executor. Keep all receipts and financial records of the estate.

Many people keep the original will in a safety deposit box. Try to find the keys and tell the manager of the financial institution that you are the executor and are looking for the original will. If you can't find the key, the box can be drilled open for a charge. Some people leave the will with their lawyer or Notary Public. However, problems can arise

if they have not kept in touch with the lawyer or Notary, who may have died, or moved or sold the business.

If you can't find the will, check with the Wills Registry at Vital Statistics. Vital Statistics will check to see if the will was registered and where the wills notice says the original will is kept. They send you a formal reply that you need for probate.

Division of Vital Statistics

Victoria - 1.250.952.2681

Lower Mainland - 604.660.2937

Outside the Lower Mainland - 1.800.663.8328

www.vs.gov.bc.ca

If the Wills Registry has no registration of any will, you cannot proceed with probate. You must apply for what are called "letters of administration." You become the administrator rather than the executor. The procedures are similar to those for probate, and you can use a self-help manual.



2. Arrange for burial or cremation.

Legally, the executor is responsible for arranging burial or cremation. Often people leave instructions about what they want. If there is any question about what the person wanted, the executor has the legal authority to decide.

3. Protect the assets.

As the executor it is your responsibility to protect the assets. For example, you may want to make sure they are insured and safe. You may wish to place valuable papers, cash, or jewellery in a safety deposit box. You may need to change the locks on the person's house. If the person owned a business, you will need to arrange for its ongoing and proper management.



4. Obtain the death certificates.

The Division of Vital Statistics (see page 5 for contact information) handles this matter. They provide the forms you fill out and return. You may want to order more than one death certificate so you can deal with more than one institution at a time. There is a fee for each death certificate.

5. Probate the will.

Probate is the procedure that confirms the will can be acted on and that you have the authority to act as executor. If the person owned real estate, probate is required.

Check with any institutions that hold the person's assets to find out what they require. Sometimes financial institutions will not release the person's money without confirmation of probate. It depends on how confident staff are that you have authority to

act. If they know you and your relationship to the deceased, they may be satisfied just to see the death certificate and the will.

6. Get probate forms.

The Probate Registry does not provide forms. They will give you a list of forms you need, and refer you to the Self Counsel Press publications, Probate Guide for BC and Probate Forms. These forms are available from public libraries, and sold at bookstores, legal stationery stores, or the Self Counsel Press office at:

1481 Charlotte Road,
North Vancouver V7J 1H1
604-986-3366

You will need to sign some of the documents in front of a lawyer, Notary Public, or "commissioner for taking affidavits." All court registries have a "commissioner for taking affidavits." Some community groups do as well. When you sign, it means you are swearing or affirming that the information you are providing in the document is true.

7. Notify the beneficiaries.

You must notify all the beneficiaries named in the will and anyone else who may have a legal claim on the estate such as a common-law spouse, children, or a separated spouse. You don't need to have a gathering to "read the will," like in the movies. However, you must send them a copy of the will and a copy of your Notice of Intent to Apply for Probate.

8. List the assets and liabilities.

The "Statement of Assets and Liabilities" is one of the forms you fill out for probate. It has four parts:

- a list of property (the person's home);
- a list of personal property (cash, jewelry, furniture, pension and death benefits);

- a list of debts; and
- a distribution list (beneficiaries names, addresses, relationship to deceased and gifts they are to receive).

Parts one and two ask the value of the assets at death. You need to give the amount or, if the asset has no value, put **nil** or **none**. To determine the market value of the person's home, refer to the Property Assessment Notice. For other assets you may need to contact an appraiser or dealer.

Do not list assets that are owned in joint tenancy or that name a specific beneficiary, such as an RRSP. These do not form part of the estate.

If you are not sure you know about all the debts, you may wish to advertise to creditors who have claims against the estate. This is more necessary if the person owned a business. You can publish a notice in the BC Gazette and a number of times in a local newspaper. If done correctly, it will also protect the executor from later claims that the executor has not given notice to the beneficiaries.

Remember: If there is nothing to list under one of the headings on the form, write **nil** or **none**. Blank spaces may suggest that information is missing. This is one of the main reasons forms are rejected.

