



# Executor's handbook

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The Farwell Group

ScotiaMcLeod, a division of Scotia Capital Inc.

**Scotia** Wealth Management.

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## A note to the Executor

It is an honour to be named as the Executor of a person's estate and it implies that you have been regarded as trustworthy and capable of carrying out this important task. It is also a serious responsibility that is subject to provincial law and regulation that can require a substantial amount of time. A person is not legally required to act as an Executor and should you feel that you are unable or incapable of fulfilling the duties of the position, you may opt to refuse to serve provided the rules regarding this are followed. You should read this entire handbook to give you an understanding of the nature of acting as an Executor to determine your suitability for the role.

When you become an Executor you are really becoming a legal Trustee with all the rights and responsibilities that come with that position. This handbook provides you with a solid overview of estate settlement and will hopefully provide you with some useful information and tools to expedite your responsibilities in a timely and competent fashion. It is very important to note that this handbook should not be viewed as a substitute for legal counsel. As will be described, there are numerous legal aspects to settling an estate and seeking legal (and other professional) counsel is highly advised.

# Glossary of terms

Throughout this handbook you may come across terminology that is unfamiliar to you. Reference this glossary at any time you need clarification.

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| <b>Administrator<br/>(Administratrix<br/>if female)</b> | In the case of intestacy (when there is no Will), there will not be a named Executor. This might also be the case where the Will does not name an Executor. In these cases, a suitable person, perhaps a family member will have to approach the court to seek the right to become the estate Administrator as evidenced by Letters of Administration. Once appointed, the Administrator will have the same responsibilities and carry out the same duties as the Executor. |
| <b>Beneficiary</b>                                      | This is the person named to receive goods or benefits under the Testator's Will or pursuant to the distribution of an estate due to intestacy.  |
| <b>Clearance certificate</b>                            | A document granted by Canada Revenue Agency that proves and confirms that the deceased and estate have fulfilled their obligations.   |
| <b>Estate assets</b>                                    | Estate assets are those over which the deceased had control and generally include such things as bank accounts, investment accounts, real estate and other personal belongings.   |
| <b>Executor<br/>(Executrix if female)</b>               | An Executor is the person named in a Will to carry out the testamentary requests and estate distribution of the deceased.   |
| <b>Fair market value</b>                                | The price of an asset comparable in the marketplace or what it would reasonably be worth in an open, unrestricted, and non-artificial transaction.  |
| <b>Intestacy</b>  | Intestacy occurs when a person dies without a legal Will. In this case, the court will have to designate an Administrator who will carry out the duties normally carried out by the Executor named in a Will. The distribution of estate assets will be subject to specific rules detailed in Provincial/Territorial legislation.   |
| <b>Non-estate assets</b>                                | Assets over which the deceased had control but are not considered estate assets in the legal sense and are therefore not part of the Executor's responsibilities. These might include insurance policies, assets held in Joint Tenancy, and certain financial accounts registered under tax law.  |

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## Glossary of terms (continued)

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|---------------------------------------|---|
| <b>Power of Attorney (POA)</b>        | A Power of Attorney or POA is a written document which legally enables another party to act on the Principal's behalf in various areas such as management of financial affairs. In the case where a deceased person had a POA or POAs, the Executor needs to contact those parties and inform them of the death since POAs cease to have effect on the death of the Principal.  |
| <b>Principal</b>                      | A person granting Powers of Attorney to another party.  |
| <b>Probate</b>                        | Probate is the legal process whereby the court certifies that the Will is valid and that the Executor (or Administrator) has the legal authority to act as the representative of the deceased. Probate is usually required and is important since the legal right of the Executor to distribute assets is crucial to outside parties such as financial institutions. The certification of the validity is evidenced in 'Letters Probate'; a legal document provided by the court to the Executor. |
| <b>Probate fees</b>                   | These are the Provincial/Territorial fees paid on the value of estate and are designed to reflect the administrative costs of reviewing the estate and issuing Letters Probate, although the actual fees are usually based on some percentage of the estate value. Certain assets may move outside the estate and not be subject to these fees. Refer to the 'Estate and Non-Estate Assets' section of this handbook to learn which type of assets are not subject to probate fees.               |
| <b>Testator (Testatrix if female)</b> | The Testator is the person who has left a Will.   |
| <b>Trust</b>                          | A Trust is a right of property held by one person for another. In the case of a Will, the Executor is assuming legal control of the estate assets for the benefit of the beneficiaries. The Executor has a legal responsibility to carry out the instructions of the Testator for the benefit of the beneficiaries of the estate.   |
| <b>Trustee</b>                        | A person or an organization that has been appointed to administer property or assets for the benefit of a third party.  |
| <b>Will</b>                           | The Will is the instrument by which a person, while alive, directs the distribution and treatment of their estate after their death. Wills are generally revocable at any time while the person is alive so it is crucial (and part of the probate process) to ensure that the Will in question is the most current.  |

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# The legal and regulatory environment

Taking on the role of Executor of an estate comes with serious legal implications. You become a legal Trustee and must abide by the applicable Provincial/Territorial laws regarding estates.

You must carry out your duties professionally, wisely and dispassionately. It is an unfortunate fact that Executors often encounter disgruntled beneficiaries who feel they have been treated unfairly and may apply pressure on the Executor, so it is important to appreciate that your first and foremost responsibility is to the Testator and their estate wishes. It is likely that interested parties will be watching your actions carefully so it is crucial that you thoroughly understand your rights and obligations.

Wills and estates are a Provincial/Territorial concern and each jurisdiction will have statutes addressing these issues. It is important to note that while there is a great deal of agreement and overlap between the various pieces of legislation, there are definitely differences that can be material in particular cases.



