



SETTLING AN ESTATE





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1 › INTRODUCTION



Settling an estate is a complicated undertaking. If you are named executor of an estate, you can face responsibilities that demand a great deal of time, energy and attention to detail. Our primary goal in developing this publication is to provide you with an easy-to-follow reference guide that will help you through the various steps involved in the estate-settling process. It's intended simply as an information resource to support you in your executor duties and is not intended as a substitute for legal or professional advice.

- › Because of the legal nature of many of the tasks involved, it makes good sense to enlist the services of a lawyer or notary to help you complete them.
- › If you have been appointed as the executor and don't want to administer the estate, you can look at appointing a trust company to be your agent. Ask for our *Agent for Executor* brochure for details.

2 › WHAT IT MEANS TO BE AN EXECUTOR

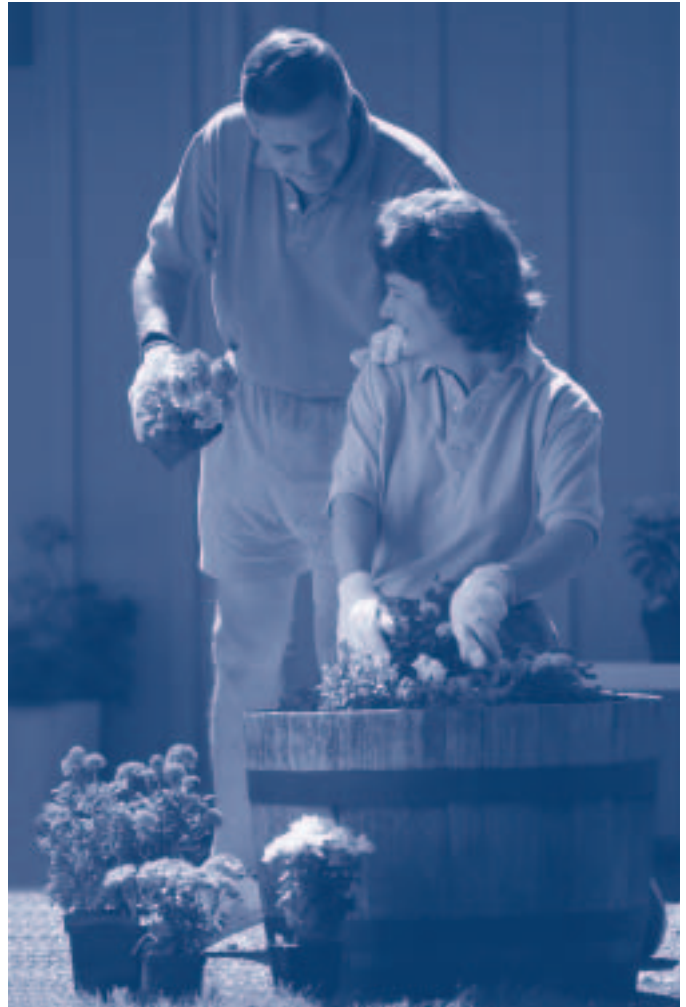
An executor is the individual or institution named in a Will that is responsible for administering the estate.

- › In Ontario, an executor is called an Estate Trustee with a Will.
- › In Quebec, an executor is called a liquidator and, if not named in a Will, the deceased's heirs may act as liquidator or may, by majority vote, designate a liquidator. A liquidator may also be appointed by the courts in certain circumstances.

Your overall responsibility as executor is to administer the estate according to the deceased's final wishes as expressed in the Will and according to provincial law. This includes finding and, if necessary, probating the Will; protecting and distributing assets; and paying outstanding debts and taxes. You will also have to prepare a final accounting for the beneficiaries of the estate.

THINGS TO CONSIDER

- › As executor, you have legal responsibilities that could subject you to personal liability. If you have concerns, consult your legal counsel.
- › If you have been appointed executor and can't or don't want to carry out all the duties involved in administering the estate, then, depending on the size and nature of the estate, you may want to contact a trust company to find out about its agent for executor services.
- › If you have been appointed executor and can't or don't want to perform any of the duties, you can decline to act before you perform any duties.
- › In Quebec, a liquidator may resign even after having performed some duties by giving written notice to the beneficiary(ies) and, if applicable, to the co-liquidator or to the person empowered to appoint a liquidator in his or her place. There may, however, be some penalties associated with resigning without a valid reason.



3 › PRELIMINARY STEPS

MAKING FUNERAL ARRANGEMENTS

As the executor, one of your first duties is to help the family make the funeral arrangements and take care of payment. In Quebec, the liquidator does not have this responsibility, but rather it is up to the heirs and successors to act and the expenses are charged to the succession.

Many people pre-arrange their own funerals, either with a funeral home or by leaving detailed instructions in their Wills or with their legal counsel, family member or friend. If the deceased has died without pre-arranged funeral plans or if his or her wishes were not communicated to anyone, then as the executor you'll need to get the deceased's family members' input on decisions around the funeral arrangements.

Contacting the funeral home

The first step is for the family to contact their choice of funeral home. The funeral director will prepare a death certificate and help plan the visitation, service and burial or cremation. As executor, you will be responsible for ensuring payment to the funeral home.

In Quebec, only the Registrar of Civil Status is authorized to issue a legal "proof of death"—called the Act of Death. However, some organizations accept other documents as proof of death, so verify with the organizations with which you'll be dealing as to what they'll accept.

The obituary announcement

If you want to place an obituary notice in a local newspaper, the funeral director can help word it and arrange to place it in the newspaper. Be sure to include details about the time and place of visitation and the funeral services. If the deceased favoured any charities, you may want to consider listing them if contributions are preferred in lieu of flowers.

The service

If nothing was pre-planned, you can help the family decide what type of service would be in accordance with the deceased's personal beliefs and values. The following questions may help you discuss this with family members.

