

Checklist of Executor's Duties

This guide provides general information about the role of the executor, fees, and a checklist of assets that typically an executor would deal with when administering an estate.



Role of an executor

An executor is a person appointed under a Will to administer the estate and follows the instructions under the Will to distribute the estate.

Executor's fees

Executor's compensation is based on provisions set out in provincial trustee legislation which generally is what is "fair and reasonable". (see page 11 discussion on fee determination)

Picking an executor

You should choose an executor who will be sensitive to the needs of your family, be able to do the job and know when and where to get advice. You should try to choose people who will not have a conflict between their job as executor and their personal interest in your estate, such as a beneficiary or possible purchaser of an asset. Advisors contemplating such a role should be aware of the potential conflict of interest.

Your choice of executor will depend on many factors. Many couples, who leave everything to the surviving spouse and then to their children, name the surviving spouse as the sole executor and then name others as alternative executors to handle matters for the children in the event the other spouse is not living. Some people choose a professional trustee. The Will may permit the executors to hire a trust company to do the administrative work. This usually occurs when the estate is quite large or there is a lengthy period of time for the distribution of the trust(s) contained within the Will. Others choose one or more people and a trust company as co-executors.

Executor's insurance

A will may provide for the executor to obtain executor insurance or an executor may wish to obtain coverage on their own. Generally, executor insurance covers damages arising from the executor's error, omission or negligent act in the performance of, or failure to perform their duties. Policies generally do not cover income or probate tax liability. To determine what is covered an executor should review the coverage and exclusion provisions of the policy.

Checklist of Executor's Duties

This checklist is based on distribution with a valid Will. The checklist starts with the preliminary steps an Executor/Trustee should take to the point when final distribution is made. Any individual appointed as an executor should consider purchasing executor insurance prior to dealing with the administration of the Estate. The insurance will provide coverage in the event of certain claims made against the executor.

Preliminary Information

Name of Executor: _____ Deceased's Spouse: _____
Co-executor: _____ Date of Death: _____
Deceased: _____ SIN for Deceased: _____
Address of Deceased: _____
Executor insurance purchased? Yes No Citizenship of Deceased e.g. Canadian and/or U.S: _____

Preliminary steps: **Completion Date** _____

- Locate and review Will
- Funeral arrangements (already paid?)
- Special arrangements
- Determine cash requirements for family
- Obtain funeral director's statement of death or apply for provincial death certificate
- Determine complexity of will

Determine complexity of will: **Completion Date** _____

- Is expertise required beyond scope of executor?
- Is executor aware of conflicts?
- Should Will be validated by court?

Contact beneficiaries (and estate lawyer): **Completion Date** _____

- Set up meeting with family members (lawyer may attend)
- Gather preliminary information from family for meeting
- Meeting and note information gathered

- Interview beneficiaries (and speak with estate lawyer)** **Completion Date** _____
- Collect relevant papers and information
 - Advise beneficiaries – of realities of estate administration timing e.g. tax issues, litigation etc.
 - Determine families' financial needs
 - Document meeting

- Establish an estate account** **Completion Date** _____
- Note all particulars about banking
 - Freeze accounts
 - Determine if there is a safety deposit box
 - Determine if accounts are joint
 - List contents of safety deposit box
 - Obtain bank requirements to deal with accounts
 - Determine if funds available to pay funeral expenses
 - Determine location of passwords for electronic banking transactions

- Locate important documents** **Completion Date** _____
- Locate and obtain title documents for real property, mortgages, share certificates, bonds, debentures and guaranteed certificates

- Notify legatees and residuary beneficiaries** **Completion Date** _____
- Determine if any difficulty in identifying charitable organization etc.
 - Notify charities of charitable bequests (and regulators where required)
 - Notify legatees/devisees of benefits to be received under the Will
 - Notify residual beneficiaries and provide a copy of the Will

- Set up a diary of time limitations** **Completion Date** _____
- Expiry of dependant relief claims
 - In Ontario and PEI – Family Law Act claims by spouse election to be made within 6 months
 - Final date to file T1 return

