

YOUR EXECUTOR'S 45 STEPS TO ESTATE SETTLEMENT



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FUNERAL SERVICES

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EXECUTOR'S DUTIES

The following forty-five steps of estate settlement are for your general information only and are not meant to replace the comprehensiveness and expert advice of a lawyer. Consult with a lawyer regarding the role of these steps in estate settlement. If Final Document Service (also known as Peacehold) was purchased, call them (1-866-610-8504) and they will assist you with much of the paperwork associated with the steps which are highlighted with a 'FDS.' In some cases, due to how individual municipalities and groups interpret privacy laws, FDS may be restricted from providing the 'above and beyond' level of service they strive to achieve. Regardless, they will be there to assist you in the vast majority of categories listed, and will be available to you for a full year.

1 Call Funeral Homes

- ☐ look for any pre-planned documents first;
- ☐ plan and pay for funeral,
- ☐ if deceased was employed, notify the employer

2 Find Will:

if nothing has been left to a spouse or children you should get legal advice; if no will, or if no executor was appointed in the will, or if the executor has died or refuses to accept the role and no alternative is named in the will, then a family member must apply to the Court for "letters of administration" instead of probate—consider getting legal advice.

- make 5-10 copies of the will and have them notarised;

3 Assess the Situation:

accept the role, or not? How complex or "messy" is estate? You are legally responsible for any misconduct your co-executor engages in.

Should you refuse to fulfill the role of executor, you cannot "intermeddle" in the estate (looking after the funeral arrangements is permitted—it is not considered intermeddling). File a "renunciation form" which can be downloaded from the web or purchased from self counsel press. Once the form is completed, file it with the courts. The replacement executor must be approved by the beneficiaries.

If a co-executor is a resident of another country, it may be wise for them to write a letter to Canada Revenue Agency to report their decision to abstain from dealing with financial matters of the estate. The Canadian resident co-executor can attach a short letter of agreement. (This may help avoid excess taxation). Also, a foreign executor can appoint someone in your province (through a Power of Attorney) to look after the assets in your province if that is more convenient.

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4 Secure Expensive Items:

possibly in a safety deposit box consider changing the locks on the home.

5 Obtain Death Certificates:

- two originals from funeral home or provinces
- get 3-8 photocopies notarized

6 Establish an Estate Bank Account:

if probate is required, you may have to wait for probate from the Court before you can complete some banking tasks.

- centralize monies from other accounts into this estate bank account!
- close deceased's other bank accounts, have bank stop any automatic debits or deposits and redirect to the new account any legitimate ongoing payments which should continue

7 Maintain Records:

keep records of all expenses incurred and actions taken (the more detailed the better) in settling the estate; provide written updates of estate work you are doing to the beneficiaries.

Dependents Provided For:

- contact Public Guardian and Trustee (a provincial government employee) if a beneficiary is under 19 (18 in some provinces) or is mentally challenged;
- if a beneficiary was financially dependent to the deceased, ensure they have access to money (you may need to take out a bank loan to ensure their living expenses are looked after);
- arrange care for minors and pets

9 **Secure Property:**

where a beneficiary of insurance or pensions has been named, these assets, since they are given outside of the will, are not considered part of the estate.

- check house, car and boat insurances and increase for adequate protection if needed—especially house insurance if house will remain vacant;
- have home cleaned and emptied if needed (dispose of perishable items);

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- arrange to have mail picked up;
- locate safety deposit box and write a list of the contents. Remove whatever contents the financial institution will allow (they may require probate to release all of it). Store contents at home or in your own safety deposit box;
- notify mortgage lender or strata corp (if applicable) of owner's death and ensure monthly payments continue

Immediate family member might be able to drive the car—executor may want to give written permission to them and go to the insurance agent to report change of driver and file the letter of permission (check with your insurance agent).

10 Contact Beneficiaries:

- contact immediate family whether they are named beneficiaries or not and inform them of the death and your role as executor; (There may be payments owing to the estate if the deceased person was receiving spousal or child support from a spouse or former spouse); if 'spouse' is separated or common law, seek legal advice;
- if your contact is a beneficiary, include either a copy of the whole will or just a copy of the first and last pages of will and the portion of will naming them;
- if there is any controversy regarding the inheritance (or lack of) to the surviving spouse, seek legal advice

Consider informing beneficiaries that it may take up to a year before any inheritance can be distributed.

