

## Overview – Duties of an Estate Trustee in Ontario

Please note that this list of steps is provided for general information only. It is not a substitute for advice from a qualified estate lawyer. Not all of these steps may apply to the estate that you are administering. *Be careful about starting to manage an estate as you may be liable for damages if you do not have the legal authority to deal with the estate.*

### **Immediate Tasks**

*(Note that - especially if the deceased died without a Will - some of these tasks may require that you first obtain the Certificate of Appointment of Estate Trustee from the Court.)*

1. Arrange for donation of organs, if appropriate; make funeral arrangements. If the deceased had sufficient funds in a bank account, the bank will usually agree to pay the expenses directly to the funeral provider, utilities etc. out of the account. (Do not cover these expenses yourself first before discussing this with the bank as the bank may not agree to reimburse you.)
2. Obtain Funeral Director's Statement of Death (multiple copies). One original is required for an application to the Court for a Certificate of Appointment of Estate Trustee.
3. Search for and review the most recent Will, codicils, witness' affidavit and any memoranda of personal effects or other instructions. This may require inspection of a bank safety deposit box. If none are found, consult a lawyer to arrange for additional searches.
4. Arrange for the care of any pets, farm animals, and immediate needs of deceased's family.
5. Secure and safeguard the assets of the estate as soon as possible.
6. Dispose of perishables in the deceased's home.

7. Identify and take steps to retain a lawyer to advise on administration and prepare application for a Certificate of Appointment of Estate Trustee, if necessary.
8. Obtain notarial copies of the Will and codicils (if any).
9. Collect the personal documents of the deceased: birth certificate, SIN card, citizenship or passport, occupation, full name and alternate names, documents relating to marital status such as divorce documents, marriage certificate, death certificate of a predeceased spouse, any domestic contracts or separation agreements.
10. Collect all financial records of the deceased: bank and investment statements, real estate deed, mortgage and taxes, insurance (life, medical, home, auto), automobile ownership, court documents. Check if the deceased was acting as estate trustee for someone else or was a trustee of a trust.
11. Make a list of regular payments such as utilities, taxes, subscriptions. Make a list of credit cards, bank accounts and any safety deposit box including addresses and account numbers.
12. Advise the deceased's employer and any pension sources. Obtain information about any death benefits arising from employment.
13. Cancel Old Age Security, Canada or Quebec Pension Plan, annuities, private pension or other regular payments received. (This will avoid the need to later refund payments that continued to be paid for several months.) Apply for Canada Pension Plan death benefits (unless the person who paid for the funeral intends to do to, with your consent).
14. (a) Identify the family members of the deceased, current or past spouses including common law, children, any other beneficiaries named in a Will, and any persons who may have been financially dependent on the deceased, including dates of birth, addresses and relationships. Indicate any who are under the age of 18 or mentally incapable.  
(b) Are there any potential or named beneficiaries whose whereabouts are unknown? Discuss with lawyer if any searches are required now or if lawyer wants you to draw up a family tree.  
(c) Discuss with lawyer how and when to notify and report to the beneficiaries or other affected persons.
15. **List** all assets of the estate and estimate their value at the date of death. You may need to contact the banks and stockbrokers that the deceased used in order to complete your list. It may not be possible to immediately determine the date of death value of some assets.

- Discuss with your lawyer, what assets are included and declared in the estate (as opposed to passing on to a joint owner with valid right of survivorship)
  - Provide an inventory, even if preliminary, to the lawyer to prepare the Application to the Court.
  - Obtain legal advice on how to deal with items which require additional time to be valued. A supplementary declaration and payment of estate administration tax may be required once more information is obtained.
16. **List** all the debts and liabilities of the estate, at the date of death.
- Have lawyer arrange for publication of the “Notice to Creditors and Others”.
  - Discuss with your lawyer the possible claims against the estate, including potential family law or dependent support claims. You may need to challenge some claims.
  - Discuss with your lawyer, any deadlines or limitation periods for any claims by or against the estate, the deadline for filing the Estate Information Return, fulfilling any undertakings to the court, and the dates for filing income tax returns including any foreign returns. Diarize these dates and stay on top of the matter.
17. Provide all the above information to the lawyer if it is necessary to prepare an Application for a Certificate of Appointment of Estate Trustee. Organize payment of Estate Administration Tax to accompany the Application. Meet with lawyer to sign the Application. Discuss applying for estate trustee insurance or a bond of administration (if required).
18. If the deceased’s property was managed by a guardian or attorney for property, discuss with the lawyer the need for an accounting from that person.
19. Set up a record-keeping system including a record of your expenses and time spent as estate trustee, to support your claim for compensation as estate trustee. Keep a diary of the steps you take as administrator such telephone calls made, interviews attended, mail sent or received. Record all payments received for the estate.
20. Where there are two or more estate trustees, discuss how duties will be divided and compensation shared.