Immediate action

Completion Date _____

1) Business interest and investments

- Where operating business, if deceased sole or controlling shareholder take control of operations and ensure operations can continue or obtain manager
- Arrange for a review of investment portfolio
- Make appropriate decisions regarding investments to yield favourable outcome

2) Real estate

Completion Date _____

- Review adequacy of property insurance coverage and alter if necessary
- If deceased lived in rental premises alone, terminate lease or arrange sublet
- If premises vacant, arrange for protection and supervision of real estate
- If leased premises, with tenants, give notice if necessary for termination

3) Chattels

Completion Date _____

- Arrange for appropriate insurance on vehicles and personal effects etc., e.g. theft coverage

4) Inventory

Completion Date _____

- Take from home and business an inventory and custody of the following:
 - Cash on hand
 - Securities
 - Jewellery and other valuables
 - Real estate deed and mortgage documents
 - Other documents of potential value

5) Protect assets

Completion Date _____

- Secure assets to a place of safekeeping or secure vacant property

6) Mortgages - receivable

Completion Date _____

- Notify payor
- Collect on mortgage
- Determine if mortgage insurance available

7) Rental properties

Completion Date _____

- Write tenants to redirect rent for rental properties
- Determine if insurance and property taxes are in good order

8) Brokerage Accounts

Completion Date _____

- Advise of death
- Cancel open orders
- Request statements to be forwarded
- Obtain list of assets held with original cost information

9) Digital Accounts and Social Media

Completion Date _____

- Determine if the testator left a memo as to digital accounts and access
If yes:
 - Use password to access, and deal with digital accounts according to Will instructions if addressed in WillIf no:
 - Check with administrator if password protected and password unknown and determine access
- Take inventory of digital accounts
- Determine any liabilities relating to digital accounts
- Close any digital accounts where account is of no further use and no liability exists

10) Digital Assets

Completion Date _____

- Determine if the testator left a memo as to digital assets and access
- Gain access to digital assets and do back up where appropriate
- Determine if there truly is an asset
If yes:
 - Determine what access rights can be passed on and how and determine the value if ascertainable
- Create an inventory of the digital assets
- Determine whether personal information should be protected to preserve the privacy of the deceased eg: photos

11) Pets

Completion Date _____

- Determine if Will provides for care of pet
- Determine caregiver, if none make arrangements with local Humane Society/Shelter or rescue organization

Contact third parties: **Completion Date** _____

- Contact and inform Canada Pension, or Quebec Pension Death Benefits, Survivor's Benefits, Veteran's Affairs, and where appropriate make claims for death benefits for dependants eg. CPP
- Notify Service Canada to cancel entitlements under Income Security Programs
- Cancel health insurance coverage
- Cancel social insurance card
- Cancel driver's license, magazine and newspaper subscriptions, cable television, internet, club membership, home phone, cell phone and request rebate on a pro rata basis if applicable
- Notify utilities for final reading and billing
- Request Canada Post to re-route mail
- Confirm outstanding balances and cancel credit cards – determine if insurance exists to cover balances
- Contact present and previous employer re: benefits
- Contact executors/trustees of other estate where deceased may have entitlement or where deceased is named as executor of other estate
- Contact lawyer/accountant – used for personal/business
- Contact investment/insurance advisor
- Contact insurance companies
- Check with insurance broker re: insurance coverage on property
- Where deceased receives pension from foreign jurisdiction (e.g. Social Security from the U.S.), notify foreign jurisdiction, cancel entitlement, make claim for death benefit, if applicable
- Dispose of any unused medication with assistance of pharmacist
- Contact any social media administrators to remove deceased content

Compile tax information: **Completion Date** _____

- Copies of last six years returns
- Tax installments, medical, charitable receipts, etc.
- Prepare and file any T1 returns for previous years within six months of the date of death

Foreign assets **Completion Date** _____

- Determine if a valid Will exists in foreign jurisdiction and conforms to jurisdiction
- If there is no valid Will then determine applicable legislation
- Hire an agent if appropriate to deal with matters in foreign jurisdiction