- › Will it be religious or non-religious, or a funeral or memorial service?
- › Will it be held in a place of worship, or a funeral chapel?
- › Will there be a tribute such as a eulogy, personal remarks by a close friend or friends or readings from religious texts?
- › Will you include music in the service?
- › Will the casket be covered with flowers or draped with a flag? Veterans and serving members of the Canadian Armed Forces may have the Canadian flag draped on their coffins.
- › Will the deceased be buried or cremated? Where will the remains be interred?

LOOKING AFTER THE FAMILY'S IMMEDIATE NEEDS

Part of your role as executor is to make sure the family's immediate needs are met. They have to be able to pay their bills and have money to manage their daily expenses. Once you have proof of death, you can apply for some

PROOF OF DEATH

Proof of death can be any of the following:

- › Death certificate issued by the province or funeral director.
- › Act of Death or Certificate of Death (Quebec).
- › Burial certificate.
- › Copy of coroner's report.

You will need several original, notarized or certified true copies of the proof of death, as you will be called upon by the deceased's banks, insurance companies, investment firms and other institutions to provide these as you administer the estate. Obtaining multiple copies at the beginning will help you avoid delays or inconvenience as you proceed with settling the estate.

immediate sources of funds, such as life insurance policies, company pension plans and for some expenses to be paid from the deceased's bank account. (See *Allowable Expenses*, page 6.)

FINDING THE ORIGINAL WILL AND DISTRIBUTING COPIES

The Will may have been kept among personal papers at home, in a safe deposit box or with a lawyer or notary. If you cannot find a Will, ask the family lawyer to advertise for it in various legal publications. In Quebec, contact either the Barreau du Quebec or the Chambres des Notaires to ask for help in locating the Will:

Barreau du Quebec
Register of Wills and Mandates

(514) 954-3412
1 800 361-8495

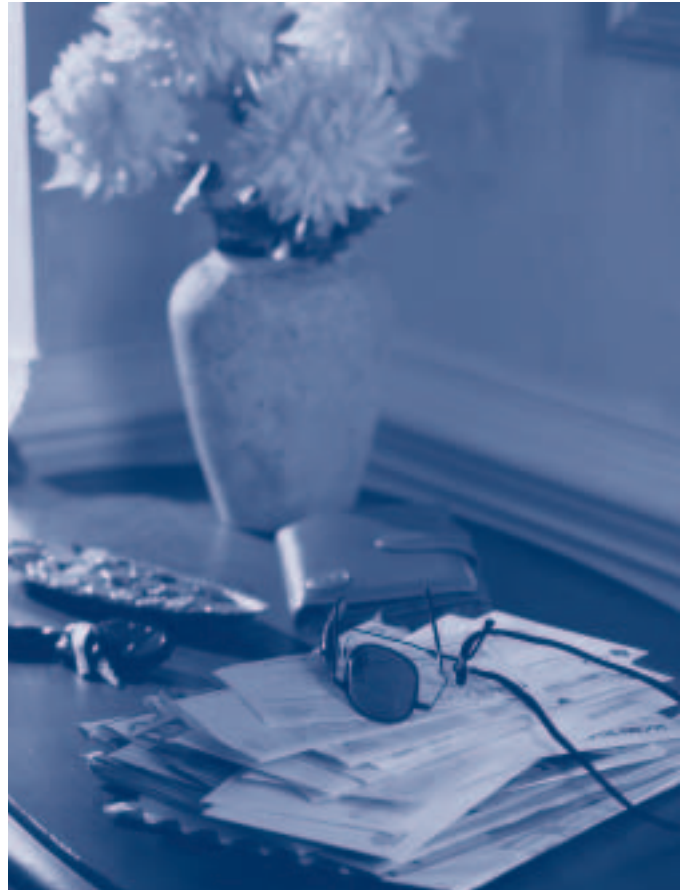
Chambres des Notaires du Quebec
Registre des testaments et des mandats

(514) 879-2906
1 800 340-4496

When you have the Will and have ensured that it is a valid Will and the deceased's last Will, distribute copies to all beneficiaries named in it. (If for any reason you must distribute the Will before you have confirmed that it is the last Will or if you have to probate the Will, inform the beneficiaries as you distribute the Will.)

PROBATING THE WILL

A probated Will is a Will that has been reviewed by the courts and deemed to be a valid Will. It confirms the executor and acknowledges their authority to carry out the terms of the Will. Although probate is not compulsory except in very specific cases, most financial institutions require probate before they will release a deceased person's assets because it assures the institution that it is handing over the deceased's assets to the person who is lawfully entitled to receive them. Without probate, the institution cannot be assured that the Will they have been given is in fact the deceased's last Will. However, if probate has been obtained, even if the Will is challenged or ruled invalid



or if a later Will is discovered (thereby revoking the Will), the financial institution cannot be held liable for releasing assets to the executor named in the probate.

Some institutions may be prepared to take a business risk and release assets without requiring probate when the value of the deceased's assets is relatively small. It's a matter of the "degree of risk" the institution is prepared to accept. In these cases, the financial institution may require the executor to sign a Bond of Indemnity.

Often, executors find that administering the estate is easier when they obtain probate since it is unlikely that anyone will question their authority to gather and deal with the deceased's assets. In Quebec, notarial Wills do not have to be probated.

4 › PROTECT OR SAFEGUARD THE ESTATE ASSETS



INSURANCE

To protect the assets from loss, theft or destruction, you should take them into your custody or safeguard them until they are sold or distributed. You should also evaluate whether there is sufficient insurance coverage for assets such as real estate, vehicles or personal possessions.

Notify the insurance company of the death and request that they add the executor's name to any existing policies. This is especially important for residences that may be left vacant. Homeowners' insurance policies may be rendered invalid if a residence is left vacant for a period of time.

BANK ACCOUNTS

Notify the deceased's bank or other financial institutions as soon as possible, and arrange to meet with a bank representative to provide proof of death and present yourself as the executor.

Allowable expenses

When a financial institution is advised of a client's death, the deceased's account(s) will be frozen. This means that no cheques or cash can be drawn from the deceased's account except for certain expenses. These expenses vary between financial institutions, so you should confirm what the deceased's institution will allow, but generally these include funeral expenses, probate taxes, property taxes, income taxes, public utility bills and car and house insurance payments.

