

Being an EXECUTOR



This booklet is about putting your affairs in order and planning for the future. This booklet gives general information only, not legal advice. It is not a do-it-yourself guide. For that, you need a more detailed self-help publication or legal advice. See page 11 on where to get this help.

You should not rely on this booklet for legal advice. It provides general information only.



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What is an Executor?

An executor is the person named in a will to carry out the directions contained in the will. The executor is responsible for settling the person's affairs after death. The person's estate (everything he or she owned) passes temporarily to the executor.

The executor locates all of the person's assets, pays the funeral costs, debts and taxes, and then distributes the remaining money and property according to the instructions in the will.

The executor is accountable to the beneficiaries. For example, the executor must let the beneficiaries know when he or she is applying for probate, and must keep records and give all beneficiaries a final statement of accounts.



What the Words Mean

Assets: What you own. Assets can include things such as money, land, investments, and personal possessions such as jewellery and furniture.

Beneficiary: A person or organization that you leave something to in your will.

Debts: What you owe. Also called liabilities. At death, these may include credit card balances, loans, and mortgages.

Estate: All of the property and belongings you own at your death. The estate does *not* include property you own with someone else in joint tenancy, or joint bank accounts. The estate does not include insurance policies, RRSPs or RRIFs, or other things you own which specifically name someone as your beneficiary.

Executor: The person you name in your will who is responsible for managing your estate and for carrying out the instructions in the will.

Probate: A legal procedure that confirms the will can be acted on and authorizes the executor to act. The procedure includes submitting special forms and the original will to the BC Supreme Court Probate Registry.

Trust: A part of your estate that is set up to ensure ongoing income for a beneficiary, usually a dependent child.

Trustee: The person or company you name to manage a trust.

Being an Executor

Being an executor takes time, energy and careful attention to detail. An executor can get help from friends and family members and also from a lawyer or accountant if necessary. However, the executor is the person who is legally responsible. An executor will make the decisions, watch over everything, and keep accurate records.

How difficult is it to be an executor?

Your task will be fairly simple if you are an executor of an estate in which there is only a car, a house, some personal belongings, and a bank account.

Your job as an executor may be more complicated if:

- there are many beneficiaries and they are difficult to locate
- the person who died owned a business
- the person had a lot of investments and debts
- the will includes a trust
- the will is challenged by someone who feels left out of the will

A daughter's experience:

I was executor of my mother's estate. It was quite simple because she had distributed many of her possessions before she came to live with us. I didn't have any trouble except that she left specific amounts of money to the beneficiaries and there wasn't enough money to go around. I learned from that. When I made my will, I put in percentages instead of actual amounts. I didn't take a fee for being executor because it was for family and it didn't take long to do the job.

Do I have to act as executor?

If someone asks you to be an executor and you don't want to do the job, you can simply say no. You can also resign later, after the person has died. However, the law says that in order to resign in this way you must not have "intermeddled" in the estate. There is no clear definition of what this means. It is best to decide early on if you do not want the job, before you make decisions that affect the estate.

If there is a co-executor, he or she can take over. You must sign a "Renunciation of Probate" form. This form says you are resigning and you have not interfered in the estate. See page 11, "Useful Publications," for where to get the form.

If there is no co-executor, the alternate executor can take over. If there is no alternate named in the will, someone will have to apply to become administrator of the estate. See page 11, under "Useful Publications."

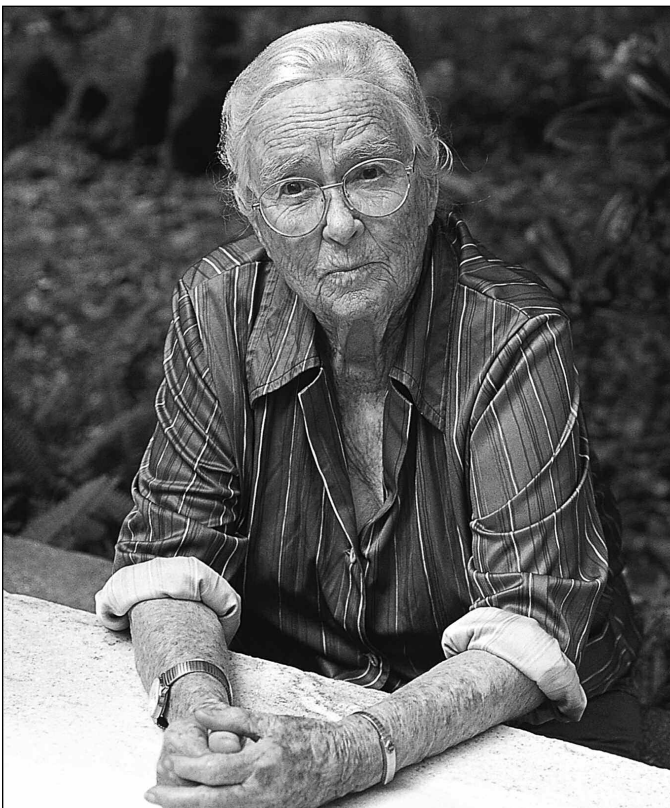


It's best to agree to act as executor only if you feel you can do the job well and give it your time and attention.