## WHAT IF SOMEONE DIES OUTSIDE OF CANADA?

If someone has died outside of Canada, the appropriate Canadian embassy or consulate should be contacted immediately. In most cases, the family will want to have the body repatriated and the Canadian authorities should prove helpful in this regard. Funeral directors should also be able to provide assistance in arranging transportation.



Executors often encounter disgruntled beneficiaries who feel they have been treated unfairly and may apply pressure on the Executor, so it is important to appreciate that your first and foremost responsibility is to the Testator and their estate wishes.



Here is a list of the relevant legislation for each Province/Territory. Though the following provides detailed and useful information, competent legal advice must be sought when determining the applicability of the law to a specific situation.

| <b>Province/ Territory</b> | <b>Legislation</b>                | <b>Link</b>   |
|----------------------------|-----------------------------------|---|
| Alberta                    | Wills and Succession Act          | <a href="http://www.qp.alberta.ca/documents/Acts/W12P2.pdf">http://www.qp.alberta.ca/documents/Acts/W12P2.pdf</a>   |
| British Columbia           | Wills, Estates and Succession Act | <a href="http://www.leg.bc.ca/39th1st/3rd_read/gov04-3.htm">http://www.leg.bc.ca/39th1st/3rd_read/gov04-3.htm</a>   |
| Manitoba                   | Wills Act                         | <a href="http://web2.gov.mb.ca/laws/statutes/ccsm/w150e.php">http://web2.gov.mb.ca/laws/statutes/ccsm/w150e.php</a>   |
| New Brunswick              | Wills Act                         | <a href="http://laws.gnb.ca/en/showpdf/cs/W-9.pdf">http://laws.gnb.ca/en/showpdf/cs/W-9.pdf</a>   |
| Newfoundland and Labrador  | Wills Act                         | <a href="http://assembly.nl.ca/legislation/sr/statutes/w10.htm">http://assembly.nl.ca/legislation/sr/statutes/w10.htm</a>   |
| Nova Scotia                | Wills Act                         | <a href="https://nslegislature.ca/sites/default/files/legc/statutes/wills.htm">https://nslegislature.ca/sites/default/files/legc/statutes/wills.htm</a>   |
| Ontario                    | Succession Law Reform Act         | <a href="http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90s26_e.htm">http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90s26_e.htm</a>                         |
| Prince Edward Island       | Probate Act                       | <a href="https://www.princeedwardisland.ca/sites/default/files/legislation/P-21-Probate%20Act.pdf">https://www.princeedwardisland.ca/sites/default/files/legislation/P-21-Probate%20Act.pdf</a> |
| Quebec                     | Justice Quebec, Wills             | <a href="http://legisquebec.gouv.qc.ca/en/showdoc/cs/CCQ-1991?langCont=en#ga:l three-gb:l four-h1">http://legisquebec.gouv.qc.ca/en/showdoc/cs/CCQ-1991?langCont=en#ga:l three-gb:l four-h1</a> |
| Saskatchewan               | Wills Act                         | <a href="https://publications.saskatchewan.ca/api/v1/products/940/formats/1517/download">https://publications.saskatchewan.ca/api/v1/products/940/formats/1517/download</a>                     |
| Northwest Territories      | Wills Act                         | <a href="https://www.justice.gov.nt.ca/en/files/legislation/wills/wills.a.pdf">https://www.justice.gov.nt.ca/en/files/legislation/wills/wills.a.pdf</a>   |
| Nunavut                    | Wills Act                         | <a href="https://www.nunavutcourts.ca/index.php/forms/category/146-wills?download=418:wills-act">https://www.nunavutcourts.ca/index.php/forms/category/146-wills?download=418:wills-act</a>     |
| Yukon                      | Wills Act                         | <a href="http://www.gov.yk.ca/legislation/acts/wills.pdf">http://www.gov.yk.ca/legislation/acts/wills.pdf</a>   |

# The implications of being an Executor

## TIME COMMITMENT

How long it will take to fulfill your role as Executor depends on the complexity of the estate. Some estates are wound up in 12 to 18 months. Others, however, are complex or encounter legal complications such as challenges from beneficiaries which can result in the process being drawn out into years. In other words, every estate will be different and will require different amounts of time, effort, and expertise, and careful consideration is necessary before assuming the task.

Regardless of the timeframe for settling an estate, the vast majority of the work and effort will usually be spent in the first few weeks with some lingering items such as filing of final tax returns or the disposition of some assets being deferred to the longer term. If the time commitment seems overwhelming, considering enlisting professional help, such as Scotiabank's Estate Assist® Service.

## MINIMIZING EXECUTOR LIABILITY

There can be a lot of risk associated with assuming the responsibilities of the executor. As the executor, you act on behalf of the estate, and you are liable for any loss, mistakes or negligence with processing the will.

Here are some pointers to reduce potential liability:

- Keep lines of communication open with regular updates with all beneficiaries to reduce risk of lack of information, complaints or accusations of bias.
- Compile an inventory of items in the house.
- Be certain household items remain as property of the estate until the Will is read.



- Ensure all CRA Income tax deadlines are met.
- Keep all receipts, bank deposits or other documentation to help prove records have been managed suitably.
- Maintain accurate records of all estate transactions and document all decisions made. Keep receipts of distributions made to beneficiaries.
- Recruit qualified professionals for assistance: lawyer, accountant, appraiser, real estate agent, etc.
- Keep affairs of the estate confidential.

## RECORD KEEPING

Gathering and maintaining full and detailed records is crucial for an Executor. There are four important reasons for this:

- **Value of assets** – As the Executor, there could be an immense amount of assets to be valued and distributed. It is important to compile a complete list of assets and their total value for reference. In the assessment of the Estate by the government, a list of assets and total value of the estate may be requested. In the province of Ontario, the 'Estate Information Return' form is required.