In Quebec, only the following expenses can be paid out of the deceased's account: funeral expenses, court fees (for non-notarial form Wills), legal costs and, if necessary, public utility bills and debts in urgent need of payment.

As the executor, you can make arrangements with the bank to have these expenses paid out of the deceased's personal deposit account.

Canada Pension Plan and Quebec Pension Plan deposits

Canada Pension Plan (CPP) and Quebec Pension Plan (QPP) benefits will still be paid to the deceased during the month of death, and these cheques or direct deposits can be deposited into the deceased's bank account.

Sole bank accounts

If the deceased was the only account holder, advise the bank in writing as to the disposition of the account balance. In most cases, you will have to provide copies of the estate documentation. Consult the deceased's financial institution to discuss its specific requirements.

The estate documentation varies from province to province. Basically, it's comprised of documents issued by the court confirming the validity of the Will and your authority to act as the executor. In Quebec, estate documentation varies according to the type of Will (*see the chart on page 11*).

Joint bank accounts

How the deceased and the surviving joint account holder set up their account will usually (assuming there are no disputes) determine whether the funds will belong to the surviving joint account holder or to the estate and the surviving joint account holder together. Funds in joint accounts that are set up as joint "with right of survivorship" pass directly to the surviving joint account holder. Funds in joint accounts that are set up as "tenants-in-common" pass to the estate of the deceased and to the surviving joint account holder. In Quebec, there is no right of survivorship, so the account is automatically treated like a "tenants-in-common" account.

Joint account survivors—all provinces except Quebec

Unless there are special circumstances, the funds in a joint account with a right of survivorship do not fall into the estate for which you, as executor, are responsible. If approached by a joint account holder in this circumstance, advise him or her to speak to the bank.

The joint account survivor should advise the bank in writing either to

- a) release the balance of the joint account to him or her or
- b) open a new account in his or her name and have the balance of the joint account transferred to this new account.

If there are pre-authorized cheques or payments going through the joint account, the bank will provide the survivor with the forms necessary to redirect them to the new account.

Joint account survivors in Quebec

In Quebec, where there is no right of survivorship, you, as executor, will need to advise the bank in writing as to the disposition of the account balance. You will be required to provide the bank with certified true copies of the notarial Will or of the probated Will, written instructions from you (the liquidator) and the survivors and a Declaration of Transmission Form.

ESTATE BANK ACCOUNT

You may wish to open an estate bank account to manage the estate's assets or to pay expenses that may be incurred in the administration of the estate. You can use the estate bank account to deposit the proceeds from the sale of the deceased's property or pay expenses such as income tax or municipal property taxes.

You can open an estate bank account at any bank or financial institution, whether the deceased was a client of that bank or not. Depending on the financial institution you deal with, you may be able to open an estate bank account before you provide estate documentation (*see the chart on page 11*). However, no funds can be released until the bank receives the estate documentation. Once the bank has the estate documentation, you can perform transactions on the estate bank account.

Cheques on the estate bank account must be signed by the sole executor or jointly by all the estate executors, or otherwise as provided in estate documentation.

SAFE DEPOSIT BOXES

You will need the key to the deceased's safe deposit box so you can list the contents and access any life insurance policies or other important documents it may contain, such as the Will. A bank representative will help you, as the executor, to list the contents of the box. In British Columbia, no contents can be released until the safe deposit box items have been listed.

Estate documentation and written authorization are required to release all the contents of the box to you or the surviving joint lessee; however, certain documents (such as cemetery plot deeds, Wills and life insurance policies) may be released before estate documentation is received by providing a proof of death. The financial institution will advise you of its policies. Once the financial institution receives the estate documentation, the remaining contents can be released.

- › If the deceased was the sole tenant, the bank will require your written authorization to release the balance of the contents.
- › If the deceased held the safe deposit box jointly with another lessee, the surviving lessee must notify the branch in writing to release the remaining contents.
- › In Quebec, the joint lessee will also require the executor's written authorization to remove contents from the safe deposit box.

SMALL ESTATES

In the case of small estates, the financial institution may release the assets of the estate without estate documentation. This may allow you to avoid probate costs, where applicable, and any associated legal fees with respect to assets held with the financial institution. Contact the financial institutions holding assets in the name of the deceased to determine their respective requirements.



ADVERTISING FOR CREDITORS

To protect the estate against any future claims, it is wise to advertise for creditors. This also protects you as the executor. If advertising for creditors has not been done, you can be personally liable for a creditor's claim after the assets have been distributed.

In Quebec, the advertisement must take the form of a notice in a newspaper circulated in the area of the deceased's last known address, and the notice must identify the deceased and indicate where interested persons may consult the inventory of the estate. If someone comes forward with a valid claim, be sure to obtain a receipt for any payments you make.

5 › ASSEMBLE, INVENTORY AND VALUE ASSETS

ASSEMBLING ALL THE ASSETS

Life insurance policies

Once you have a copy of the life insurance policy, contact the company to initiate payment. You will be required to provide proof of death together with your written request.

- › If there is a named beneficiary, the proceeds from the policy will usually be available in about 30 days and paid directly to the named beneficiary. There may be special procedures for payment if the beneficiary is a minor or disabled individual.
- › If the deceased named the estate as the beneficiary, there could be a considerable delay before any funds are released to the estate, as estate documentation is required to release the funds.

If you can't find the life insurance policy, contact the Canadian Life and Health Insurance Association (CLHIA) to perform a search on your behalf. They can be reached at the following telephone number 1-800-268-8099.

Other insurance benefits

The deceased may also have been covered by a group insurance plan through his or her employer or other organizations he or she belonged to, such as alumni and professional associations.

- › If the deceased was involved in a car, plane or train accident, he or she may be covered by an automobile club or by a credit card issuer.

Employment benefits

- › If the deceased was employed at the time of death, the employer's Human Resources Department should be able to confirm whether the deceased was entitled to any benefits such as final salary, bonuses, vacation pay, and/or a death benefit. Coverage for the deceased's spouse and children under the employer's group health insurance plan may also continue for a period of time after his or her death. Find out how many months of coverage the family will have and what medical or dental expenses are covered.