If will is not probated most provinces do not have a formal requirement for how you should contact the beneficiaries. If will is probated, however, most provinces require a formal notice be sent to the beneficiaries.

11 Gather Documentation:

- ☐ gather birth certificate;
- ☐ marriage certificate;
- ☐ property tax statements;
- ☐ property deeds (do a title search—determine the details of ownership, obtain legal descriptions and whether any charges are on title); arrange to sell any real estate if necessary;
- ☐ investment papers;
- ☐ insurance company contacts;
- ☐ bank and mortgage contacts, etc.

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12 **Contact all Financial Institutions:**

for shares of a family owned business or for real estate, consider using a lawyer to complete the legal documents. If there are rollover dates, such as for GICs or investments that mature at particular dates, take note of the maturity dates and any penalties for liquidating the assets before or after the key dates. Try to avoid penalties if at all possible.

- remove deceased's name from joint accounts;
- transfer accounts held solely by the deceased into the Estate account;
- bank books updated to date of death;
- look for dormant bank accounts: **FDS**
- ensure all authorized expenses are paid—in most cases you can take the invoice to the bank and have them pay the creditor directly

13 **Contact Tenants or Landlord, if applicable:**

- if deceased was a renter, cancel the lease and ask if any rent was owing;
- ask how much time you have to empty the residence;
- collect the security deposit if applicable;
- if deceased owned rental property, inform renters of owners' death and if property will be sold or not;
- reconfigure how rent is to be paid (into estate bank account, for example)

14 **Notify Current or Previous Employer:**

- enquire about private pension, survivor pension and if pension benefits are transferable; **FDS**
- enquire about company insurances, spousal/child insurance coverage;
- enquire about unpaid benefits (i.e. vacation pay, etc.)

15 Notify Life Insurance Companies to Obtain Benefits:

- credit card insurance;
- mortgage life insurance;
- group employee benefit insurance (see previous point);
- personal life insurance: **FDS**
- association life insurance—if death resulted from a transportation accident there may be other insurances available—contacting a lawyer is advised

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Calculate the Value of the Estate (as of the date of death):

- including real estate, vehicles, personal property, investments (stocks and bonds, mutual funds, RRSP, RRIF—be detailed, including serial numbers, interest rates, maturity dates, market values etc.);
- you may need to determine the original purchase price of all assets as well as their value as of the date of death (you may need to get an appraisal or two) in order to calculate capital gains or losses for the deceased's final tax return;
- record the amount of each debt and to whom it is owed; verify debts to confirm legitimacy; if the debts are greater than the assets, the estate is insolvent—seek legal advice;
- for real estate, the cost of some capital improvements and renovations may be considered;
- list any agreements or court orders to which the deceased was a party, or under which the deceased was liable. This might include divorce decrees, maintenance orders, marriage agreements, Family Law Act orders, guarantees, buy-sell agreements, partnership agreements, leases, employment contracts, and insurance owned by the deceased on the life of another.

There are no capital gains taxes owing on cash, GICs, treasury bills or your principal residence.

RRSPs not rolled over to a spouse or disabled child/grandchild will most likely require taxes to be paid by the estate.

Ensure you follow the will's instructions re: the handling of the investments. Buying or holding an investment in the estate that is not permitted by provincial laws can leave the executor personally liable to the beneficiaries of the estate.

Set Aside Funds:

in estate account: don't distribute estate items to beneficiaries until you are sure adequate money is available to cover estimated debts, taxes and executor's compensation.

Conduct Wills Search:

only if probate is required (not applicable in all provinces)

Apply for Probate:

In Ontario referred to as a "Certificate of Appointment of Estate Trustee with a Will"

if necessary, apply for probate with the Courts (consider using a lawyer for this task—if you decide not to use a lawyer, probate manuals can be purchased at some office supply stores; seek legal advice as probate laws and fees vary by province; if a home or cottage was solely owned (no "joint owner"), letters probate will almost always be required. For purposes of calculating the probate fee, in most provinces any items jointly owned with right of survivorship, as well as insurance and registered investments (i.e. RRSP) that have a named beneficiary, pass directly to the recipient and usually do not form part of the estate valuation.