- **Proof of activities** – There will be a substantial amount of paperwork involved in settling an estate, particularly in the short term. Bank statements, Investment Account Statements, receipts from government bodies, invoices from outside professionals, statements from Canada Revenue Agency, etc. will be involved. As an Executor, you may be called upon to provide proof that you have been fulfilling your duties competently and in the best interest of the estate. The more comprehensive and organized the files, the more comfortable you will be in weathering any scrutiny.
- **Tax** – When an estate involves business interests, you will probably be required to file at least two tax returns for the deceased and the estate, and it is important to have all relevant information at hand to ensure that all tax laws are complied with and that the deceased and the estate receive any tax advantages available.
- **Good business practice** – There will be numerous duties and responsibilities stretching out over months of time and the potentially complex task will be made much easier if a comprehensive records and filing system is in place.

## ACCEPTING OR REJECTING THE ROLE OF EXECUTOR

After reading this handbook and making enquiries, you may decide that you are not up to the task. This is certainly understandable where the time commitment is excessive, the nature of the responsibilities too complex, or perhaps family tensions prove to be problematic. If the Testator is still alive when the appointment is made, then you can certainly request that the person name someone else. If the Testator has passed away and the Will names an

alternate Executor, then that person may be able to assume the role. If the Will does not name an alternate Executor, the legislation may allow for a new Executor to be named. If you have begun acting as the Executor and then decide to step back, it will probably prove difficult to renounce the role. Alternatively, you may consider enlisting the help of a Trust Company. Scotiabank's Estate Assist service can help you perform your many duties, while you remain responsible for making key decisions. In all cases, it is highly recommended to consult a competent lawyer.

## COMPENSATION FOR THE EXECUTOR AND OUTSIDE PARTIES

The law appreciates that acting as an Executor is an important and time-consuming part of the proper workings of a smooth estate transition process and allows for the reasonable compensation of those assuming the duties. In many cases, the Executor will waive any fee out of respect and warm feeling for the deceased and that is certainly acceptable. The Executor is likely to waive any fee if the deceased was a family member, for example. Where the Testator has clearly stated in the Will what the Executor will be paid, the situation is quite clear.

However, the Provincial/Territorial legislation is rather vague on compensation and use terms such as 'fair' and 'reasonable'. It is generally accepted that payment of between 1% and 5% of estate assets is suitable depending on the complexity of the situation. Any out-of-pocket expenses realized by the Executor required in carrying out their duties will of course be paid by the estate. We will discuss using outside assistance later, but provided the services of these professionals are necessary and reasonable, those costs will be covered by the estate and paid as incurred.



If you have begun acting as the Executor and then decide to step back, it will probably prove difficult to renounce the role.

# Overview of an Executor's initial duties

Below is a general overview of some of the key items you will need to address at the initial stages of your new role as Executor. For further support material and resources such as actionable checklists, please refer to [Resources for the Executor](#).



## PLAN THE FUNERAL

Ordinarily it is the responsibility of the Executor to arrange for the funeral of the deceased. This is made easier where the deceased has provided specific details about the ceremony, interment, etc. in the Will. In the absence of specific directions, it is usually prudent to consult with the immediate family and perhaps the deceased's religious guide to determine the most appropriate approach. The estate will be responsible for any funeral costs. Obituaries are often produced to run in local newspapers. A family member usually assumes the responsibility of creating the obituary but the Executor may assume this task. The estate will cover the advertising costs.



One of the responsibilities of the Executor is to make payments from the estate to settle any outstanding debts incurred by the deceased.

## NOTIFY CREDITORS

One of the responsibilities of the Executor is to pay any legal debts incurred by the deceased that are outstanding. Some of these debts might be quite apparent but there may be other creditors of which you are unaware. Provincial/Territorial law varies on this point, but generally it is advised to make an advertisement in the local newspaper notifying creditors of the death which allows any creditors to bring forward their claim over a specified time period. A lawyer familiar with the jurisdiction should be approached.

## COLLECT DOCUMENTS

There are many pieces of documentation that must be collected to allow an Executor to carry out their duties effectively. Where the deceased was an organized person, they will often have a file or a box with their important documents contained. You will also be going to the bank or trust company to deal with the deceased's accounts and at this point you should inquire about any safety deposit boxes. The bank will require legal proof of your ability to act as the Executor before allowing you to review the safety deposit box.

Ideally, another person should be present and a full inventory of the contents made.

## NOTIFY BENEFICIARIES

When it has been determined who has an interest in the estate, those parties should be contacted in writing, informing them of your position and right to act as well as their entitlements. A copy of the Will should be provided where it exists. Where a beneficiary is either a minor or legally incapable, their legal guardian should be contacted.

**The Will.** This is the most important document and every effort must be made to locate it. It will typically be found among the deceased's important papers but if not, the safety deposit box or the deceased's lawyer will be likely locations.

**Proof of Death.** This will be required numerous times over the course of settling the estate. The funeral director can provide you with a Proof of Death document and multiple copies should be attained. At least one Provincial/ Territorial Death Certificate should be applied for since there may be certain institutions that will require this and not accept the funeral director's document.

## REDIRECT MAIL

It is a good idea to have the deceased's mail redirected to your address. This will certainly save time as well as give you an idea of the deceased's status of affairs and will help in determining which people and institutions need to be notified about the death.