Company pensions

Contact the deceased's employer or (if retired) former employer to request payment of any survivor pensions or transfer of other pension benefits. If the deceased was not retired at the time of death, his or her beneficiary could be eligible for one of the following benefits:

- 1) A lump sum based on the contributions made into the plan while the deceased was employed, plus interest;
- 2) A lump sum based on an actuarial calculation; or
- 3) A deferred pension benefit.

If the deceased was retired at the time of death, arrange to have the pension benefits transferred to the deceased's spouse.

GOVERNMENT PENSION PLANS/OTHER BENEFITS

Canada Pension Plan/Quebec Pension Plan

Canada Pension Plan (CPP) and Quebec Pension Plan (QPP) benefits will still be paid to the deceased during the month of death, and these cheques can be deposited into the deceased's bank account (see page 6).

CPP/QPP survivor benefits

The deceased's spouse and/or children may be entitled to monthly survivor benefits and a lump-sum death benefit if they meet the eligibility requirements. The surviving spouse, including a common-law spouse, must generally be at least 35 years old to receive an immediate survivor benefit (unless raising one or more dependent children) and the children must be either under 18 or between 18 and 25 and attending school full-time.

There are basically two types of monthly survivor benefits:

- 1) A monthly survivor pension for the spouse.
- 2) A monthly orphan benefit to the children available even if they still have one living parent.

Application for these benefits may be made even if the deceased was not receiving CPP or QPP benefits at the time of death.

To receive further information about these benefits, contact your local Human Resources Centre of Canada (HRCC) office listed under the Government of Canada section in the telephone directory or check the Web site at www.sdc.gc.ca. For information about QPP benefits, contact the Régie des Rentes du Québec or visit www.rrq.gouv.qc.ca.

Old Age Security

Advise HRCC to cancel the deceased's Old Age Security payments. Old Age Security payments will still be paid to the deceased during the month of death, and this cheque or direct deposit can be deposited into the deceased's bank account. Ask if the deceased's spouse is entitled to receive monthly spousal survivor payments.

GST/HST credits

If the deceased was receiving GST or HST quarterly credits, the estate is entitled to them if they were issued in the month of death. It's important to contact the Canada Revenue Agency (CRA) and/or Revenue Quebec to cancel any future credits.

Child tax benefits

If the deceased was receiving federal or Quebec government child tax benefits, contact your local CRA Tax Centre to advise them of the death. The CRA will forward the change to the Régie des Rentes du Québec. Check to see if the deceased's spouse or children's guardians are entitled to receive these benefits.

Veterans' allowance

- › Veterans of Canada's Armed Forces and their dependents may be eligible for burial, pension and other benefits if they meet the eligibility requirements.
- › Veterans without sufficient funds to cover their funeral expenses may be eligible for help from the Last Post Fund.
- › Contact your local Veterans' Affairs Office for further information.

MAKE AN INVENTORY OF ASSETS AND LIABILITIES

Making an inventory of the estate's assets and liabilities is one of the most significant tasks you will face. A copy of the deceased's most recent income tax return and the contents of the safe deposit box can provide you with details about some of the deceased's assets. In addition, you can ask their bank, other financial institutions and credit card issuers for a list of outstanding liabilities. Ideally, the deceased will have left a list of assets and liabilities that you can work with.

When making the inventory

- 1) Determine the market value of each asset at the date of death. You will also need the tax cost to calculate capital gains or losses to be reported on the final tax return. The tax cost of an asset is generally the purchase price. In the case of an asset such as real estate, the cost of certain capital improvements and renovations may also be included. A capital gain is basically the profit earned on an asset. For example, if you bought a vacation home at \$100,000 and later sold it for \$150,000, the capital gain on it would be \$50,000.
- 2) Determine if a beneficiary has been named or if the asset was held jointly with right of survivorship. If so, these assets may not have to be included as part of the estate to be probated.
- 3) Finally, decide if any assets should be sold and the proceeds paid to the estate. You will need to refer to the Will to determine which assets are to be transferred to a beneficiary or to be sold.

Use the worksheet on page 12 to help you.

Note: In Quebec, law prescribes the manner of the inventory. The liquidator may be exempted from making the inventory, but there are serious repercussions for the heirs and successors if they agree to such an exemption. They automatically become heirs of the estate and are liable for the entire debts of the estate. If the inventory is made as prescribed by law, the heirs and successors are only liable for the debts up to the value of the property they take.

OBTAIN PROBATE FROM COURT

Basically, there are four types of Wills that are legal in Canada:

- › A formal Will: This is a Will normally drawn up by a lawyer (or notary in Quebec) and signed according to the requirements of provincial law.
- › A holograph Will: This is a handwritten Will that is signed by the maker but does not have to be witnessed (not valid in all provinces).
- › An international Will: This is a Will drafted and signed according to set standards agreed to by certain jurisdictions who have signed an international convention regarding Wills (not valid in all provinces).
- › A Quebec notarial Will: This is a Will drawn up by a notary. It does not have to be probated in Quebec.

How to proceed

It is advisable to consult a lawyer or notary concerning probate of the Will. You will need the following documents:

- 1) Original Will (and codicils, if any).
- 2) Affidavit of witness to the Will/codicil (in most provinces).
- 3) Except in Quebec, the Application for Probate form supplied by the court. Depending on the province, that form may also require the executor to list the value of the estate assets.
- 4) In Quebec, probate can be obtained either by depositing a motion for probate before the superior court where the deceased resided or the Will may be probated by a notary on the application of any interested person.