Collect information on assets and liabilities: **Completion Date** _____

- Review and collect information of liabilities of estate e.g. rental agreements
- Determine if any assets are missing
- Contact investment advisor/insurance advisor or financial planner for all information
- Contact banks if not already done to ascertain balances, investments etc.
- Determine if there are matters to be litigated on behalf of estate or to what extent if any there will be liability for law suits involving the deceased and/or the estate
- Determine all liabilities outstanding at death, and interest accruing on outstanding debt after the date of death – determine what should be paid to save interest
- Determine personal guarantees made by deceased on loans
- Collect any outstanding cheques

Valuation **Completion Date** _____

- Arrange for valuations of real estate, securities, personal property, automobiles

Beneficiary designations **Completion Date** _____

- Determine where last designation made
(i.e. Will, policy application forming contract, other instrument)
- Confirm institution recognizes last designation filed
- File any and all documents necessary to assist or to make claims for or on behalf of beneficiaries
- Put carrier on notice if proceeds will be contested by beneficiaries or have estate lawyer write letter putting on notice

RRSP/RRIF **Completion Date** _____

- Request confirmation of benefits payable
- Confirm institution recognizes last designation filed
- Determine requirements to receive monies

Insurance

Completion Date _____

- Request confirmation of benefits payable
- Name of person entitled to receive benefits or confirm estate
- Determine whether there are outstanding liabilities against policy
- General inquiry as to whether other policies exist – request requirements necessary to have proceeds paid to beneficiary or estate
- Arrange for payment of proceeds – to pay for certain debts immediately e.g. funeral expense

Inventory

Completion Date _____

Prepare an inventory of assets and liabilities to include the following:

- List by class and full details of assets
- List assets by value and full particulars, including certificate numbers, registration particulars etc.
- List maturity dates
- Interest rate
- Calculate accrued interest where applicable
- Provide information regarding foreign assets but do not list for probate
- Payments received and frequency
- Full particulars of liabilities of estate
- Collect any outstanding cheques

Application to court

Completion Date _____

- Retain and meet with estate lawyer to complete application for proper certificate (documents required will vary from province to province)
- Make provisions for any fees that may be applicable
- Review documents and parties to be served and request originals and notarial copies of final orders

Debts of estate

Completion Date _____

- Determine if ad for Notice to Creditors in newspaper is worth the cost (if yes, expiry date must not predate issuance of certificate or probate obtained from court)
- Once probate is granted, determine when ad for creditors can expire
- Provide ongoing reporting to beneficiaries
- Where applicable obtain releases – avoid delay of distribution

Administration and distribution

Completion Date _____

Will differ on intestacy – see provincial legislation

1) Preliminary matters:

- When probate is granted, obtain sufficient notarial copies to transfer assets
- If ad for creditors has been done it must expire before distribution or accounting occurs (usually expiry happens for ad in 30 days)
- Ask estate lawyer to register certificate or probate on title for real estate if necessary
- Consider executor's insurance

2) Time limitations

Completion Date _____

- Determine whether there are any time periods remaining outstanding restricting distribution e.g. family law or dependant relief claims

3) Review Will

Completion Date _____

- Determine scheme of distribution of assets
- Consult with beneficiaries regarding in specie distribution (distribution in kind) where appropriate

4) Realize assets

Completion Date _____

- Bank accounts closed – transfer to estate account (if joint accounts – right of survivorship, provide financial Institution with death certificate and request transfer to surviving joint tenant)
- Invest surplus of cash in accordance with terms of Will
- Sell or transfer real estate according to Will

5) Stocks and bonds

Completion Date _____

- Arrange for re-registration
- Complete declarations of transmission and powers of attorney required to transfer securities
- Sell to meet cash needs of estate
- Sale for distribution
- Transfer to beneficiaries pursuant to Will
- Deliver securities and obtain receipts if distribution in kind

6) Prepare cheques/electronic transfers (where appropriate)

Completion Date _____

- Payment of debts
- Payment of legacies
- Payment of distribution

7) Legatees

Completion Date _____

- Payment made
- Receipt obtained

8) Personal effects

Completion Date _____

- Deliver personal effects
- Obtain receipts
- Sell – depends on provisions in Will – cash becomes residuary for distribution

