
VERHAEGHE LAW OFFICE
BARRISTERS & SOLICITORS
4902 - 48 STREET
ATHABASCA, ALBERTA
T9S 1B8

Att: Richard Verhaeghe
Timothy Verhaeghe
Ph. (780) 675-2534
Fax: (780) 675-3161

Email: Richard@Athabascalaw.com
Timothy@Athabascalaw.com
www.athabascalaw.com

Checklist for Executors

The following is not a complete list of the duties and responsibilities of an executor or executrix, but it does provide a good overview of the principal tasks:

- Make all funeral arrangements.
- Identify all savings and chequing accounts of the deceased. Notify all financial institutions about the death and obtain up-to-date information about the balances on deposit.
- Locate all insurance policies and obtain information about the amount payable on each. Notify the insurer of the death.
- Access and list the contents of the deceased's safety deposit box.
- Review the deceased's personal papers to determine all assets and liabilities (debts).
- Prepare a detailed statement of assets and liabilities.
- Arrange for storage and insurance of any assets that require it.
- Notify the beneficiaries of the death, if necessary, and advise them of their entitlement under the Will.
- Redirect mail and cancel any subscriptions or charge accounts. Return or destroy credit and charge cards.
- Obtain all unpaid wages and other benefits from former employer.
- Apply to the court for Letters of Probate.

- Advertise for creditors, if necessary.
- File income tax returns for year of death and any outstanding from former years.
- Apply for Canada Pension Plan benefits, if any. (If the deceased ever worked outside Canada, foreign social security benefits may also be payable.)
- Apply for any amounts payable to the estate under insurance policies.
- Pay funeral expenses, income taxes payable and all debts of the deceased.
- Pay money bequests and distribute specific gifts of property according to the instructions in the Will (be sure to obtain receipts and to retain sufficient cash to carry out the final steps).
- File the estate's income tax return and pay any tax owing (i.e., if the estate earned any income following the death of the deceased).
- Pay legal fees and any outstanding fees related to administering the estate, including compensation for personal representative(s).
- Determine residuary beneficiary preferences for distributions and arrange sale or transfers of the estate assets to the rightful beneficiaries.
- Apply for Tax Clearance Certificate for final distribution from the CCRA.
- Have Beneficiaries sign Final Releases before making a final distribution.
- Prepare and distribute a final report to the beneficiaries.

Being an Executor

The purpose of this document is to provide some basic information about being an executor. It does not contain a complete statement of the law in the area and laws change from time to time. If somebody has asked you to act as an executor and you have specific questions about your role you should contact a lawyer.

What is an executor?

An executor is the person or trust company named in a will to administer an estate. The person who made the will (called the **testator**) expects the executor to settle the estate and distribute the property to the beneficiaries according to the instructions set out in the will.

What is included in the estate?

The estate includes everything owned by the testator at the time of his or her death. For example, the estate might include a house, cottage, automobile, bank account and investments. It would also include any property that comes into the estate after the testator's death. Since the testator is not there to administer it, the executor assumes the responsibility for handling all matters associated with carrying out the wishes of the deceased and winding up the estate.

What are the executor's duties?

The executor is responsible for arranging the testator's funeral, taking possession of all the testator's property, documents, and accounts, making a list of them, having the estate probated if necessary, paying the debts of the estate, and distributing the estate to the beneficiaries.

What does the executor do upon learning of the testator's death?

As soon as the executor learns of the death of the testator the executor must decide if he or she is still willing and able to act as executor. Usually, the person named as executor has discussed their role with the testator in advance so this should not be a problem.

The first event that must take place is the testator's funeral. Ideally, the testator's family and executor will know where to find any specific funeral instructions. These should be in a safe place so they can be referred to upon the testator's death. If this has not happened, the executor will have to find and read the will to see whether it contains funeral instructions.

What if the will does not give specific instructions? What if there are no instructions for burial arrangements?

Where the testator has given no instructions, as for example about the place of burial or the type of funeral, the executor has the right to decide the matter as he or she thinks best. If there is doubt about the testator's wishes, the executor should allow the family of the testator to choose an appropriate funeral arrangement. The funeral expenses are payable out of the estate.

When does the executor read the will?

As soon as possible, the executor should find, and carefully read, the original will. It is not advisable to put one's funeral instructions in one's will. Often the will is not read until after the funeral. The will should help the executor verify certain points, such as:

- notice to next of kin and heirs.

- security of properties and other goods.

- special arrangements to be made if perishable goods are involved.

- steps to be taken to meet the immediate financial needs of dependents.

- determination of cash needs for the administration of the estate.

Can I refuse to act as an executor?

You are under no obligation to act as an executor. You can refuse the position when the testator first asks you. Or, if you agree to act as the executor, you may still change your mind at the time of the testator's death. If you are unable to act as executor when the beneficiaries ask you to distribute the inheritances, you can refuse to act. You will automatically lose all rights of executorship.

If I start my duties as executor can I change my mind later?

Once you begin to carry out the duties of an executor, you cannot just walk away. By law your intervention in the estate makes you responsible for the executorship. If you wish to back out after you have taken control of the testator's property, you must formally renounce your position. To do this, you must submit the renunciation in writing to the Surrogate Court.

This does not mean that you cannot ask about the assets and liabilities of the estate. However, your actions may establish you as the executor. You should therefore be careful before taking any actions that may commit you to this position.

Can I be held responsible for mistakes I make while acting as an executor?

It depends on the circumstances. You must act for the estate as if it were your own property. An executor who is reasonably prudent in carrying out his or her duties will probably not be held responsible if things go wrong. However, if the executor is careless, he or she can be held responsible for the losses suffered by the estate. For example, if you make frivolous investments or unauthorized expenditures on behalf of the estate, you may be liable. You might have to repay losses personally.

Can I get help if administering the estate becomes complicated? May I hire a professional?

Yes you may. It is important that you handle the estate properly because you may be held responsible for your mistakes. When you are in doubt about what to do, it is wise to consult a professional. Reasonable fees charged for professional services would be paid by the estate.

When might I need the help of a lawyer?

A lawyer may be able to help an executor in the following ways:

- provide opinions about the meaning of the will;
- offer advice on your duties as executor;
- complete instruments of conveyance;
- apply for probate of the will where necessary;
- prepare and obtain receipts for inheritances delivered, etc.
- arrange for the registration of assets in the name of the executor.

Will I be paid for my services as executor?

The executor has the right to be paid for his or her services. If the testator has made no provision for payment in the will, then you can make a claim for financial compensation before the Surrogate Court. The fees that you receive as executor are taxable (to you). The executor also has the right to be reimbursed for all reasonable expenses made while administering the estate. Family members will often agree to administer an estate without taking a fee. You should discuss this with the testator. Whatever you agree to should be set out in the will.

How long does it take to settle an estate?

A simple estate can take a few months while a complicated or contested estate can take 18 months to several years or more.

When do my duties as executor end?

The executor's duties end as soon as the estate is completely settled. This normally means when all the debts of the estate have been paid, including income tax, and the testator's property has been distributed according to the will.

In rare situations, the executor may be obliged to reopen the estate after it is closed. For example, the discovery of sums of money, even 20 years after the death of the testator, would force the executor to reopen the estate and distribute the money according to the instructions in the will.