Tips for executors: When you agree to act as an executor, make sure you have an up-to-date copy of the will. Keep it in a safe place where you can find it easily. Keep a written record of all your activity as executor and keep all receipts and financial records of the estate.

A senior's experience:

I found out after my brother died that he had named me executor. He didn't ask me first. Although I loved my brother, I didn't want the job. I was 78 years old. Also, I live in Alberta and he lived in BC. It was going to be too difficult. So I signed a Renunciation of Probate form, and the alternate executor took over.



Does an executor get paid?

Any expenses the executor has while settling the estate are paid for out of the estate. Examples of expenses are photocopying, postage, and long-distance phone calls.

Sometimes the will states the executor's fee. This is the maximum the executor can receive. If the will does not list any fee, the executor may take up to five percent of the gross value of the estate and five percent of the income. The amount depends on how much work is involved and whether the executor hires professional help or does it all him or herself. The executor may also receive an annual care and management fee of .4% of the estate, in cases where the executor continues to act over a long period.

Sometimes the will leaves the executor a special gift for doing the job. In this case, he or she will get an executor's fee as well, but only if the will says so. The executor may prefer to take a gift rather than a fee because a fee is taxable but the gift (jewellery, cash, real estate, etc.) given under the will is not.

If there is more than one executor, the fee is split, but not always equally. It depends on who does the most work.

Often an executor does not accept a fee. This is common if the executor is a spouse, family member, or close friend. An executor who is also a beneficiary may apply for a fee, unless the will says that this cannot happen.

The executor applies for the fee when he or she prepares the accounts for the beneficiaries to approve. If the beneficiaries do not agree with the proposed executor fee, they can require the executor to show his or her accounts to a Registrar of the Court, who will set the fee.

What if I have disagreements with the other executor?

If the executors do not agree, it may cause problems. For example, if one executor wants to sell the house and the other disagrees, there will be no sale.

If you have serious disagreements with other executors you may need to contact a lawyer. Disputes may have to be settled in court.

If there is more than one executor, you are legally responsible for what the other executor does. For example, if the other executor takes funds from the estate, you have to make up the loss. You can then sue the other executor.

When does my responsibility as executor end?

The executor remains responsible for looking after the estate if assets or debts turn up years later. Even if the estate has already been distributed, you will be legally responsible for dealing with them. There is no set time when the responsibilities of the executor are finished unless the court formally discharges you. In practice, most people say it takes about a year to complete the work of executor for a straightforward estate.

Should I get help from professionals?

Many executors do the work themselves. Others may hire a lawyer to do some or all of the work. Probate is considered legal work and only lawyers can do it on behalf of an executor.

Some executors may hire a lawyer to handle complex business matters and an accountant to prepare the final tax return.

Both lawyers and Notaries Public can help you if you need to provide affidavits (a written oath that swears the information you give is true).

Professional fees are paid out of the estate. Ask beforehand about costs, the amount of time involved and the service provided.



What Do I Do First?

Here are ten steps the executor may take when the person dies. The order of the steps will depend on the situation. It may seem like a lot to do in a short time, but you will find that one step leads to another. This outline can help you get organized.

For more information, see “Where Can I Find Out More?” on page 11. You may want to talk to someone you know who has been an executor. But remember, no two wills or estates are exactly the same.

1. Locate the will and read it as soon as possible

The will may have instructions about the person's wishes for organ donation, burial or cremation, and/or funeral or memorial service.

Many people keep the original will in a safety deposit box. Try to find the keys and tell the manager of the financial institution that you are the executor and are looking for the original will. If you can't find the key, the box can be drilled open for a charge. Some people leave the will with their lawyer or Notary Public. However, problems can arise if they have not kept in touch with the lawyer or Notary, who may have died, or moved or sold the business.

What if I can't find the will?