Once the court receives these items, it will issue one of the following documents depending on the province:

Province	Estate documentation	Authorized executor
Ontario	Certificate of Appointment of Estate Trustee with a Will	Estate Trustee
Alberta	Grant of Probate	Personal representative
Manitoba	Grant of Probate	Executor
Quebec	Probate Will, notarial Will	Liquidator
British Columbia, Saskatchewan and Atlantic Canada	Letters Probate	Executor

ASSETS/LIABILITIES WORKSHEET

Ownership

ASSETS	Ownership		
	Deceased only (\$)	Joint (\$)	Named beneficiary (\$)
Bank accounts (chequing and savings)			
Term deposits			
Stocks, bonds, mutual funds			
RSPs			
RIFs			
Annuities			
Other investments (brokerage accounts, savings bonds, money market funds)			
Life insurance			
Company pension plan			
Principal residence (current market value)			
Other real estate			
Personal property (jewelry, autos, household furnishings, etc.)			
Collectibles (market value of fine art, precious metals, etc.)			
Other			
Total assets			
LIABILITIES	Deceased only (\$)	Joint (\$)	Named beneficiary (\$)
Mortgages			
Loans			
Credit cards			
Other loans or debts			
Income tax			
Total liabilities			
NET ESTATE (Total assets less Total liabilities)			

These documents confirm the validity of the Will and confirm the authority of the person(s) named as executor(s) in the Will.

The court will issue Letters of Administration instead of Letters Probate or Grant of Probate depending on the province in the following cases:

- 1) A person dies intestate (without a Will).
- 2) The deceased had a Will but did not appoint an executor.
- 3) All the executor(s) named in the Will are deceased, unable to act or decline to act.

In Ontario, Letters of Administration are known as a Certificate of Appointment of Estate Trustee without a Will.

When someone dies without a Will (intestate) in Quebec, the liquidator (executor) may be appointed by the court, designated by a majority vote of the heirs of the deceased or named by Ministerial Order. The liquidator(s) may also be beneficiaries of the deceased's estate

First Nations members

If the deceased was a First Nations member, who ordinarily resided on a reserve, estate documentation as detailed in the chart on page 11 will not be required. A document known as a Ministerial Order will be issued by the Ministry of Indian and Northern Affairs, naming the executor under the provisions of the Indian Act.

Probate tax

In all provinces except Quebec, when an executor applies to the court for probate, a tax must be paid to the provincial government. The tax is based on the value of the estate's assets. Certain assets do not form part of a deceased's estate at death. These generally include assets held with right of survivorship and life insurance policies, RSPs, RIFs and similar investments that have a beneficiary other than the deceased's estate designated on the plan.



6 › ADMINISTERING AND DISTRIBUTING THE ESTATE

INVESTING THE ESTATE ASSETS

You may wish to invest any surplus cash until the estate settlement is finalized. The types of investments available for estate assets are governed by the terms of the Will and by your provincial legislation. A lawyer, notary, accountant or corporate executor can advise you on the list of allowable investments.

DISTRIBUTING THE ESTATE ASSETS

Once you have arranged for the listing, evaluation and protection of the assets and the Will has been probated, you can consider distributing some of the assets to the beneficiaries. It is very important that you distribute the assets only after you are certain that there are sufficient funds to pay the deceased's debts and outstanding taxes.

As mentioned previously, certain assets do not form part of the deceased's estate. Assets with a named beneficiary are generally not included in the estate. These assets may, nonetheless, create a tax liability on death, which will be payable by the estate. Joint assets that have the right of survivorship (not in Quebec), under normal circumstances, become the property of the surviving joint owner.

RSPs and RIFs

Generally, an individual's RSPs and RIFs will be redeemed following his or her death. If he or she has designated a beneficiary under the plan, the proceeds will generally be paid to the beneficiary. If no beneficiary is named, you must distribute the proceeds according to the terms of the Will. Please note that beneficiary designations made in an RSP do not automatically carry over to a RIF.

In certain circumstances, it may be possible for the deceased's RIF plan to continue if his or her spouse or common-law partner is the successor annuitant. Alternatively, the spouse or partner could transfer the proceeds to his or her own tax-sheltered plan. If the beneficiary is a financially dependent child or grandchild who is either infirm or under the age of 18, there may be an opportunity to transfer the proceeds to a tax-sheltered plan for the child or grandchild.

Consult with a tax advisor to ensure that registered plans are dealt with in the most advantageous manner for all beneficiaries.

Non-registered investments

The deceased may have held investments outside of an RSP or RIF. To reinvest or redeem any of these investments requires the executor's written instructions, as well as the estate documentation.

Guaranteed investment certificates/term deposits/ mutual funds

For these investments, you can notify the financial institution, stockbroker or investment firm, as appropriate, in writing to reinvest it in the name of the estate or redeem it to the beneficiaries designated in the Will.

Stocks and bonds

Contact the deceased's stockbroker or investment firm to determine what they require to transfer the stocks or bonds to the estate or a beneficiary designated in the Will, if any. Normally, they will ask that a Declaration of Transmission be completed, and in most cases they will provide the form. Depending on the terms of the Will and the wishes of the beneficiaries, arrange to either sell the stocks or bonds and distribute the proceeds to the beneficiaries or transfer the stocks or bonds to them in kind.

Principal residence

If the deceased owned a home in joint tenancy, with rights of survivorship, the title of the property passes to the surviving joint owner (except in Quebec). In this case, the property does not form part of the estate.

If the deceased was the sole owner of the home and left it to beneficiaries named in the Will, it may be possible to either transfer title to the beneficiaries or sell it and distribute the proceeds to the beneficiaries as set out in the Will. To find out more, consult a lawyer or notary.

There may be additional issues if the residence is a matrimonial home and the surviving spouse is not a joint tenant or is not named as beneficiary. Consult a lawyer or a notary for advice.

Vehicles

You will need to transfer ownership or sell the vehicle as set out in the Will. Most provincial motor vehicle departments require a copy of the Will and proof of death. You may also be asked to fill out a particular form, such as a Sworn Statement of Family Gift in Ontario, and have it notarized. Check with your provincial department of motor vehicles for the specific procedure for transfer of ownership in the event of death.

Personal possessions

Gifts of personal belongings are called bequests. The deceased may have itemized a list of personal belongings in the Will or attached a letter to the Will specifying how they want their personal possessions to be distributed. These lists or letters may or may not be legally binding on the executor. If you're in doubt, consult a lawyer or notary for advice.