9. Apply to probate the will.

In most cases, you don't actually go to court to get probate. You need to fill out specific forms. Then take them, along with the original will and the reply from the wills search, to the Probate Registry of any Supreme Court of British Columbia.

To contact the local Probate Registry of the Supreme Court look in the blue pages of your

telephone book under Province of British Columbia - Court Services.

Or call Enquiry BC:

Lower Mainland - 604.660.2421

Outside the Lower Mainland - 1.800.663.7867

You will need to pay a fee when you file the documents. At time of printing of this booklet the following fees applied:

- no fee for an estate where the gross value of the assets is less than \$25,000,
- \$208, plus \$6 for each thousand (or portion) over \$25,000 to \$50,000, and plus \$14 for each thousand (or portion) over \$50,000.

These fees are subject to change. Call any Probate Registry in BC to check. To find the nearest Probate Registry call the Supreme Court of BC Probate Registry 1.800.663.7867 or Vancouver Probate Registry at the Supreme Court of British Columbia at 604.660.2876.



10. Obtain probate.

After the registry staff determine that your forms are in order and the fees are paid, you will get a "Grant of Probate." This is a legal document that allows you to deal with the estate. If your application is rejected, the staff will tell you the reason. You can correct the problem and re-apply.

Probate Checklist

Here's a checklist of general tasks after probate, in order of priority. While being an executor does not have to be difficult, there are lots of details and you need to be organized. The following are some of the things you may have to do.

Deal with assets

- Close all bank, credit union, trust company accounts the person held. You may want to put all money into one account for the estate.
- Send in claim forms for death benefits or pension benefits. This may involve contacting the employer, the union, Canada Pension, Old Age Security, Veterans Affairs.
- Collect any money coming to the person or the estate including salary and insurance.
- Apply to transfer assets such as real estate property, a car, **bonds** and other items with a registered title. Assets of the estate are transferred first to the executor and then to the beneficiary. These steps are often done at the same time. The land title office has the forms for transferring real estate. Autoplan handles transfers of motor vehicles.
- Keep records of all income received and any expenses paid. Keep copies of all letters and forms you send.



Pay debts and outstanding expenses

- reasonable funeral expenses,
- probate fees and legal costs,
- municipal and income taxes,
- all other claims as of the date of death.

If the estate does not have enough money to pay all outstanding debts, it is very important to get advice from a lawyer as soon as possible so that you do not become personally liable for the debts.

Prepare and file income tax returns

You need to file a final income tax return for the person. If the person had assets or income in another country, you may need to file a foreign income tax return as well. Ask Canada Revenue Agency for their booklet "*Preparing Returns for Deceased Persons*." This guide is available online at www.cra-arc.gc.ca.

After the income tax is reported, assessed and paid, apply for a Clearance Certificate. For your own protection, you should have this certificate before you begin to distribute the estate.

Call Canada Revenue Agency for information and forms - 1.800.959.2221.

Distribute the estate

Do not distribute the estate until six months after probate is granted. You do this to make sure that no one is going to challenge the will. If all those who have a claim on the estate sign a form saying they will not contest the will, you can go ahead sooner.

General tasks

- Distribute gifts of legacies and gifts of personal bequests to people or organizations named in the will. Sometimes the person attaches a separate list with the will that says who should receive particular items.

- Prepare a final statement of assets, debts, income, expenses and distribution. This is for the beneficiaries to approve and is called “passing of accounts.”
- If any cash and belongings remain after you distributed the specific gifts, divide the remainder or **residue** as instructed by the will. If the will does not have a residue clause, you must distribute the remainder as if there was no will. This is set out in the Estate Administration Act. The Probate Guide listed in the next section may help.
- If a beneficiary is a non-resident of Canada, you may need to obtain a clearance certificate from Canada Revenue Agency.

Manage the trust

A trust is a part of your estate that is set aside in your will for a beneficiary, most often a child. For small or simple estates, the executor is often also the **trustee**. In larger or more complicated estates, there may be a different trustee, such as a trust company.