If you can't find the will, check with the Wills Registry at Vital Statistics. They may know where the will is located. If the Wills Registry has no registration of any will, you cannot proceed with probate. You must apply for what are called “letters of administration.” You become the administrator rather than the executor. The procedures are similar to those for probate, and you can use a self-help manual. See page 11 under “Useful Publications.”

2. Arrange for burial or cremation

Legally, the executor is responsible for arranging burial or cremation. Often people leave instructions about what they want. If there is any question about what the person wanted, the executor has the legal authority to decide.

3. Protect the assets

As executor, it is your responsibility to protect the assets. For example, you may want to make sure they are insured and safe. You may wish to place valuable papers, cash, or jewellery in a safety deposit box. You may need to change the locks on the person's house. If the person owned a business, you will need to arrange for its ongoing and proper management.

4. Obtain the death certificates and do a wills search

The Division of Vital Statistics handles both of these matters. They provide the forms you fill out and return. You may want to order more than one death certificate so you can deal with more than one institution at a time. There is a fee for each death certificate.

If you are probating the will, you must do a wills search to make sure the will you have is the most recent one. Fill out the form Vital Statistics provides and return it with the fee. If the person used more than one name, you will have to search under each name for an additional cost per name.

Vital Statistics will check to see if the will was registered and where the wills notice says the original will is kept. They send you a formal reply that you need for probate.

To find out what the fees will be, contact the Division of Vital Statistics.

To contact the Division of Vital Statistics, look in the blue pages of your telephone book under Province of British Columbia- Vital Statistics. You can call 604-660-2937 (Lower Mainland), 250-952-2681 (Victoria) or toll free from elsewhere: 1-800-663-8328.

You can also get information from the Division of Vital Statistics website at: www.vs.gov.bc.ca

5. Decide if it is necessary to probate the will

Probate is the procedure that confirms the will can be acted on and that you have the authority to act as executor. If the person owned real estate, probate is required.

Check with any institutions that hold the person's assets to find out what they require. Sometimes financial institutions will not release the person's money without confirmation of probate. It depends on how confident staff are that you have authority to act. If they know you and your relationship to the deceased, they may be satisfied just to see the death certificate and the will.

6. Get the forms you need for probate

The Probate Registry does not provide forms. They will give you a list of forms you need, and refer you to the Self Counsel Press publications, Probate Guide for BC and Probate Forms. These are available from public libraries, and sold at bookstores, legal stationery stores, or the Self Counsel Press office at: 1481 Charlotte Road, North Vancouver V7J 1H1. Phone: 604-986-3366.

You will need to sign some of the documents in front of a lawyer, a Notary Public, or a

“commissioner for taking affidavits.” All court registries have a “commissioner for taking affidavits.” Some community groups do as well.

When you sign, it means you are swearing or affirming that the information you are providing in the document is true.

7. Notify the beneficiaries

You must notify all the beneficiaries named in the will and anyone else who may have a legal claim on the estate such as a common-law spouse, children, or a separated spouse. You don't need to have a gathering to “read the will,” like in the movies. However, you must send them a copy of the will and a copy of your Notice of Intent to Apply for Probate.



8. List the assets and liabilities

The “Statement of Assets and Liabilities” is one of the forms you fill out for probate. It has four parts: 1) a list of real property (the person’s home); 2) a list of personal property (cash, jewelry, furniture, pension and death benefits, etc.); 3) a list of debts; and 4) a distribution list (beneficiaries names, addresses, relationship to deceased and gifts they are to receive).

Parts one and two ask the value of the asset at death. You need to give the amount or, if the asset has no value, put ‘nil’ or ‘none’. To determine the market value of the person’s home, refer to the Property Assessment Notice. For other assets you may need to contact an appraiser or dealer.

Do not list assets that are owned in joint tenancy or that name a specific beneficiary, such as an RRSP. These do not form part of the estate.

If you are not sure you know about all the debts, you may wish to advertise to creditors who have claims against the estate. This is more necessary if the person owned a business. You can publish a notice in the BC Gazette and a number of times in a local newspaper. If done correctly, it will also protect the executor from later claims that the executor had not given notice to the beneficiaries.

Remember, if there is nothing to list under one of the headings on the form, write ‘nil’ or ‘none’. Blank spaces may suggest that information is missing. This is one of the main reasons forms are rejected.

9. Apply to probate the will

In most cases, you don’t actually go to court to get probate. You need to fill out specific forms. Then take them, along with the original will and the reply from the wills search, to the Probate Registry of

any Supreme Court of British Columbia. To contact the local Probate Registry of the Supreme Court look in the blue pages of your telephone book under Province of British Columbia - Court Services. Or call Enquiry BC: 604-660-2421 in the Lower Mainland; 1-800-663-7867 outside the Lower Mainland.