## FREEZE ACCOUNTS AND SECURE ASSETS

As the Executor, you will be assuming control of all of the deceased's assets. As a result, all the interested parties will have to be contacted, and in some cases, proof of your capacity as Executor could be requested. As the key controller of assets, here are examples of accounts that need to be frozen and reassigned as estate accounts:

**Bank account(s).** Any accounts outstanding will need to be frozen and reassigned as estate accounts. This will enable you to accept any estate revenues coming in and make any necessary estate disbursements. You will need to meet the appropriate person at the bank/ trust company/credit union to set up the account and provide you with chequing privileges.

**Investment accounts.** The deceased may have had investment accounts with various financial institutions. These institutions must be contacted to be made aware that the account holder has passed away. When provided with the appropriate documentation (Death Certificate, Letters Probate, etc.), they will create an estate account with you as the trustee with control over the contents

**Pensions.** If the deceased was the recipient of a private pension from a previous employer, the pension administrator needs to be contacted so they can determine how to proceed. If the deceased left a spouse, then in most cases that spouse will be eligible for a survivor pension, typically some proportion of the original pension. Proper documentation will be required.

# The estate

As an Executor, your primary responsibility is to distribute the deceased's estate pursuant to their wishes as laid out in their Will, so it is important to determine what constitutes the estate.

Generally, estate assets are those over which the deceased had control and usually include such things as bank accounts, investment accounts, real estate and other personal belongings.

On the other hand, there are often assets over which the deceased had control but are not considered estate assets in the legal sense and are therefore not part of the Executor's responsibilities. These might include insurance policies, assets held jointly, and certain financial accounts registered under tax law.

When considering estate versus non-estate assets, it is crucial to appreciate the differences in taxation versus probate. As a reminder, probate is a Provincial/Territorial tax or fee imposed on the value of an estate. Therefore, non-estate assets are not subject to probate fees. In many cases, however, assets will be subject to income tax regardless of their estate status, and the Testator's estate will be responsible for the tax.



Although RRSPs/RRIFs remain tax-sheltered throughout the year of death and the following calendar year, any increase in value from the date of death to the date of payout is taxable in the hands of the named beneficiaries or to the estate. It is very important to take note of the nature of the assets under review, and tax advice should be sought. If certain criteria are met, these taxes can be reduced or eliminated.

# The Will

As a general principle, a person has testamentary freedom in regards to how they choose to distribute their estate upon their death, and a carefully drafted Will can usually back this up.

However, it is important to appreciate that even the best Wills are often challenged by disgruntled parties.



## HERE ARE A FEW INSTANCES WHERE A WILL MIGHT BE DECLARED WHOLLY OR PARTIALLY INVALID:

### **Bequests are made that breach some other area of the law.**

Family law will generally take precedence over a Will where the court feels that a family member has been harmed or disadvantaged. This would certainly be the case if there was a dependent child that was not taken care of through the Will. The courts will then step in to ensure that the child receives support from the estate. This principal applies to spouses as well. Family law also recognizes that a person cannot 'write their spouse' out of the Will, and the court will act to ensure that the spouse receives an equitable share of the estate.

**Imposition of a trust.** Some parties might try to make the case that the deceased and the estate owed them something. An example might be where one child has remained at home and abandoned a career to take care of a parent. If the parent subsequently leaves their estate to someone else, the stay-at-home child may seek compensation from the estate.

**Lack of capacity.** It is assumed under law that a person drafting their Will is of a 'sound and disposing mind'. This is rather subjective and will be decided by the court based on the facts at hand. Challenges to Wills often hinge on this and there may be attempts to show that the Testator did not really appreciate what they were doing or perhaps will try to show that the Testator was subject to some sort of coercion or pressure from other parties.

If legal challenges are mounted against an estate, the Executor should immediately seek out legal counsel.



# Seeking outside assistance

Settling an estate is a serious responsibility and must be done competently and professionally to satisfy the legal requirements as well as the beneficiaries.

This will often require assistance from outside professionals. There is nothing wrong with engaging and paying outside professionals provided that it can be shown that their expertise was required and that the compensation was reasonable. Even the simplest of estates can provide legal, tax, or accounting challenges. Professionals you may want to obtain expertise from include:

- **Lawyers.** Wills and estates are subject to Provincial/Territorial law and there are differences from jurisdiction to jurisdiction. It is prudent to seek out legal counsel when settling an estate. The more complex the estate, the more likely it is that legal assistance will be needed. However, even if the estate is simple in nature, there may be a time in the estate settling process when you could benefit from consulting with a lawyer.
- **Accountants.** Particularly where an estate involves business interests, it is prudent to consult with an Accountant. The deceased will often have had an Accountant they dealt with, and this person should be familiar with the deceased's financial affairs. This should help to clarify and expedite sorting out their finances. The Executor will probably be required to file at least two tax returns on behalf of the deceased and the Estate, and an Accountant can provide professional assistance in this area.



Even the simplest of estates can provide legal, tax, or accounting challenges.



- **Property assessors.** The need to have asset valuations can arise in various estate settlement situations, for example:
  - **Estate equalization.** The Testator may specify that a piece of real estate go to one beneficiary and that another beneficiary receives an equitable share in cash or other assets. In this case, it is necessary to determine the value of the real estate without an actual sale, therefore, an expert needs to be brought in to estimate the fair market value.
  - **Tax settlement.** It is assumed under tax law that when a person dies, all their assets are disposed of at Fair Market Value. Consequently, it is often necessary to get a professional opinion on value when an asset is not going to actually be sold. This could apply to assets such as real estate, or in a more complicated scenario, a business interest.
- **Trust companies.** The estate and trust professionals at Scotiitrust have been managing estates and helping Executors for over 120 Years. When you hire Scotiitrust to act for you, you are assigned a dedicated Trust Officer who will perform the many duties involved in the administration of the estate, reporting regularly to you and, where applicable, the beneficiaries, while you remain responsible for making key decisions. And, where the Will establishes one or more trusts, we can work with you in your long-term role as trustee.



