



**EXECUTOR RESPONSIBILITIES:  
THE LEGAL PROCESS EXPLAINED**

The passing of a loved one may be expected. It may even be welcomed, in certain circumstances. However, it is never easy. Handling all of the administrative details while mourning can be challenging. We designed this material to provide you guidance and assistance throughout the process.

## 1. IMMEDIATELY AFTER DEATH

This is the most confusing and difficult period. The hospital staff will usually provide initial guidance on the handling of the remains. You must plan for the funeral. It is not necessary to consult the will at this point. That will come later, when things settle down. When making the funeral arrangements beware of deceptive or aggressive funeral home practices. Some funeral homes prey on grieving families. They may attempt to persuade you to spend more than necessary. We recommend doing some online research prior to attending. It should only take a few minutes, but will help you navigate the process. If the deceased received OAS or CPP benefits from the federal government, you should notify them of the death. The estate is entitled to keep the payments made in the month of death. If further payments are received for the following month, those must be returned. You must attend a Service Canada location and they will provide you with the necessary documents. You should also cancel the deceased's Canadian government issued ID, such as SIN, Passport, or citizenship ID. Finally, you should notify CRA. The final income tax filing is discussed at paragraph 7.

You should advise the deceased's bank and investment companies of the death. They will freeze the accounts until the court issues letters of probate or administration. This will prevent any unauthorized activity. The estate will likely have debts, such as funeral or credit cards, that must be paid prior to issuance of letters of probate/administration. Most banks and credit unions will allow you to pay those debts from the deceased's account if you provide them with a copy of the receipt. This is done as a matter of courtesy and not mandated by law, so it is up to the institution to provide assistance in accordance with its own policy.

## 2. NO WILL

If a person dies without having signed a will, he or she died intestate. You must first determine who is best suited to handle the responsibilities of managing the legal process of distributing the deceased assets according to law.

The Intestate Succession Act of Manitoba governs the process. The person responsible for managing the process is called the “personal representative” or “administrator/administratrix”. To qualify, that person must be a Manitoba resident and of the age of majority. The law also establishes an order of priority of those who can apply. A spouse has first priority. Adult children have second priority. Parents have 3rd priority, and so on. Once a qualified person accepts the responsibility, he or she must apply to court to be named Administrator/Administratrix and to receive “Letters of Administration”. This is a court document that you will provide to banks and insurance companies to access the funds. with an equal or higher priority must renounce their right to act.

## 3. APPLICATION FOR LETTERS OF PROBATE OR ADMINISTRATION

The application for Probate and Administration are, for all practical purposes, almost identical from this point forward. While not mandated, we recommend that you hire a lawyer to assist you through the process. Court procedures are very detailed and complicated. The court will reject documents that do not meet their exact standards. To compound the problem, the court does not provide any guidance or assistance.

You will need the following documents/information when meeting your lawyer:

- The original will (unless the deceased died without a will)
- A complete list of the deceased assets which include:
  - All real estate holdings or properties;
  - Most recent bank account statements for all accounts in all banks, including TFSA;
  - Most recent investment statements, i.e. RRSP, RRIF, GIC; An estimated value of the deceased personal property; A detailed list of furniture, vehicles, and equipment is NOT required.

(list continues)

- Any high value, non-depreciable item such as a work of art, a valuable collection, or collector car. Personal vehicles depreciate and are not included in this list.
- Names, addresses and telephone numbers of all beneficiaries named in the will. If there is no will, names, addresses and telephone numbers of spouse, children, parents, and siblings.
- Life insurance policies

You should also open a bank account for the “Estate of the (Name of the Deceased) “ so you can deposit any cheque issued to the Estate of \_\_\_\_\_. Should you apply for the death benefit from CPP, the cheque will be issued to the Estate of \_\_\_\_\_.

#### 4. COURT APPROVAL

Once your lawyer receives all of this information, he/she will send the court mandated documents to all residual beneficiaries and prepare the request for letters of probate/ administration. Once prepared, you will meet with your lawyer to sign the request. The lawyer then submits the request to court. Provided the judge accepts to issue Letters, the process can take anywhere from 3 to 6 weeks.