### **Next Tasks – Start of the Administration**

*(Note that some of these tasks may require that you first obtain the Certificate of Appointment of Estate Trustee from the Court.)*

21. Obtain multiple notarial copies of the Certificate of Appointment from the lawyer.
22. Arrange for redirection of mail.

23. Notify financial institutions, brokers, insurance companies and other business contacts of the death and your authority (when received). Instruct brokers to cease trading. Close the deceased's accounts where appropriate or at least, change the address on record. Open an estate bank account.
24. Make arrangements for sale/liquidation of assets not passing directly to heirs, including personal effects, taking care to safeguard items that were specifically bequeathed. Keep valuables and stock certificates in a safety deposit box until ready to liquidate or transfer.
25. Collect any assets that do not pass directly to a beneficiary, including insurance proceeds and employer benefits e.g. death benefits, refund of pension contributions, group life insurance, unpaid salary, stock options, etc.
26. Be sure to prepare and deliver the Estate Information Return to the Ontario Ministry of Finance, within 90 days of the date that the Certificate of Appointment of Estate Trustee was issued by the Court.
27. Prepare real estate for listing and sale – emptying, cleaning, minor repairs if recommended. Arrange for property management and regular inspections, grass cutting, snow removal, winterizing. Your lawyer should prepare a Transmission Application into your name as Estate Trustee or register a Caution to prevent vesting of the asset in the beneficiaries (three year limitation). Discuss payment of any mortgages or liens.
28. Make necessary arrangements with a transfer agent to replace any missing stock certificates (and eventually redeem them if not required to be transferred directly).
29. Arrange to prepare and file income tax returns. You must collect and provide all the relevant financial documents including previous years' returns, financial statements, real estate information, details of assets abroad, and any business information. Contact an accountant to discuss the tax liabilities of the deceased and your responsibilities as administrator, and whether tax advice is needed for the on-going management of the estate. The accountant can prepare the returns. Three main tax returns are needed:
  - a) one for the year(s) before the death, if the deceased had not filed a return and if tax is payable;
  - b) one for the year of death; and
  - c) one for each tax year of the estate administration.

30. Determine which debts should be paid, and do so. Obtain receipts. If the total liabilities are larger than the total debts (including payment of funeral and expenses of administration) it is especially important to discuss this with a lawyer to avoid incurring any personal liability.

### **Distributions and completing the administration**

31. Check Bank of Canada website for any unclaimed (dormant) bank accounts. Also the Revenu Québec website of unclaimed property for anyone who lived in Quebec.
32. Obtain advice on the proper treatment of various documents – either destruction or return to issuer (e.g. passport, driver's license, health card etc.)
33. When Notices of Assessment are received from CRA, apply for the appropriate tax clearances. (Extra steps are required if any beneficiaries are non-residents of Canada.)
34. Send an updated Estate Information Return and pay additional probate tax if any new assets were discovered (or values changed) from amount initially reported.
35. Review the terms of the Will or the law of intestacy with the lawyer. Discuss with lawyer whether appropriate to have accounts passed with the Court. If not, have lawyer prepare receipts and/or releases for signature by beneficiaries.
36. Prepare estate accounts for review by beneficiaries and calculate the executor's compensation.
37. With the approval of the lawyer and tax accountant as to appropriate holdback for taxes and additional accounting and legal fees: pay specific cash legacies (with interest if beyond one year) or deliver items that were bequeathed in the Will. Obtain receipts. Make interim distributions to residual beneficiaries if appropriate, again after discussion and approval with advisers.
38. Set up testamentary trusts and either deliver to trustee(s) or act as trustee where instructed in the Will (as appropriate).
39. Once final tax clearance is in hand, distribute any remaining assets to beneficiaries.
40. Prepare and distribute a final report and accounting to the beneficiaries. Have accountant prepare T4's and CPP calculations on executor's compensation, if necessary.
41. Arrange for the safe storage of the estate's records.