**CONTACT INFORMATION**

**ACCOUNTANT**

Name \_\_\_\_\_ Name of firm \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

**ASSESSOR**

Name \_\_\_\_\_ Name of firm \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

**REAL ESTATE ASSESSOR/BUSINESS VALUATOR**

Name \_\_\_\_\_ Name of firm \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

**CHARTERED BUSINESS VALUATOR**

Name \_\_\_\_\_ Name of firm \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

**LAWYER**

Name \_\_\_\_\_ Name of firm \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

**FINANCIAL INSTITUTION/BROKER**

Name \_\_\_\_\_ Name of firm \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

# Tax considerations

It is a common saying that the only things that are inevitable in life are death and taxes, and in death, the two come together.

As an Executor, you will definitely be encountering the Canada Revenue Agency (CRA) and the Income Tax Act (ITA). As noted earlier, one of your responsibilities will be to ensure that all valid creditors of the deceased's estate are satisfied before the estate can be distributed, and the CRA will certainly be at or near the top of the list. Returns for the deceased taxpayer definitely differ from those who are alive with different rights and obligations. It is best to seek out the assistance of a competent accountant to ensure that the rules are followed and that any tax advantage is obtained. Below are a few areas of tax for you to consider:

## DEEMED DISPOSITION ON DEATH

Under Canadian tax law, it is assumed that when a person dies, all of their assets have been disposed of at Fair Market Value at that time. This will, of course, trigger capital gains (or losses) that must be reported for tax purposes. This can have serious tax implications where the tax cost of an asset (such as real estate or securities) is very low but the current market value is very high. The resulting tax bill can be large enough that an asset that was intended to be kept in the family must be sold to satisfy the tax bill. There are a few measures that might be taken to avoid or at least defer this tax liability:

### Spousal rollover

This is one of the most important tax deferral mechanisms available to Canadians. When a legal spouse is alive and the other spouse dies, it is assumed under tax law that the surviving spouse assumes



the asset at its tax cost rather than at its Fair Market Value. This serves to defer any taxable disposition until the widow or widower dies. Tax law assumes that this 'rollover' happens automatically but there may be situations where it makes sense to opt out of the rollover and recognize the capital gain. This is a strategy that can be used to soak up unused capital or non-capital loss balances in the hands of the deceased, which are otherwise lost. Consult with a tax expert to learn more about spousal rollovers.

### Principal residence exemption

This is one of the most generous tax avoidance measures available to the average Canadian. The rules are very specific, but in general this tax measure says that a taxpayer may protect the gain on the disposition of their Principal Residence from capital gains taxation. Consequently, if a person dies, regardless if they have a spouse, they can avoid any tax on the increase in value in their Principal Residence. When dealing with a person's estate, the Principal Residence Exemption needs to be considered and reported on the final return, whether or not there is a taxable portion of the gain on deemed disposition.

### Deferral of tax on death of a taxpayer

It is possible to elect to defer the payment of taxes caused by a deemed disposition at death. 10 equal instalment payments are required in this case. The first instalment must be made by the day the taxes were otherwise due.

Use Form T2075 Election to Defer Payment of Income Tax, Under Subsection 159(5) of the Income Tax Act by a Deceased Taxpayer's Legal Representative or Trustee. A tax specialist would be best to assist the Executor with this.

Although interest will be charged by the CRA, this option may provide much-needed relief when high value, low liquidity capital assets must be disposed of to pay taxes on deemed disposition.

## THE TAX RETURNS

As an Executor you will be responsible for filing at least one and perhaps several tax returns on behalf of the deceased and estate depending on the date of death. In the absence of self-employment income, here are important dates to consider:

- **Terminal returns.** The final tax return, also known as the terminal return, must be received by CRA as follows:

- **Death Occurred between January 1 to October 31.** File by April 30
- **Death occurred between November 1 to December 31.** File within six months after date of death (May 1 to June 30). Note however that balances due for the surviving spouse, who may file at the same time, must be paid on or before April 30 to avoid interest charges.



Returns for the deceased taxpayer definitely differ from those who are alive with different rights and obligations.

- **Death of a self-employed person.** Death Occurred January 1 to December 15: file by June 15. If death occurred in the period December 16 to December 31, file six months after date of death. Again, balances due for the surviving spouse, who may file at the same time, must be paid on or before April 30 to avoid interest charges.
- **Prior filed returns for the deceased.** The due dates above remain the same; Taxpayer Relief Provisions may be applied to file late or amended returns in the prior 10 years, and to waive penalties and interest in hardship cases.
- **Special privileges and relief options.** Executors who are filing final returns may take advantage of two important special privileges for deceased taxpayers that will provide additional relief:
  - **Rights and things returns.** These additional returns can be filed to claim personal amounts in full on each return – terminal and rights or things – and to split between returns and claim other benefits to the best advantage of the taxpayer on each return. Besides an additional personal return used to report things like: Old Age Security (OAS) benefits due and payable before the date of death; uncashed matured bond coupons; bond interest earned to a payment date before death, but not yet paid or reported; and unpaid dividends declared before the date of death, there are two other reports that can be filed:
  - **Optional return for partner or proprietor**
  - **Optional return for Graduated Rate Estate**

## ESTATE RETURNS

Where the estate has earned income on assets not distributed to the beneficiaries, a separate trust tax return must be filed. Note that a Graduated Rate Estate (GRE) of an individual is the name of the estate that arose on and as a consequence of the individual's death. It can run for no more than 36 months after the death. A T3 Trust return must be filed. Be sure to seek the services of a qualified professional for assistance.

