



ESTATE GUIDE and QUESTIONNAIRE

Prepared for:

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The administration of an estate is both a privilege and a responsibility. It can be a complex matter. Acting on your behalf, we will inform you of your duties and responsibilities and handle the paperwork.

ADMINISTERING AN ESTATE

When a person dies, the assets they leave behind are their "estate". The person who distributes the estate is called a Personal Representative or "PR". This terminology replaces the traditional wording of Executor, Executrix, Administrator or Administratrix. To distribute the estate, the PR needs to obtain a Grant of Probate when there is a Will OR a Grant of Administration when there is no Will.

The PR has many duties. These include attending to funeral arrangements, paying outstanding debts, obtaining the Death Certificate, identifying all property, caring for the property, locating Beneficiaries, notification of banks, insurance companies, government, obtaining a Grant, filing Tax Returns, obtaining a Clearance Certificate and distribution of the estate. In some cases, the PR will also be in charge of administering any special trusts created in the Will. For example, where money is held in trust for several years on behalf of minor children or a handicapped adult child, the PR will look after this money.

All expenses in administering the estate (including legal fees) are payable out of the estate. A PR is entitled to compensation for the time and effort they expend as well, and this is payable out of the estate.

GRANT OF PROBATE

Probate is a court procedure which certifies the validity of a Will and confirms the appointment of a Personal Representative. When you receive Probate on an estate, you receive a document from the court that is signed by a judge that, in essence, states "*The attached Will is the only valid Will for this estate and the person named in this Court Order has the power and authority to deal with all the property of the Deceased*". In modern usage, the definition of Probate has been expanded to include the entire process of dealing with an estate. Someone will typically say "We will probate this estate". This means they will look after the estate from beginning to end.

GRANT OF ADMINISTRATION

A Grant of Administration is also referred to as Letters of Administration. This is the document issued by the court when a person dies without a Will or with a Will where either no PR is appointed or the appointed PR is not willing or able to act. It states who has the legal authority to deal with the estate. The Letters of Administration do not determine how the estate is distributed. That is determined by the *Intestate Succession Act* for any death occurring before February 1, 2012 and by the *Wills & Succession Act* for any death occurring on February 1, 2012 or later.

WHEN A PERSON DIES WITHOUT A WILL

The distribution of the estate is governed by the *Intestate Succession Act* and the *Wills and Succession Act*.

Under the *Intestate Succession Act* (death occurring before February 1, 2012), if the Deceased was married with no children, the estate goes to the spouse. If there is a spouse and one child, the first \$40,000 goes to the spouse and the rest of the estate is divided equally between the child and the spouse. If there is a spouse and more than one child, the spouse receives \$40,000 and one-third of the rest while the children equally share two-thirds of the rest. If there are no children and no spouse, the estate goes to the parents of the Deceased. If there are no parents, the estate goes to the brothers and sisters of the Deceased. Should the estate be divided between the Deceased's brothers and sisters and one of them has predeceased the Deceased and left children, then those children will equally receive the share of their deceased parent. The list carries on from there to name even more distant relatives. Finally, if there are no relatives, the estate will go to the universities in Alberta.

The *Wills & Succession Act* (death occurring on February 1, 2012 or later), introduces substantial changes in many areas while leaving some rules of distribution unchanged. When a person dies with a spouse or Adult Interdependent Partner or "AIP" (This terminology now replaces "common-law spouse") and no children, the spouse/AIP receives the entire estate. If there is a spouse/AIP and children, the distribution is more complex. If the children are the children of both the Deceased and the spouse/AIP, then the entire estate goes to the spouse/AIP. If the children are the children of the Deceased only and not the children of the surviving spouse/AIP, then the surviving spouse or AIP is entitled to the greater of 50% or \$150,000 and the rest of the estate goes to the children (descendants) of the Deceased, in equal shares. If there is no spouse/AIP or children, the *Wills & Succession Act* states that the estate will go to various relatives starting with the parents of the Deceased. Finally, if there are no relatives, the property goes to the government.

LENGTH OF TIME TO PROBATE AN ESTATE

The time to fully probate an estate can be quite lengthy. Even in the simplest case, by the time property is distributed and final Tax Returns are filed and approved, many months have passed. In complex estates, without considering any trusts, the time typically exceeds one year.