#### 5. LETTERS OF PROBATE/ADMINISTRATION

Once you have the Letters of Probate/Administration, you will be able to distribute the estate. The letters will permit you to withdraw funds from the deceased’s bank accounts, liquidate investments such as RRSP, RRIF, and GIC, and transfer title of real property.

#### 6. PAY DEBTS

Before you distribute the assets though, you MUST pay off all debts. The executor/ administrator is responsible to pay those debts. If you do not, creditors have a right to sue. We recommend publishing notice to creditors in two publications. Your lawyer can manage this on your behalf. The estate will likely have debts, such as funeral or credit cards, that must be paid prior to issuance of letters of probate/administration. Most banks and credit unions will allow you to pay those debts from the deceased’s account if you provide them with a copy of the receipt. This is done as a matter of courtesy and not mandated by law, so it is up to the institution to provide assistance in accordance with its own policy.

## 7. REVENUE CANADA

The executor/administrator must file the deceased's final (or terminal) tax return. If the estate continues to earn income or interest, or receives a death benefit under the Canada Pension Plan after the date of death, then the estate must also file a tax return. We recommend that you consult with an accountant to ensure you complete this properly.

Once the tax return(s) are submitted and you received the notice of assessment(s), you should apply for a clearance certificate. This certificate protects you as executor in the event CRA reassesses and claims more taxes are due. If you do not obtain a clearance certificate, CRA may pursue you personally for the estate's tax liability.

## 8. DISTRIBUTION

Once you are satisfied all debts have been paid and filed the tax return you can make an initial distribution. We usually recommend holding back funds until you receive the clearance certificate from Revenue Canada. This can take 6 to 9 months.

You have the option of distributing the funds yourself or your lawyer can do so on your behalf. When we distribute the funds, prior to distribution, we ask all residual beneficiaries to sign a release. The release outlines the value of the estate and that beneficiary's entitlement. This release protects the executor/administrator from future liability in the event one of the beneficiaries decides to challenge your decisions.

## 9. LOW VALUE ESTATES

If the funds in the bank accounts are under \$30,000 to \$40,000, banks and credit unions will sometimes allow the executor to distribute the estate without providing letters of probate as long as you can produce the original will.

If this is the case and the deceased did not own any real property, then requesting letters of probate is unnecessary. The bank or credit union will simply ask you to sign an indemnification stating that you will reimburse the bank if it is found liable for giving you the funds following a court order (if someone challenges the way you distributed the funds in court)

## CHECKLIST

Immediately after death:

- Contact funeral home
- Cancel OAS and CPP
- Cancel Passport, SIN, citizenship card, First Nation Status \_\_\_\_ Advise CRA
- Advise bank or credit union

Following funeral:

- Make appointment with lawyer
- Obtain original will (unless deceased dies without a will)
- Make list of residual beneficiaries names, addresses, and phone numbers
- A complete list of the deceased assets which include:
  - All real estate holdings or properties;
  - Most recent bank account statements for all accounts in all banks, including TFSA;
  - Most recent investment statements, i.e. RRSP, RRIF, GIC;
  - An estimated value of the deceased personal property; A detailed list of furniture, vehicles, and equipment is NOT required.
  - Any high value, non-depreciable item such as a work of art, a valuable collection, or collector car. Personal vehicles depreciate and are not included in this list.
- Life insurance policies
- Open Estate of \_\_\_\_\_ bank account.
- Publish notice to creditors (Lawyer will assist)
- Contact accountant to prepare income tax return(s)
- Once you receive Letters of Probate/Administration
- Obtain clearance certificate from CRA
- Confirm all debts are paid and notice period for creditors has elapsed \_\_\_\_ Obtain release(s) from beneficiaries (Lawyer may assist)
- Initial distribution (Lawyer may assist)
- Final distribution once clearance certificate is received