## SPECIAL CONSIDERATIONS ON TERMINAL RETURNS

Terminal tax returns differ from ordinary tax returns in various respects. For example, depending on the nature of the income earned by the deceased, up to an additional three tax returns might be filed that will provide additional tax advantage as explained above. As well, additional tax advantage can be provided through the treatment of capital losses carried forward. It is advised to seek out the advice of tax specialists when planning to file final tax returns.

### [CRA clearance certificate](#)

You will definitely want to receive a clearance certificate from the CRA as proof that the deceased and estate have fulfilled their obligations.

## PROBATE FEES/TAXES

Probate fees, at least in theory, represent the administrative costs incurred in settling an estate. In practice, however, they are really taxes since the amount payable is directly related to the value of the estate. Probate fees vary widely across the country and the provincial laws need to be consulted.

Manitoba, for example, eliminated probate fees as of July 1, 2020. As with any estate debt, probate fees must be dealt with before any estate assets can be distributed.

Here is an example of how to calculate probate: Consider an individual who died with an estate value of \$500,000:

### ONTARIO:

No probate fees on the first \$50,000 of estate value  
\$15 per \$1,000 of estate value above \$50,000

Probate Fee Calculation  
\$15 x 450 ((\$500,000-\$50,000)/\$1,000)  
Total = \$6,750

A chart of the probate fees across Canada can be accessed [here](#).

# Insurance considerations

As an Executor you will probably be encountering insurance issues, and, depending on the nature of that insurance, be directly involved.

## LIFE INSURANCE

If the deceased had insurance on his/her life, then that coverage was probably revealed by either general knowledge or through the discovery of an insurance contract when reviewing the deceased's documents. The Executor's role in dealing with the insurance will depend on the nature of the insurance contract:

### The estate as beneficiary

If the estate is named as the beneficiary, then the Executor will be directly involved and is responsible for contacting the insurance company and providing evidence of death as well as their legal capacity to receive the benefit on behalf of the estate. It should also be noted that the insurance benefit would be part of the estate subject to probate.

### Some other party as beneficiary

If some other party is beneficiary, then the Executor does not play a role apart from informing the beneficiary and providing proof of death where required.



## DISABILITY, LONG TERM CARE OR OTHER PERSONAL INSURANCE COVERAGE

In the case where other types of insurance coverage are discovered, the Executor will need to contact the insurance providers to inform them that the insured is deceased.

## PROPERTY INSURANCE

For insurance on property such as a home, vehicle, boat, etc., the Executor will need to contact the insurance providers to inform them of the death and will also need to arrange for interim coverage while the estate is being settled.

Note: These organizations may ask for copies of the Death Certificate, and in some cases the Will, so it is important to ensure several copies are made.

# Distributing the estate

When all other estate responsibilities and liabilities have been settled, bequests can then be distributed to the beneficiaries.

However, there are several very important steps that need to be taken before the distribution begins. As previously mentioned, a Clearance Certificate should already have been received from the Canada Revenue Agency. The Executor is personally liable for taxes payable so no distributions should be made without that Clearance Certificate. In addition:



Prepare a final accounting of the estate settlement process. Each beneficiary should be provided with this to provide evidence that you carried out your duties fully and competently. The accounting should clearly lay out any disbursement made by the estate in the settlement process as well as any compensation that the Executor would be receiving.

Receive signed releases from each beneficiary acknowledging their understanding of the estate settlement. A lawyer should be brought in to draw up the release. If a beneficiary refuses to sign the release, legal advice should be sought before distributing any assets.

## TRANSFER OF ASSETS TO THE BENEFICIARIES

Once all the proper measures have been taken, the assets will be legally transferred to the beneficiaries. As the Executor, you will have assumed control of the estate assets and you will be directly involved in the final transfer process:

**Financial assets.** These will typically include the amount in bank accounts and investment accounts at financial institutions. The proper documentation and various tax forms will have to be filled out and signed by the parties. The estate departments at financial institutions will be well-versed in the details of this process and should be approached to assist in the final transfer.

**Real estate.** Depending on the nature of ownership (Joint Tenancy, Sole Ownership, Tenancy in Common), various different documentation will be required but typically Letters Probate will be necessary evidencing your legal rights as Executor. The Land Registry Office in the jurisdiction where the real estate is located should be contacted to ensure proper legal transfer is made.



# Resources for the Executor

While assuming your role as Executor, please refer to the following resources to help you along the way.

## AN EXECUTOR'S CHECKLIST OF INITIAL DUTIES

Where the deceased was a sole homeowner and the property must be maintained until the estate is settled, other responsibilities need to be considered immediately, and in many cases, arrangement for continuing service and payment from the estate need to be established.

| ACTION   | REQUIRED | DONE |
|--|----------|------|
| Plan the funeral   |          |      |
| Send death notification letters (refer to the death notification checklist) and consider immediacy |          |      |
| Apply for probate  |          |      |
| Notify creditors   |          |      |
| Locate the Will  |          |      |
| Notify beneficiaries   |          |      |
| Obtain proof(s) of death   |          |      |
| Freeze accounts and secure assets  |          |      |
| Redirect the mail  |          |      |
| Dealing with pets  |          |      |
| Home insurance   |          |      |
| In-home care workers   |          |      |
| Maintenance workers  |          |      |
| Newspapers   |          |      |
| Other home services such as Meals on Wheels  |          |      |
| Property taxes   |          |      |
| Social media accounts such as Facebook, LinkedIn, Twitter, Google+, Instagram                      |          |      |
| Utilities (heat, electricity, water, telephone)  |          |      |

## DOCUMENT CHECKLIST

Here is a list of important documents you will need to collect as the Executor of an estate. The following document checklist will help you keep track of the documents you will need and those you have already obtained or need to obtain.