Trusts

If a trust is created in the Will for a beneficiary, then the assets as set out in the Will must be invested on an ongoing basis. The executor must follow the terms of the Will to determine what types of investments they may invest in, when/if the income and/or capital in the trust is paid out and when the trust is wound up. While the trust is being administered, the trustee may be required to prepare a trust tax return. Depending on the terms of the trust, it could last for 10, 20 or 30 years, for example. Consult a lawyer or notary for advice.

Effects of marriage and matrimonial regime

Quebec law provides that, in certain circumstances, marriage gives rise to obligations even after death. If the deceased was a Quebec resident at the time of death, regardless of where he or she was married, the effects of marriage such as the family patrimony, compensatory allowance, the survival of the obligation to provide support and matrimonial regime legislation may require that part of the value of the estate be paid to the surviving spouse or descendant. You should consult your legal advisor for advice.

PAYING DEBTS AND TAXES

You need to investigate and pay any debts or taxes owed by the deceased. These might include loans, mortgages, lines of credit or credit cards.

Loans, mortgages, lines of credit

Ask the deceased's bank or other financial institutions for a list of outstanding liabilities, the amount owed on each and whether or not the loans were insured. They will provide the appropriate insurance forms for insured loans and help you process them.

If loans that become the responsibility of the estate were not insured, there are usually two ways they can be repaid:

- 1) One way is to use the proceeds from the estate, such as from the sale of assets or from life insurance policies.
- 2) Another way, called the right of offset, is to use the deceased's assets held at the bank, either investments or cash in a personal deposit account, to repay the loan at that financial institution.

In the case of a joint loan, 50% of the debt may belong to the estate, depending on the terms and conditions of the loan agreement. Establish the amount owing and notify the joint loan co-applicant(s) to reapply for the loan on their own or pay it off.

You can meet with a bank representative to discuss how the loans will be repaid.

Credit cards

Return all credit cards to the issuing financial institution as soon as possible so the issuer can block the cards from further use.

- › If the card was in the deceased's name only, make arrangements to pay any outstanding balance if not insured.
- › If there is a co-applicant on the card, let them know they must stop using the card immediately. They can make arrangements with the issuer to either maintain the account or apply for a new one.

Other debts

These can include debts resulting from the liquidation of the matrimonial regime, the partition of the family patrimony or the effects of marriage (Quebec only).

PREPARING THE FINAL TAX RETURN(S)

As the executor, you have certain responsibilities:

- 1) Filing the final income tax return (also called the terminal return).
 - 2) Paying all taxes owing.
 - 3) Informing the beneficiaries as to which amounts they receive from the estate are taxable.
- › If the deceased was a resident of Quebec, you must also prepare a final Quebec provincial tax return.
 - › If the deceased did not file required returns for any previous years, you will need to file them.
 - › There may be an opportunity to report certain taxable amounts on one or more separate elective returns in order to reduce the deceased's overall tax liability.
 - › If the deceased was a Canadian resident living part-time in the United States or was a U.S. citizen or green card holder, you may need to file a U.S. income tax return. To get a form, contact the Internal Revenue Service at 1-215-516-2000 or through their Web site at www.irs.gov.
 - › If the deceased owned U.S. assets (such as securities issued by U.S. corporations or U.S. real estate) or was a U.S. citizen or green card holder, you may need to file a U.S. Estate Tax return.

Any taxes owing must be paid at this time. If the taxes owing are not paid by the due date, interest will be added to the final tax bill. And if the return is filed late as well, penalties will also be charged.

You may have to contact the Canada Revenue Agency (CRA) or Revenue Quebec for information you need to prepare the final return. Before they will give you any information, you must provide the following:

- › Proof of death.
- › The deceased's social insurance number.
- › Estate documentation proving you are the executor.

You will need to report any income earned or received from January 1 until the date of death. This includes, but is not limited to, the following amounts:

- › Salary, wages or vacation pay.
- › Pension income.
- › Interest on government or corporate bonds.
- › Income from other assets such as mutual funds, shares, GICs, term deposits, etc.

In addition, there may be a tax advantage of reporting income owing but unpaid as of death on a separate income tax return called a "rights and things" tax return.

Capital gains and losses

You must attach a schedule of capital gains and losses with the final return. Capital gains are basically the profits earned on certain assets such as stocks or real estate. When assets decrease in value, a capital loss will result. For taxation purposes, the deceased is generally considered to have sold most assets at fair market value immediately before death, even though the sale did not actually take place.

The following table gives the due date of the final Canadian income tax return according to the date of death:

Date of death	Due date for the return
January 1 to October 31	April 30 of the following year
November 1 to December 31	Six months after date of death

You will need to determine the fair market value and tax cost of assets in order to calculate any capital gains or losses. Special rules apply if a net capital loss is realized in the year of death. Special rules may apply to certain properties, including the following:

- › Principal residence.
- › Assets left to a spouse or common-law partner.
- › Property left to charities.
- › Farm property.
- › Eligible shares of a small business corporation.

RSPs and RIFs

When an annuitant dies, the fair market value of his or her RSPs and RIFs is generally included in income on the final tax return. In certain circumstances, a plan can continue for a surviving spouse or common-law partner and is not taxed in the deceased's final return. In other circumstances, if the beneficiary of the RSP or RIF is a spouse or common-law partner or a financially dependent child or grandchild, it may be possible to tax some or all of the value of the plan in the beneficiary's income rather than in the deceased's final return. This would be particularly beneficial if the beneficiary is taxed at a lower tax rate or is able to transfer some or all of the proceeds to a tax-sheltered plan for themselves.

Be sure to claim all available deductions and credits, including the following:

- › RSP contributions (subject to the deceased's deduction limit and the annuitant not being over the age of 69 during the year) to deceased's plan (if made prior to death) or a plan for the deceased's spouse or common-law partner (made prior to death or within 60 days following the end of the year of death).
- › Charitable donations and medical expenses. Special rules apply in the year of death.
- › Personal tax credits for the entire year.