Estate administration is much quicker when the Deceased has made a list of all their property. Contact people involved in the assets of the Deceased and others such as the accountant and stock broker are helpful. Old outdated documents can substantially delay estate administration. An old Share Certificate for a defunct company obligates the PR to engage in an often lengthy search to verify the exact status of the investment.

DUTIES AND RESPONSIBILITIES

A PR must act fairly to all persons that have an interest in the estate including creditors, specific beneficiaries and residual beneficiaries. A specific beneficiary receives a specific gift under the Will such as a set amount of money or a specific piece of property. A residual beneficiary receives a share of everything that is left in the estate after creditors, claimants, and specific beneficiaries are looked after. The PR must account for every transaction they perform. The residual beneficiaries must receive a detailed accounting of the assets, liabilities, receipts and expenditures in the estate. They can then object to any item and demand a further explanation or ask the court for a review. The PR must maintain property until it is either sold or distributed. For example, if there is a house, the PR is responsible for looking after the house until it is sold. This can involve a substantial amount of time and effort. The PR has a duty to creditors and all beneficiaries to look after any property in the estate. The PR is required to exercise a certain level of care in performing their duties. Failure to perform can result in claims against the PR. The PR does have discretion and is not required to consult with all the beneficiaries over every decision they make. However, they must exercise their discretion in a reasonable and prudent manner. For example, selling a valuable antique by simply placing a classified ad in the local newspaper rather than obtaining an appraisal and selling it through someone who can obtain the maximum value, could result in a claim against the PR. The duty of care required by a PR can be a complex area, so consulting with us regarding specific issues is welcome.

LIABILITIES

The estate assets must be used to pay any outstanding funeral expenses, burial expenses, taxes, credit cards or other debt. Distributions to beneficiaries cannot be done until all debts are addressed.

What happens if there are not enough assets in the estate to cover the debts? Only the estate is responsible for the debt. If there is a shortfall, the PR cannot be forced to pay any of the debts out of their own pocket, unless their actions have created the inability to pay the debt. Likewise, beneficiaries or family members are not liable for debts. The only time the beneficiaries or family members can be liable is when they have improperly removed assets from the estate. Even then, their liability only extends to the value of the property removed from the estate. In certain very limited circumstances where the PR has acted in a negligent, careless or fraudulent manner, they can be held personally liable. In summary, the majority of the liability rests with the estate and assets which can be traced to other persons.

Where debts remain unpaid even after liquidation of assets, those creditors will be left high and dry. The debts will remain unpaid and the Deceased person may ruin their credit rating. Of course, this is a non-issue once they are deceased. This can be a complex area and certain debts may have priority over other debts. This is where you need the assistance of a lawyer.

The PR can be personally liable where assets have been distributed to beneficiaries and all the claims or debts have not been paid. This can include debts or claims that are not even known until after distribution to beneficiaries. For this reason, we highly recommend placing an ad in the local newspaper with a notice to all creditors and claimants providing them a deadline for submitting their claim. Any claims arising after the deadline must still be paid out of estate assets. However, if the estate has been distributed, the PR is no longer personally liable.

CLAIMS AGAINST THE ESTATE

It is highly recommended that every PR place a classified ad in the local newspaper for creditors and claimants. This notice provides a deadline for filing a claim. After the deadline has passed the PR is free to distribute assets without any worries about personal liability. Notice the ad is for creditors and claimants and not just creditors. Often times, legal language uses several words to say the same thing. This is not one of those cases. A claimant is anyone with a claim against the estate. This goes well beyond creditors. Claims against the estate include everything from contractual claims to civil claims. For example, someone may have a claim for injuries suffered at the hands of the deceased person through either a motor vehicle accident or a slip and fall at the Deceased's home.

There may also be a claim for work done for which no contract exists. Claims can surface long after the date of death. Hence the importance of the classified ad providing a deadline for claimants and creditors. After the deadline, the PR is no longer personally liable for any claims brought against the estate. The claimant must pursue recovery against the beneficiaries, if possible.

TRUSTS

If the Deceased specified a trust in their Will for certain property held by the estate on behalf of one or more beneficiaries, the PR is usually responsible for the ongoing administration of any trust. However, a separate Trustee can be appointed in the Will. The PR or Trustee must look after the assets, prepare accountings and tax returns and follow the directions for distribution in the Will. This usually occurs when there are minor beneficiaries and when the beneficiary is a minor, the Public Trustee often becomes involved.