| <b>DOCUMENT</b>  | <b>REQUIRED</b> | <b>OBTAINED</b> |
|--|-----------------|-----------------|
| Annuity statements   |                 |                 |
| Articles of incorporation  |                 |                 |
| Bank account statements  |                 |                 |
| Bank cards   |                 |                 |
| Birth certificate  |                 |                 |
| Business contracts   |                 |                 |
| Business leases  |                 |                 |
| Child support documents  |                 |                 |
| Credit card statements   |                 |                 |
| Credit cards   |                 |                 |
| Disability insurance contacts  |                 |                 |
| Divorce documents  |                 |                 |
| Driver's licence   |                 |                 |
| Group insurance contracts  |                 |                 |
| Health card  |                 |                 |
| Investment account statements  |                 |                 |
| Investment certificates  |                 |                 |
| Leasing contracts  |                 |                 |
| Life insurance contracts   |                 |                 |
| Loan documents   |                 |                 |
| Marriage license   |                 |                 |
| Mortgage contracts   |                 |                 |
| Net worth statements (Individual and balance sheets for business or holding companies) |                 |                 |

document checklist (continued)

| DOCUMENT   | REQUIRED | OBTAINED |
|--|----------|----------|
| Partnership agreements   |          |          |
| Passport   |          |          |
| Pension contracts  |          |          |
| Powers of Attorney   |          |          |
| Proof of death: <ul style="list-style-type: none"> <li>• Funeral home</li> <li>• Provincial/territorial</li> </ul> |          |          |
| Property insurance contracts   |          |          |
| Property insurance statements  |          |          |
| Real estate deeds  |          |          |
| Registered investment account statements   |          |          |
| Separation documents   |          |          |
| Social Insurance Card  |          |          |
| Tax assessments  |          |          |
| Tax returns trust documents  |          |          |
| Vehicle insurance  |          |          |
| Vehicle leasing contract   |          |          |
| Vehicle ownership  |          |          |
| Will   |          |          |

## CONTACTING THE GOVERNMENT – PENSIONS AND ENTITLEMENTS

### Veteran's Affairs Canada

Where the deceased was a veteran of military service, there may be government financial assistance available. If the deceased was a recipient of the War Veteran's Allowance, there may be support available for a surviving spouse or children. The Last Post Fund serves to provide assistance for

eligible veterans who lack the financial resources to pay for an honourable and appropriate funeral and burial. Coverage is subject to a financial means test. Details of the services provided and eligibility can be accessed [here](#).

### Contacting service Canada to cancel Canadian Pension Plan (CPP) and Old Age Security (OAS) benefits

In regards to government pensions and payments, typically there will be two government payments received by an older person, CPP and OAS. Even if the deceased had not actually been receiving benefits due to their age, Service Canada should be notified. A useful guide on how to proceed in cancelling OAS and CPP can be found [here](#).

### CPP death benefit

The CPP program provides for a lump-sum benefit for pensioners on death of \$2,500. This is designed to help pay for final expenses such as the funeral. The benefit should be applied for in writing within 60 days of death. The funeral director will most likely be very familiar with the process but the application can be accessed [here](#).

## DEATH NOTIFICATION CHECKLIST

Here is a helpful checklist of important parties that may need to be contacted and notified of the Testator's death:

| TO BE NOTIFIED   | REQUIRED | DONE |
|--|----------|------|
| Accessible parking permits                                     |          |      |
| Credit bureau  |          |      |
| Credit bureau (Equifax)  |          |      |
| Credit bureau (TransUnion)                                     |          |      |
| Credit card companies  |          |      |
| Deceased's employer  |          |      |
| Department of vital statistics                                 |          |      |
| Driver's insurance   |          |      |
| Driver's license   |          |      |
| Elections Canada   |          |      |
| Magazine subscriptions   |          |      |
| Passport office  |          |      |
| Private insurance companies (Life, Disability, Property, Auto) |          |      |
| Private pension administrators                                 |          |      |
| Provincial territorial health insurance                        |          |      |
| Service Canada (CPP, OAS)                                      |          |      |
| Social Insurance Number  |          |      |
| Veteran's Affairs Canada where applicable                      |          |      |

# When to engage a trust company

Being named as Executor is a big responsibility; and fortunately Scotiabank can help. Our Estate Assist service can be invaluable to Executors who face challenges and uncertainty in managing an estate.

## WHEN TO SEEK PROFESSIONAL ASSISTANCE

- If you face time or distance challenges.
- If you are uncertain about the tasks and duties required.
- If you are concerned about personal liability.
- If there are complex assets to handle like a business or income property.
- If you require support managing the needs of family and other beneficiaries.