You will need to pay a fee when you file the documents. At the time of printing of this booklet:

- there is no fee for an estate where the gross value of the assets is less than \$25,000
- the fee is \$208, plus \$6 for each thousand (or portion) over \$25,000 to \$50,000, and plus \$14 for each thousand (or portion) over \$50,000

These fees are subject to change. Phone any Probate Registry in BC to check.

10. Obtain probate

After the registry staff determine that your forms are in order and the fees are paid, you will get a “Grant of Probate.” This is a legal document that allows you to deal with the estate.

If your application is rejected, the staff will tell you the reason. You can correct the problem and reapply. You only have to pay the filing fees once.

If the will was made in another province, is it still valid?

If someone dies in BC, but had a valid will in another province, an executor may be able to act on the will. The process may be more complicated.

It is always a good idea to make a new will when you move to another province.

Executor's Checklist after Probate

Here's a checklist of general tasks after probate, in order of priority. While being an executor does not have to be difficult, there are lots of details and you need to be organized. This offers a brief outline. For a more detailed self-help guide, please see page 11, "Useful Publications."

○ Deal with assets

The following are some of the things you may have to do. Remember these do not apply to assets owned in joint tenancy.

- Close all bank, credit union, trust company accounts the person held. You may want to put all money into one account for the estate.
- Send in claim forms for death benefits or pension benefits. This may involve contacting the employer, the union, Canada Pension, Old Age Security, Veterans Affairs.
- Collect any money coming to the person or the estate including salary and insurance.
- Apply to transfer assets such as real estate property, a car, bonds and other items with a registered title. Assets of the estate are transferred first to the executor and then to the beneficiary. These steps are often done at the same time. The land title office has the forms for transferring real estate. Autoplan handles transfers of motor vehicles.
- Keep records of all income received and any expenses paid. Keep copies of all letters and forms you send.

○ Pay debts and expenses

Pay all the outstanding debts and expenses. In most cases you pay them in the following order of priority.

1. reasonable funeral expenses

2. probate fees, legal costs
3. municipal and income taxes
4. all other claims as of the date of death

If the estate does not have enough money to pay all outstanding debts, it is very important to get advice from a lawyer as soon as possible so that you do not become personally liable for the debts.

○ Prepare and file income tax returns

You need to file a final income tax return for the person. If the person had assets or income in another country, you may need to file a foreign income tax return as well. Ask Canada Revenue Agency for their booklet "Preparing Returns for Deceased Persons." This guide is available for downloading from their website at www.ccradrc.gc.ca.



After the income tax is reported, assessed and paid, apply for a Clearance Certificate. For your own protection, you should have this certificate before you begin to distribute the estate. Call Canada Revenue Agency for information and forms.

○ Distribute the estate

Do not distribute the estate until six months after probate is granted. You do this to make sure that no one is going to challenge the will. If all those who have a claim on the estate sign a form saying they will not contest the will, you can go ahead sooner.

The following are your general tasks. There are extra duties if the will includes a trust; please see the box on this page.

- Distribute gifts of cash (legacies) and gifts of personal belongings (bequests) to people or organizations named in the will. Sometimes the person attaches a separate list with the will that



says who should receive particular items. While this is not legally binding — if the item is not mentioned in the will — it makes the executor’s task easier.

- Prepare a final statement of assets, debts, income, expenses and distribution. This is for the beneficiaries to approve and is called “passing of accounts.”
- If any cash and belongings remain after you distributed the specific gifts, divide the remainder (the “residue”) as instructed by the will. If the will does not have a residue clause, you must distribute the remainder as if there was no will. This is set out in the Estate Administration Act. The Probate Guide listed in the next section may help.
- If a beneficiary is a non-resident of Canada, you may need to obtain a clearance certificate from Canada Revenue Agency.

If the will includes a trust

A trust is a part of your estate that is set aside in your will for a beneficiary, most often a child. For small or simple estates, the executor is often also the trustee. In larger or more complicated estates, there may be a different trustee, such as a trust company.

If you are acting as trustee, you are responsible for making sure that all the assets are invested or kept in a safe place, and for filing annual trust tax returns. You are also responsible for making payments to the beneficiary of the trust as directed by the will. You can get help with these tasks from a lawyer and an accountant. Contact Canada Revenue Agency (Revenue Canada) for a copy of the booklet called “T3 Trust Guide.” You can download this guide from their website at www.cca-adrc.gc.ca.