The CRA has a number of publications that may be helpful, including the following:

- › Preparing Returns for Deceased Persons (Form T4011).
- › Death of an RRSP Annuitant (Form RC4177).
- › Death of a RRIF Annuitant (Form RC4178).

These publications and other forms are available at your local CRA office or from the CRA Web site at www.cra-arc.gc.ca.

If the final income tax return is simple and straightforward and the deceased did not have many assets or sources of income, you may have no problem preparing the return yourself. But if it's complex enough to require a capital gains schedule or the deceased has significant amounts in RSPs or RIFs, you should consider getting help from an accountant, lawyer or other qualified professional to ensure that taxes are minimized.

Notice of Assessment

Once the CRA and, if applicable, Revenue Quebec process the final tax return, they will issue a Notice of Assessment. A Notice of Assessment is a statement showing the income tax liability for a particular year and any amount still owing or refundable. If you don't agree with the Notice of Assessment, you can file a Notice of Objection. However, this may delay the final settling of the estate.

Tax Clearance Certificate

If you agree with the Notice of Assessment, it is recommended that you apply to the CRA and, if applicable, Revenue Quebec for a Tax Clearance Certificate (Form TX19). A Clearance Certificate is a written confirmation that all tax liabilities of the deceased have been paid or that acceptable security for payment has been provided. The Clearance Certificate covers not only the year of death, but all prior years as well. If you distribute assets of the estate prior to receiving a Clearance Certificate, you could be personally liable for any taxes owing if there are no longer sufficient funds remaining in the estate to cover the payment. The Clearance Certificate is your assurance that you, as the executor, are relieved of any personal liability for future taxes.

Estate tax return

The deceased's final tax return may not be your final responsibility regarding tax returns. If the estate earns income after the deceased died and before assets are distributed to the beneficiaries, a tax return may be required for the estate.

TYING UP LOOSE ENDS**Government documents**

Return government documents such as the social insurance card, passport, health insurance card and driver's licence. Keep a record of the different cards' numbers or make photocopies of them for future reference, as you may need the numbers to claim government benefits or pensions for family members or beneficiaries.

Social insurance card

Send the social insurance card, proof of death and an explanatory note to your local Human Resources Centre of Canada office. To find the address of the nearest office, look under the Government of Canada section in the blue pages of your telephone directory.

Passport

Return the passport to your local passport office or the central passport office with a letter of explanation.

Passport Office

External Affairs and International Trade Canada
Ottawa, Ontario K1A 0G3

Health insurance card

Contact your provincial Health/Social Services department and ask if the health insurance card needs to be returned to them. In some provinces, such as Quebec, the funeral director will send back the card on your behalf.

Driver's licence

Call your provincial Motor Vehicle Department and ask if you need to return the driver's licence. A refund for the unused portion of the term of the licence may be issued when you return it.

Lifestyle issues

Here are some other things you'll have to attend to on behalf of the estate:

- › Terminate the lease or arrange for sublet of any rental property.
- › Cancel regular and cellular telephone service, cable TV service and Internet service.
- › Cancel gardening and/or snow clearance contracts.
- › Cancel newspaper and magazine subscriptions.
- › Cancel club memberships.
- › Arrange for the care or adoption of pets.
- › Re-route the mail.

Handling business or partnership arrangements

The deceased may have been a sole business owner or in partnership with others. As the executor, you must address and administer the deceased's business arrangements in either case. The best way to approach this is with the help of a lawyer or notary.

You may wish to contact the following non-profit organizations for information and/or advice about the family business and succession:

Canadian Association of Family Enterprise (CAFE)

55 St. Clair Avenue West, Suite 255
Toronto, Ontario M4V 2Y7
Telephone: (416) 323-7800
Toll free: 1 866 886-0982
Fax: (416) 323-3949
www.cafeuc.org

The Business Families Foundation

1 Place Ville Marie, #3333
Montreal, Quebec H3B 3N2
Telephone: (514) 877-6620
Fax: (514) 877-6699
www.fament.org

FINALIZING THE ESTATE

Final distribution of estate assets

After all bequests, legacies, expenses, fees, taxes and debts have been paid, there may be remaining assets of the estate, called the residue. Distribute this to the beneficiaries as set out in the Will and make sure you obtain receipts.

Closing the estate bank account

Once the estate is settled, advise the bank in writing to close the estate bank account.

Final accounting to beneficiaries

Your final responsibility is to prepare an accounting to the beneficiaries stating what assets the deceased owned at death, what expenses and debts were paid and how the remaining assets were distributed. You can refer to your estate bank account statement to help you in the preparation of this report.



When the report is ready, ask the adult beneficiaries to approve it and have them sign your release from further responsibility in administration of the estate. It is advisable to consult a lawyer or notary to prepare the release form.

You may also wish to consider having the final report approved by the court. This might be the best course to take if the beneficiaries are under the legal age or there are any questions about your administration of the estate.

Executor's fees

As executor, you may be entitled to receive financial compensation. The fee may be stipulated in the Will or agreed upon by the beneficiaries. At a minimum, you are entitled to reimbursement of any expenses incurred while carrying out your duties.

It may not be advantageous to receive compensation if you are both the main beneficiary of the estate and the executor. Any compensation you receive, with the exception of reimbursement for direct expenses, is taxable. As inheritances are not taxable in Canada, it might be wiser to inherit directly from the estate.

Asset

Anything of monetary value owned by an individual or business.

Beneficiary

The person designated to receive something under a Will or designated under a registered plan or insurance policy.

Bequest

A gift of personal belongings to a person named in a Will.

Capital gain

Net profit earned on certain assets or property.

Codicil

Legal document amending the Will.

Estate

All the assets and liabilities of an individual at the time of death.

Estate documentation

Documents issued by the court confirming the validity of the Will and confirmation of the authority of person(s) named as executors in the Will (*see detailed list on page 11*).

Estate trustee

Executor in Ontario.