If you are acting as trustee, you are responsible for making sure that all the assets are invested or kept in a safe place, and for filing annual trust tax returns. You are also responsible for making payments to the beneficiary of the trust as directed by the will. You can get help with these tasks from a lawyer or an accountant. Contact Revenue Canada for a copy of the booklet called “T3 Trust Guide”:

1.800.959.2221

www.cra-arc.gc.ca

All fees stated in this booklet were accurate at time of publishing. Contact service provider to check rates.



Glossary continued

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| Executor: | The person you name in your will who is responsible for managing your estate and for carrying out the instructions in the will. |
| Intermeddled: | To interfere in the affairs of others. |
| Probate: | A legal procedure that confirms the will can be acted on and authorizes the executor to act. |
| Residue: | The part of an estate that is left after the payment of charges, debts, and bequests. |
| Trust: | A part of your estate that is set up to ensure ongoing income for a beneficiary, usually a dependent child. |
| Trustee: | The person or company you name to manage a trust. |
| Will: | A document, conforming to the requirements of British Columbia law, that contains directions for the disposal or distribution of a person’s assets after his or her death. |

Helpful Information

| | | |
|------------------------------------|---|---|
| Access Pro Bono Society of BC | If you cannot afford a lawyer, you can make an appointment for free legal assistance from a volunteer lawyer. | Lower Mainland: 604.878.7400 Outside Lower Mainland: 1.877.762.6664 |
| Clicklaw | Clicklaw is a website aimed at enhancing access to justice in British Columbia. It features legal information and education designed for the public from over 24 contributor organizations. | www.clicklaw.bc.ca |
| Dial-a-law | Dial-a-Law is a library of pre-recorded tapes with information about the law in BC. They have tapes on various topics such as Making a Will; Getting Ready to Handle an Estate in Probate; and the Disappointed Beneficiary. | Lower Mainland - 604.687.4680 Outside the Lower Mainland - 1.800.565.5297 www.dialalaw.org |
| Law Students Legal Advice Clinics | These clinics provide information and assistance about choosing or being an executor, and making a will. In the Lower Mainland, law students from the University of British Columbia hold free legal clinics in different locations. | Lower Mainland: 604.822.5791 Victoria: 1.250.385.1221 www.lslap.bc.ca |
| Lawyer Referral Service | Offers referrals to lawyers who can provide up to a half-hour consultation for \$25. | Lower Mainland: 604.687.3221 Outside Lower Mainland: 1.800.663.1919 lawyerreferral@bccba.org |
| Legal Services Society Call Centre | Can answer legal questions and direct people to other information or services that can help them solve their legal problems. They do not give legal advice. | Lower Mainland: 604.408.2172 Outside Lower Mainland: 1.866.577.2525 |
| Self Counsel Press | Self Counsel Press publishes do-it-yourself guides on legal topics, including Probate Guide for BC, Probate Forms, and Wills for British Columbia. They are available from public libraries, bookstores, and legal stationery stores in BC. | www.self-counsel.com |
| Senior Citizen Counsellor Program | Volunteer counsellors are appointed by the Ministry of Health Services to assist other seniors. They can provide information on provincial programs and refer you to service agencies. To contact a counsellor, call the HealthLink BC: | Health and Seniors Information Line Victoria - 1. 250.952.1742 In BC - 1.800.465.4911 www.gov.bc.ca/health |
| Society of Notaries Public of BC | You can go to a Notary for help with making a will and executing affidavits. To get the name and telephone number of a Notary Public near you, phone the Society of Notaries Public of BC. Ask the Notary Public how much it will cost for a first meeting. | Lower Mainland - 604.681.4516 Outside Lower Mainland - 1.800.663.0343 www.notaries.bc.ca |
| Public Guardian and Trustee Office | Manages estates where there is a will, but the executor has died or is not able to act and there is no alternate executor and no heirs to take over. | 700 - 808 West Hastings Street Vancouver, BC V6C 3L3 604.660.4444 |

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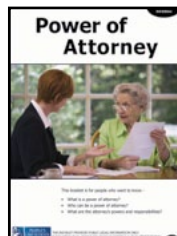
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