Where Can I Find Out More?

Useful Publications

Self Counsel Press publishes **do-it-yourself guides** on legal topics, including Probate Guide for BC, Probate Forms, and Wills for British Columbia. They are available from public libraries, bookstores, and legal stationery stores throughout BC.

Note: the Probate Guide and Probate Forms include information on being an administrator of an estate.

Community Groups

In many communities there are people that can provide information about legal issues. Ask your local seniors' centre, community information centre, public library, or Royal Canadian legion.

Senior Citizen Counsellor Program

Volunteer counsellors are appointed by the Ministry of Health Services to assist other seniors. They can provide information on provincial programs and refer you to service agencies. To contact a counsellor, call the Ministry's BC Health Information Line.

- In Victoria, phone: 250-952-1742
- Anywhere else in BC, phone toll-free: 1-800-465-4911

Or visit their website at: www.gov.bc.ca/health/

Law Line

The Law Line is a phone-in service of Legal Services Society. Staff can answer legal questions but cannot give legal advice.

- Lower Mainland, phone: 604-408-2172
- Outside the Lower Mainland, phone toll-free: 1-866-577-2525

Or visit their website at:

www.lss.bc.ca/general/LawLINE.asp

Hours: 9:00 a.m. - 4:00 p.m. Monday, Tuesday, Thursday, and Friday
9:00 a.m. - 2:30 p.m. Wednesday

Dial-a-Law

Dial-a-Law is a library of pre-recorded tapes with information about the law in BC. For example, they have tapes on making a will; getting ready to handle an estate in probate; and the disappointed beneficiary.

- Lower Mainland, phone: 604-687-4680
- Outside the Lower Mainland, phone toll-free: 1-800-565-5297

Or visit their website at: www.dialalaw.org.

Electronic Law Library

The BC Courthouse Library Society maintains an Electronic Law Library (ELL) with an extensive collection of links to government information, legislation, court decisions, and specific areas of law.

Visit their website at: www.bcpl.gov.bc.ca/ell/

Law Students Legal Advice Clinics

These clinics provide information and assistance about choosing or being an executor, and making a will.

In the Lower Mainland, law students at the University of British Columbia hold free legal clinics in different locations. To find out how to apply, phone: 604-822-5791.

Or visit their website at: www.lslap.bc.ca/main/

In Victoria, the Law Centre provides free legal clinics to people who are financially eligible. To find out how to apply, phone: 250-385-1221.

Or visit their website at: www.thelawcentre.ca/

Lawyer Referral Service

The BC Branch of the Canadian Bar Association operates the Lawyer Referral Service, funded by the Law Foundation of BC. The Service enables members of the public to consult with a lawyer for up to 30 minutes for a fee of \$25, plus taxes. After the consultation, the fees to be charged are strictly

between the lawyer and the client. The lawyer is not obliged to accept the applicant's case and the applicant is under no obligation to retain the lawyer.

- Lower Mainland, phone: 604-687-3221
- Outside the Lower Mainland, phone toll-free: 1-800-663-1919.

Or visit their website at:

www.cba.org/bc/initiatives/main/lawyer_referral.aspx.

A Notary Public Near You

You can go to a Notary for help with making a will and executing affidavits. To get the name and telephone number of a Notary Public near you, phone the Society of Notaries Public of BC. Ask the Notary Public how much it will cost for a first meeting.

- Lower Mainland, phone: 604-681-4516
- Outside the Lower Mainland, phone toll-free: 1-800-663-0343

Or visit their website: www.notaries.bc.ca/.

Public Guardian and Trustee Office

This government office looks after the estates of people who die without a will, and who have no heirs who are willing and able to take over.

The Public Guardian and Trustee also manages estates where there is a will, but the executor has died or is not able to act and there is no alternate executor and no heirs to take over. The Public Guardian and Trustee charges fees to manage and settle the estate.

Public Guardian and Trustee Office
700 - 808 West Hastings Street
Vancouver, BC V6C 3L3

- Lower Mainland, phone: 604-660-2421
- In Victoria, phone: 250-387-6121
- Outside the Lower Mainland, phone toll-free: 1-800-663-7867

Or visit their website: www.trustee.bc.ca/.

The People's Law School

The People's Law School is a non-profit Society whose purpose is to provide British Columbians with reliable information about their rights and responsibilities under the law.



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This booklet and others are available under Publications on the People's Law School website:

www.publiclegaled.bc.ca

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You should not rely on this booklet for legal advice. It provides general information only.