Executor

Person(s) named in a Will to administer the estate of the deceased. In Ontario, the executor is known as the estate trustee (with a Will). In Quebec, the executor has been known as the liquidator since January 1, 1994.

Intestate

The condition of dying without leaving a valid Will.

Legacy

Gifts of cash to beneficiaries named in a Will.

Letters of Administration

A document issued by a court appointing the administrator(s) of an estate. It is issued when a person dies intestate (without a Will). In Ontario, this document is called a Certificate of Appointment of Estate Trustee without a Will.

Letters Probate

A document issued by a court confirming the authority of the executor named in the Will. It also certifies the Will to be the Last Will and Testament of the deceased. Letters Probate are known as Grant of Probate in Manitoba and Certificate of Appointment of Estate Trustee with a Will in Ontario.

Liability

Also known as debt. This is an amount owed to creditors of the deceased.

Liquidator

Executor in Quebec.

Ministerial Order

A document issued by the Ministry of Indian and Northern Affairs naming the executor(s) of the estate under the provisions of the Indian Act.

Non-registered investments

Non tax-sheltered investments, such as investments held outside an RSP or RIF, the earnings from which are generally recognized as income in the year they are earned and taxed accordingly.

Probate

Probate is the formal process of proving the Will and confirming the authority of the executor(s) named in the Will.

Probated Will

Applicable in Quebec only, the probated Will is a document issued by the superior court that attests that the Will is the Will of the deceased and that the formalities required by law have been observed.

Proof of death

An original, notarized or certified true copy of a death or burial certificate, Act of Death, Certificate of Death or other evidence of death. In Quebec, legal proof consists of the Act of Death issued by the Registrar of Civil Status.

Retirement Savings Plan (RSP)

A plan registered under the Income Tax Act that allows an individual to accumulate savings for retirement on a tax-sheltered basis.

Retirement Income Fund (RIF)

A plan registered under the Income Tax Act that permits accumulated registered retirement savings to be paid out over time to provide an individual with income during retirement. Principal and earnings generated within the plan remain tax-sheltered until they are withdrawn as income.

Residue

The final portion of the estate remaining after all bequests, particular legacies, legacies by general title, taxes, bills and fees have been paid.

Right of survivorship

The right of the surviving joint tenant(s) or holder(s) of property to ownership of that property after one of them dies. (Does not apply in the Province of Quebec.)

Terminal return

Final income tax return prepared on behalf of the deceased.

Will

A written document conforming to provincial rules that takes effect on a person's death and states what the person wants to happen to the person's assets on his or her death.



NOTES

SETTLING AN ESTATE – EXECUTOR’S CHECKLIST

PRELIMINARY STEPS

- Locate the Will and review for specific instructions concerning the funeral.
- Assist with funeral arrangements, if required.
- Obtain original copies of proof of death certification (most organizations that you will deal with as an executor require original documentation).
- Ensure that the family’s immediate financial needs can be met.
- Provide beneficiaries with a copy of the Will, as applicable.

SAFEGUARD ESTATE ASSETS

- Verify that adequate insurance is in place to protect all real assets.
- Notify banks and financial institutions where deceased held accounts or had other dealings; close all accounts held exclusively in deceased’s name.
- Open an estate account to deposit income and pay expenses, transferring any balances.
- Locate all original investment certificates, stocks, bonds, property deeds, etc.
- Document current market value and original purchase price for each asset for taxation (capital gains) purposes.
- Identify which assets are to be sold, transferred in kind, or have title(s) transferred in accordance with terms of the Will and wishes of beneficiaries.
- Investigate and pay all debts owed by the deceased, checking with financial institutions for outstanding liabilities.
- If loan(s) is/are insured, complete appropriate insurance forms.
- Cancel all credit card accounts and return cards to issuers.

PROBATABLE ESTATES

- Consult a lawyer concerning the probate of the Will (all provinces except Quebec).
- Supply required documents to court.
- Obtain court documentation attesting to the validity of the Will and confirming you as legal executor.
- Pay probate taxes to provincial government as determined.

ADMINISTER AND DISTRIBUTE ESTATE

- Invest any surplus cash until estate is finalized, selecting from allowable investments (contact a lawyer, accountant or corporate executor for details).
- Initiate sale of assets, transfer of titles, etc.
- Begin distributing assets to beneficiaries according to the terms of the Will once it has been probated, ensuring that there are sufficient funds to pay outstanding debts and taxes of the deceased.
- Advise beneficiaries to consult with a tax advisor to ensure the most tax-advantageous treatment of any registered investments.
- Assist in establishing any trusts stipulated in the Will.
- Settle all legitimate claims prior to final distribution of assets, obtaining receipts for any payments made.
- Obtain a copy of the last tax return filed by deceased.
- Prepare and file final tax return(s) including, if applicable, a provincial return in Quebec, returns for international jurisdictions, and a rights and things return.
- File any outstanding returns from previous years if not yet filed.
- Pay all income taxes owing.
- Obtain tax clearance certificate(s) from CRA and Revenue Quebec (if applicable) once the Notice of Assessment(s) is/are received, confirming that all tax liabilities have been settled.

SETTLING AN ESTATE – EXECUTOR’S CHECKLIST

- Complete a final tax return for the estate as well as for the deceased's business, if necessary.
- Return Social Insurance card, passport, driver's licence and health insurance card, if required, obtaining any appropriate refunds.
- Terminate the deceased's lease or arrange to have premises sublet.
- Cancel newspaper and magazine subscriptions, club memberships, telephone, cable TV, Internet services, and gardening and/or snow removal contracts.
- Re-route mail.
- Arrange for care or adoption of pets.
- Arrange for final distribution of remaining assets, obtaining receipts from each beneficiary.
- Distribute specific bequests (personal belongings) to respective beneficiaries according to the terms of the Will, obtaining receipts.
- Advise the bank in writing to close the estate account once the estate is settled.
- Prepare a final accounting of all assets, liabilities, expenses and distribution of assets for beneficiaries.
- Prepare a reckoning of your expenses (and compensation, if any) as executor.
- Have each adult beneficiary approve this accounting and sign a release.



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