ESTATE LITIGATION

Estate litigation, while rare, can arise for many different reasons. When there are competing claims against the estate or unclear directions in the Will, the court may have to determine the final outcome. The PR is responsible for directing any litigation to its conclusion. Estate litigation can take the form of a simple application to the court for "advice and direction" or it can involve a complex and expensive trial.

TAXES AND CLEARANCE CERTIFICATES

One major area where we do not handle any of the paperwork is the required Income Tax Returns however, we can work with your tax advisor/accountant or provide you with a referral to a tax advisor/accountant with experience in dealing with estates.

CLEARANCE CERTIFICATE

A Clearance Certificate is a document issued by the Canada Revenue Agency to verify that all taxes for a deceased person have either been paid or that the CRA has accepted security for payment. Without a Clearance Certificate, a PR remains liable for any unpaid taxes even after the estate has been distributed. For example, should the CRA re-assess taxes for a deceased person for any of the years prior to their death, the PR is liable to pay those taxes even if they have already distributed the estate. With a Clearance Certificate in place, even if CRA reassesses the taxes, they cannot look to the PR for any payment of amounts owing. To apply for a Clearance Certificate, you complete a form called *Asking for a Clearance Certificate TX-19*. This form is completed and sent to CRA after the last tax return has been filed for the deceased and the final notice of assessment received from CRA. You will also need to enclose a copy of the Application for Probate or other documents that you have filed, which would include a statement showing the property distribution.

MAXIMUM LIABILITY OF THE ESTATE OR PR FOR UNPAID TAXES

The liability will not be more than the value of the property in the estate. In other words, neither a PR nor any of the beneficiaries are required to pay money out of their own resources for unpaid taxes. Of course, as stated above, a PR can be personally liable if they have distributed the estate before receiving a Clearance Certificate and thereby frustrating CRA's attempts to have taxes paid out of the estate property. This area is subject to the general rules regarding preferential treatments of creditors or attempts to avoid creditors. For example, if a deceased person transfers all their property to someone prior to their death to avoid taxes, then the CRA has the ability to chase the persons receiving the property prior to death to recover the taxes owing. This is a complex area and consultation with a lawyer will answer specific questions.

YOUR NEXT STEP

We have provided you with a basic Questionnaire below. Once you have completed this Questionnaire, please forward same to our office along with the **Deceased's original Will and original Certificate of Death/Funeral Directors Statement of Death**. Upon receipt, we will review the information you have provided and contact you with any further requirements. If you have any questions with regard to completing this Questionnaire, please contact "Irene" of our office at 780-417-9222 ext 207.

*** We require Deceased's original Will and original Certificate of Death / Funeral Directors Statement of Death**

1. Full name of Deceased: _____
and all other names known by: _____
2. Full Address of Deceased at time of death: _____
3. Residence of Deceased during last 6 years prior to death: _____
4. Habitual residence of Deceased: _____
5. Date of Birth of Deceased: _____ Place: _____
6. Date of Death of Deceased: _____ Place: _____
7. Occupation of Deceased at date of death: _____
8. Date of Retirement (if known): _____
9. Social Insurance Number of Deceased: _____
10. Year last Income Tax Return filed by Deceased: _____
11. Who filed last Income Tax Return: _____
12. Address shown on last Income Tax Return: _____
13. List employer(s) of Deceased during the period from January 1st prior to death:

14. Income of Deceased in year prior to death: _____
15. Location of Will since execution: _____
16. **Executor(s)** Full Name, Address & Phone Date of Birth Date of Death (*if applicable*)

17. **Beneficiaries** Full Name, Address & Phone Date of Birth Date of Death (*if applicable*)

18. Did Deceased marry since date of Will: _____
19. Surviving Spouse - Full Name: _____
20. Surviving Spouse - Complete Address: _____
21. Surviving Spouse - Date of Birth: _____