9) Trusts

Completion Date _____

- Will provides for trusts, set up testamentary trusts and arrange for ongoing review of the investments and ongoing compliance within the rest of the terms of the trust e.g. payment of income

10) Tax planning

Completion Date _____

- Consider spousal trust
- Consider income splitting opportunities
- Consider unused expenses
- Estimate current year and closing capital gains and exemption
- Consider filing deadlines
- Consider separate returns
- RRSP/RRIF contribution to a surviving spouse
- Consider charitable gifts – include in T1

11) Tax returns

Completion Date _____

- Prepare and file Terminal T1 Return and other returns with Canada Revenue Agency (CRA) and request clearance certificate (terminal period returns must be filed by April 30th of the year following the year of death, or by six months from the date of death whichever is later)
- Prepare and file T3 Trust Information Return (the T3 return must be filed within 90 days from the year end of the taxation year which the estate has chosen or its deemed year end)
- Determine if deceased is up to date with U.S. tax filing
- File U.S. return if applicable and all necessary forms for disclosure purposes
- Obtain Goods and Service Tax clearances if applicable.
Note: Distribution of estate should not occur without clearance certificate

12) Distribution

Completion Date _____

- If Will provides for outright distribution, obtain release for distribution
- Transfer assets or funds to beneficiaries
- Retain sufficient funds as a reserve for income taxes and any outstanding accounts

13) Cancel insurance

Completion Date _____

- Cancel insurance on real estate when transferred or sold
- Cancel auto insurance when transferred or sold
- Cancel all other insurance once transferred or sold

14) Fees

Completion Date _____

- Request solicitor's fees
- Determine executor's compensation – must be reasonable to be deductible for estate
- Establish a reserve for any additional fees, expenses
- Write beneficiaries

15) Prepare accounts

Completion Date _____

- Prepare final statements of accounts for passing or approval by beneficiaries
- Determine executor's compensation – must be reasonable to be deductible for estate

16) Deeds

Completion Date _____

- Obtain transfer of cemetery deed if applicable

17) Approval by beneficiaries

Completion Date _____

- If accounts approved – confirm approval or releases have been sent back

18) If approval not provided by beneficiaries

Completion Date _____

- If accounts not approved must be audited by Court
- Ask estate solicitor to prepare application and all necessary notices and to arrange an appointment

Final matters:

Completion Date _____

- Distribute any remaining funds or deliver assets
- Pay executor's fees/legal fees/accounting fees/misc. fees
- Maintain holdback/reserve pending receipt of necessary clearance certificates (do not issue final cheques until certificate received)
- Write to the beneficiaries with a final report on all aspect of administration
- Arrange for closing estate bank account after confirming all cheques and/or electronic transfers have cleared

Determining fees:

A five-factor approach has been created to determine “fair and reasonable” compensation:

- 1) the size of the trust;
- 2) the care and responsibility involved;
- 3) the time occupied in performing the duties;
- 4) the skill and ability shown; and
- 5) the success resulting from the administration.

The five factors are employed to ensure that the use of percentages produces a fair and reasonable result. In British Columbia and Newfoundland statutory limits have been imposed. In the remaining provinces, statute or regulation has sanctioned neither the percentage approach nor actual guidelines.

Generally, in most provinces the percentage guidelines are as follows:

- 1) 2.5% charged on capital receipts;
- 2) 2.5% charged on capital disbursements;
- 3) 2.5% charged on revenue receipts;
- 4) 2.5% charged on revenue disbursements; and
- 5) if the estate is not immediately distributable, an annual care and management fee of $\frac{2}{5}$ of 1% on the gross value of the estate. (This is only available where the estate or part of it is to be held in trust and not distributed to the beneficiaries within the year).

It is often thought that executor’s compensation is 5% of the capital value of the estate however, this is not entirely true. This is because the percentage is based on what capital disbursements have been made which can fluctuate when capital is distributed out from time to time as required to keep the estate open until administration is finalized.



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MK2982E A 04/19