## WHY SEEK PROFESSIONAL ASSISTANCE

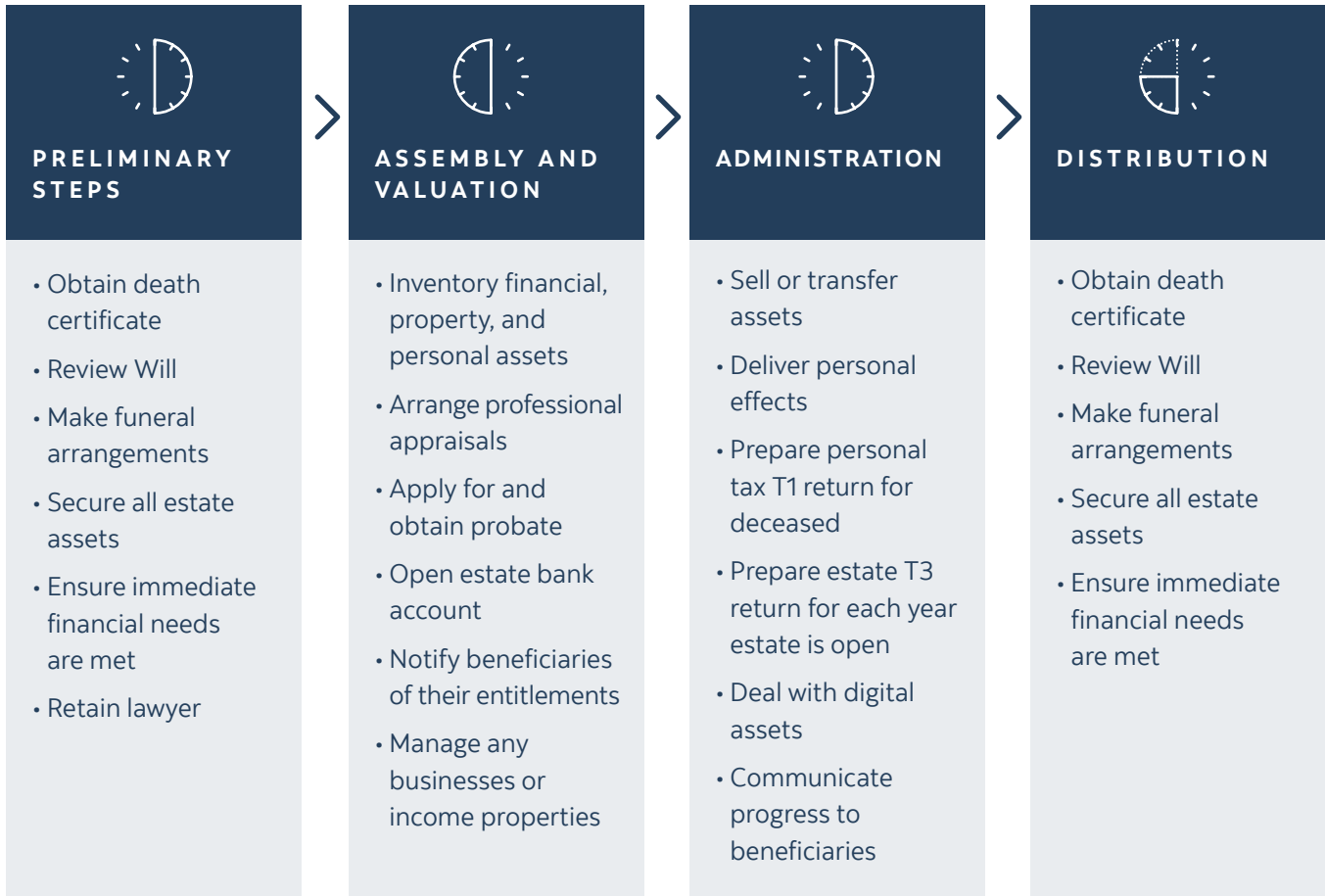
- To reduce the risk of your personal liability.
- To accelerate completion of the estate's administration.
- To allow you to rely on an impartial third party who is sensitive to the needs and concerns of family members/beneficiaries.
- To give you peace of mind at a most difficult time.
- To ease the day-to-day burden of being Executor for you and your family.

## THE SCOTIATRUST APPROACH

Estate Assist is a service provided to help Executors fulfil their role. Although many people consider it an honour to be appointed as Executor, there are some serious misconceptions about how time-consuming and demanding the role can be. In order to alleviate this burden at an already difficult time, Scotiabank's Estate Assist services can minimize personal liability and help clients who may face challenges with this role in terms of time, uncertainty, or distance, and/or who wish to avoid family conflict.

Scotiabank's team of professionals ensure that the administration of your loved one's estate is carried out with sensitivity, professionalism and objectivity. We can also draw upon other expertise within the Bank to meet your specific needs in areas such as real estate, private company dispositions, and Business and Family Advisory Services.

## OUR ESTATE ADMINISTRATION PROCESS

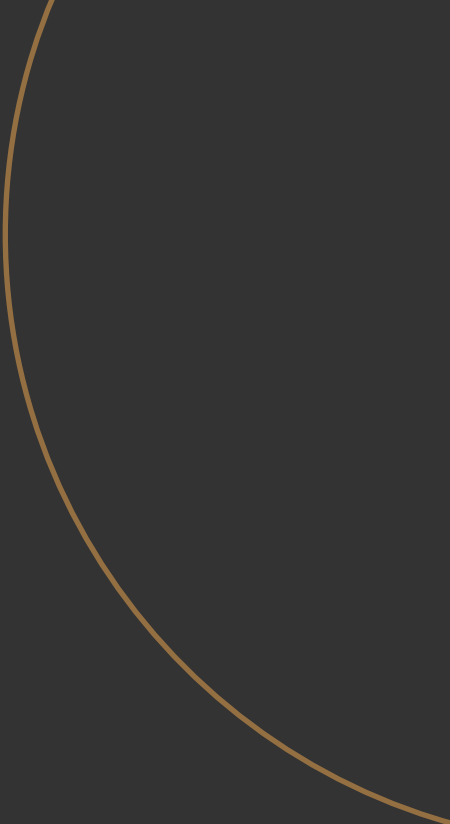


We hope this handbook has given you a better understanding of the responsibilities and obligations involved in becoming an Executor. It may also have given you an opportunity to reflect on your own estate and testamentary wishes. If you're looking for a detailed checklist to keep you on track, contact our team for a copy of the Executor Checklist.

Although planning your estate is an area some prefer to avoid, it is extremely important to take the time to ensure you have a thorough, well-considered and current Will in place. You will be doing your family, and certainly your Executor, a great favour by dealing with this very important aspect of life.

**To learn more about the specialized services at Scotiabank, contact The Farwell Group today.**





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