22. Deceased Spouse - Full Name (if applicable): _____

23. Deceased Spouse - Date of Birth (if applicable): _____

24. Deceased Spouse - Date of Death (if applicable): _____

25. Was Deceased formerly married: _____

26. Former Spouse - Full Name (if applicable): _____

27. Former Spouse - Address (if applicable): _____

28. Former Spouse - Date of Divorce (if applicable): _____

29. Former Spouse - Date of Death (if applicable): _____

30. Did the Deceased have any children who predeceased him/her: _____

Name in Full	Date of Birth	Date of Death
_____	_____	_____
_____	_____	_____
_____	_____	_____

31. Did the deceased children of the Deceased have any children surviving them: _____

Name in Full	Complete Address & Phone Number	Date of Birth
_____	_____	_____
_____	_____	_____
_____	_____	_____

32. Surviving Children of Deceased:

Name in Full	Complete Address & Phone Number	Date of Birth
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

33. Surviving Children of the Deceased who are physically/mentally disabled and, by reason thereof, unable to earn a livelihood:

Name in Full	Complete Address & Phone Number	Date of Birth
_____	_____	_____
_____	_____	_____
_____	_____	_____

34. If the Deceased died Intestate (without a Will) and did not leave a surviving spouse nor children, please provide information on the **parents of the Deceased**:

Name in Full Complete Address & Phone Number Date of Birth & Date of Death *(if applicable)*

35. If the Deceased died Intestate (without a Will) and did not leave a surviving spouse, nor children, nor parents, please provide information on the **siblings of the Deceased**:

Name in Full Complete Address & Phone Number Date of Birth & Date of Death *(if applicable)*

36. If the Deceased died Intestate (without a Will) and did not leave a surviving spouse, nor children, nor parents and had siblings that predeceased the Deceased, please provide information on the **deceased sibling's children**:

Name in Full Complete Address & Phone Number Date of Birth & Date of Death *(if applicable)*

37. If the Deceased died Intestate (without a Will) and did not leave a surviving spouse, nor children, nor parents and had siblings that predeceased the Deceased and the deceased siblings had deceased children, please provide information on the **deceased sibling's deceased children**:

Name in Full Complete Address & Phone Number Date of Birth & Date of Death *(if applicable)*

38. Inventory (Estate Assets)

(a) Real Estate *(Fair Market Value)* ***(provide municipal address & legal land description)***:

(b) Mines and Minerals *(Fair Market Value)* ***(provide legal land description)***:

(c) Mortgages/loans, etc. given by Deceased:

(d) Mortgages/loans, etc. owned by Deceased:

(e) Cash on hand in Banks, Investment Companies, etc. *(Provide Bank/Investment Company names, addresses, account numbers & copies of Statements as at date of death):*

(f) Life Insurance: *(If payable to the estate, provide copy of Policy. If payable to a named beneficiary, advise who payable to and how much)*

(g) Annuities:

(h) Money/Debts/Loans owing to the Deceased/Estate:

(i) Shares, Bonds, etc. owned by Deceased and where found at death. *(Provide Bank/Investment Company names, addresses, account numbers & copies of Statements as at date of death):*

(j) List values of following:

Personal Belongings *(A value is required, even if it is \$1.00)* _____

Household Goods/Furniture *(A value is required, even if it is \$1.00):* _____

Automobile(s) *(year, make, model and value):* _____

Other Property *(List any other property, details about said property & its value):* _____

39. Debts owed by the Deceased/Estate (*List the Deceased's debts at the time of death i.e. credit cards, etc. & provide Statements for same as at date of death. If the funeral/burial/cremation expenses were paid after death, please provide the total amount paid, who paid & copies of the invoices*): _____

40. Any other pertinent information: _____

41. **Notice to Creditors and Claimants.** You must speak to your lawyer whether this is recommended in your case. If you choose to publish this Notice, Surrogate Rules state that in the case of an estate with a gross value of \$100,000.00 or less, this Notice must be published at least once. In the case of an estate with a gross value of more than \$100,000.00, this Notice must be published at least twice with 5 days or more between publications. A Claimant must notify the Personal Representative of the claim no more than 1 month after date on which the last notice was published. If a Claimant does not comply, they can only make a claim against the estate with the prior consent of the court. This Notice must be published or circulated in the area where the Deceased usually resided.

Does Executor want us to advertise? YES _____ NO _____

If YES, which newspaper(s) is the Notice to be advertised in?

42. Does Executor want us to handle the disbursement of the estate after Probate?
YES _____ NO _____