- go to a notary and get 7 copies of the 'letters probate' notarized

Probate is the process of the courts confirming the will is legitimate. The fee for the government rubber stamp of verification varies by province.

Institutions that hold the deceased's assets can either release the asset (mutual fund, shares, bank accounts, car, etc.) without requiring probate or they can refuse to release it until the executor probates the will.

In determining the value of the estate for probate, a good starting point is a copy of the deceased's last income tax return.

Property owned outside the province may fall under the probate laws of that province and not the province where the deceased resided—seek legal advice.

Apply for Veteran's Allowance: [FDS](#)

money may be available through Last Post Fund to assist with funeral costs (reimbursement) but strict qualifications must be met; other services (housekeeping, etc.) may be available.

Apply for Canada Pension Plan Death Benefit FDS

Apply for Canada Pension Plan Survivor's Benefit FDS

also, orphan's benefit and widowed spouse allowance if applicable.

Cancel Old Age Security Benefit: FD5

The estate is entitled to the final month's cheque (the month in which the deceased died)—endorse the back and deposit.

Pay Debits:

pay them according to the order of priority as mandated by your provincial estate laws if there is any chance the estate assets may be insufficient to cover the debts.

- before you pay any outstanding balances, ask if any credit cards, bank credit lines, loans or mortgages are covered by life insurance
- if deceased owed money, place death notice in the provincial business bulletin and/or the local paper where the deceased had resided requesting creditors to contact you; seek legal advice on the requirements of your province;
- don't forget the property taxes;
- pay legal fees and all other fees related to the administration of the estate.

Be "Released":

consider getting a release (a form usually drafted by a lawyer) signed by each beneficiary prior to distributing inheritance—the signed release protects you from legal action initiated by a disgruntled beneficiary (not necessary if family dynamic and estate settlement have been smooth).

Distribute Assets:

Consider waiting until you receive a "notice of assessment" from Canada Revenue Agency telling you how much tax is owed or how much will be returned. It can be risky to issue any inheritance to the beneficiaries until you receive the tax clearance certificate from Revenue Canada.

- get a property receipt signed by beneficiaries when distributing miscellaneous items of value not specifically mentioned in will;
- apply to transfer assets with registered titles (such as real estate property, a car, bonds) first to the executor and then to the beneficiary—these steps are often done at the same time—the institution involved will assist you with the proper forms;
- once in your name, determine whether securities or bonds should be sold or simply transferred to the beneficiaries;
- remember to legally register the title of the principal residence in the surviving spouse's name if it was owned jointly—bring a death certificate and proof of citizenship to your local land titles (also called land registry) office.
- file property transfers with Land Titles (also called Land Registry) office, if applicable;

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- it may be wise not to distribute any inheritance until executor's fee is agreed upon by you and beneficiaries. For accounts registered jointly with right of survivorship, request the account be transferred to the surviving owner. Also, arrange to have any RRSP/RRIF transferred or rolled over to the named beneficiaries.

To transfer ownership of real estate/mortgage that was not jointly owned you may need to register probate on the title, sign the appropriate land registry documents including the land titles transmission application—check the regulations governing your province.

If one of the beneficiaries has predeceased the will-maker, their inheritance can either go to their children (the will-maker's grandkids) or it can bypass the family altogether and be divided amongst the remaining living siblings. Seek legal advice for the laws of your province.

Depending on your province, transferring title of land to a beneficiary (or selling or disposing of a spousal home) within 210 days of probate may require special permission—seek legal advice.

Discard Items:

anything not named by beneficiaries can be sold/donated; consider giving items you are unsure of what to do with (glasses, hearing aids, etc.) to charity

- ☐ cancel any insurances on items sold or distributed

Collect Executor's Fee

must be approved by the beneficiaries—usually a simple verbal agreement is all that's needed (but if the fee was specified in the will, beneficiary approval, in most provinces, is not required); assets that are jointly held or have a named beneficiary are often not to be included in any calculations for the executor's fee; executor fees vary from province to province but as a general rule, an executor is able to claim between 1% and 5% of an estate, with only the more complicated estates reaching the top of that range.

- ☐ obtain reimbursement for all reasonable expenses incurred in administering the estate (with receipts);
- ☐ send letter to bank requesting estate account be closed

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