

FOLLOW THEIR WISHES *to change the world*

GUIDE TO BEING AN EXECUTOR¹ OR TRUSTEE

Administering a will can be difficult, especially if you're a close friend or relative. This guide will help you work through some of your roles and responsibilities.

The following is a checklist and basic guide outlining some of the activities that you will have to engage in to bring the affairs of even a simple estate to a close. The list is by no means exhaustive and does not offer any legal advice or opinions. It is provided to help you ask the right questions and to provide a guide for you as an executor or trustee.

WHERE DO I START?

- Accommodate special requests like organ or body donation.
- Arrange for care of dependents or pets.
- Determine whether any funeral/burial arrangements were pre-planned or pre-arranged.
- Consider publishing an obituary.
- Identify immediate cash requirements for family.
- Obtain the original death certificate (including several copies).
- Cancel any driver's license, magazine and newspaper subscriptions, cable television, club memberships, telephone, and request refunds if applicable.
- Cancel health insurance coverage.
- Approach appropriate agencies in Canada to cancel any old age security (OAS) cheques and Canadian Pension Plan (CPP) payments.
- Obtain information on any outstanding credit card balances and cancel the cards.
- Contact Canada Post to reroute mail to an appropriate family member if possible.
- Arrange for safe custody of personal valuables and important documents.
- Arrange for the care of vacant properties.
- Ensure adequate property insurance exists.

IF YOU DON'T WANT TO BE AN
EXECUTOR OR TRUSTEE

SEE PAGE 8

¹ Unless the context otherwise requires, words referring to the masculine gender shall include the female gender (Executrix in this case).

Locate the will and meet with the lawyer:

- Locate and review the will, ensuring that you understand your duties and personal liability as the executor.
- Identify any potential conflicts of interest.
- Maintain a detailed record of all the decisions you make, steps taken and financial transactions.

Contact the beneficiaries of the estate:

- Set up a meeting with family members to discuss the will and any pertinent information you require from them.
- Determine the estate's contractual obligations and the family's needs.
- Gather preliminary information from the family and document the meeting, noting the information gathered.

Accounting for the estate:

- Contact all banks, financial advisors, and other institutions involved with the deceased's financial affairs.
- Gain access to and list contents of any safety deposit box(es).
- Determine the assets and liabilities of the deceased by writing to the financial institutions, insurance companies, brokers, employer, and RRSP/RRIF trustees, etc. for information.
- Organize a review of all investments in portfolio.
- Open an estate bank account. This is particularly helpful.

Determine if there are any benefit entitlements for the survivors:

- Inquire to determine entitlement to and apply for Canada Pension Plan Death Benefits, Survivor's Benefits and Dependent's Benefits.
- Contact previous employer(s) to determine any Survivor Pension Benefits or insurance proceeds.

Begin to obtain all relevant documents for the estate file:

- Review tax returns from past years and complete and file any previous outstanding T1 General² returns.
- Acquire all title documents for property, mortgages, share certificates, bonds, debentures³, and guaranteed investment certificates.
- Obtain evaluations of all real estate, securities, automobiles, and any personal property.
- Review any insurance policies to determine the adequacy of coverage for the surviving spouse or dependents and make changes if deemed necessary.
- Ensure that the lawyer sends each beneficiary a copy of the will, including any charitable causes or institutions named by the deceased.
- Compile a complete list of assets and liabilities, listing them by their class and value. Ensure that you include certificate numbers, registration particulars, maturity dates, interest rates, and payment frequency.
- Discuss probate requirements, beneficiary notice, and any administrative concerns with a lawyer or professional estate advisor.

² A T1 General tax return or T1 (entitled Income Tax and Benefit Return) is the form used in Canada by individuals to file their personal income tax return.

³ Debentures are an unsecured loan certificate issued by a company, backed by general credit rather than by specified assets.

Apply for a grant of probate:

- With the assistance of a solicitor or estate professional, apply for grant of probate⁴, certificate of appointment or administration (terms differ province to province).
<http://www.fin.gov.on.ca/en/tax/eat/>
- After probate/certificate has been granted, acquire notarized copies in order to transfer assets.
- Request that the lawyer or estate professional register probate on title to real estate, if necessary.

Attend to administration details:

- Keep in contact with the beneficiaries by reporting on the progress of the estate administration and provide each with a copy of the complete inventory of assets and liabilities.
- Be prepared to have an Advertisement to Creditors published before distributing estate assets.
- In order to transfer securities, complete all powers of attorney and declarations of transmission.

Finalize all banking administration matters:

- Settle all debts and pay all legitimate outstanding claims.
- Arrange to have safety deposit box, if one exists, closed and obtain the contents.
- Complete the closure of all bank accounts, transferring the balance to the estate account. If any joint bank accounts exist with right of survivorship, supply the financial institution with the death certificate and request that they transfer the account to the surviving joint owner.
- Invest cash surplus according to the terms of the will.
- Organize the sale of securities if converting to cash. Otherwise arrange for the reregistration and transfer of the securities.
- Arrange for transfer or rollover of RRSP/RRIF proceeds to the surviving spouse or designated beneficiary.

Begin the distribution process:

- Examine the will for details regarding the distribution scheme of assets. If necessary, discuss distribution of assets in kind with beneficiaries.
- With a lawyer or estate professional, review any restrictions or time periods imposed on the distribution of estate assets.
- Prepare cheques for debt payments, legacies and interim distributions.
- If distribution of the actual securities (in-kind) is required, be prepared to provide the beneficiaries with the actual certificates and obtain receipts for them.
- Be prepared to provide the beneficiaries with any bequeathed or requested personal effects and remember to obtain written proof of receipt.
- Acquire Goods and Service Tax (GST/ HST) clearances.

⁴ Probate is the legal process whereby a will is "proved" in a court and accepted as a valid public document that is the true last testament of the deceased.

Meet all income tax reporting requirements:

- If the deceased held any foreign assets, complete and file the necessary tax returns.
- Complete and file a Terminal T1 Tax Return and any other required returns with Revenue Canada and request a Clearance Certificate. Note that Terminal period returns have to be filed by April 30th of the year following the year of death, or by six months from the date of death, whichever is later.
- If a trust is established as part of the estate, complete and file a T3 Trust Information Return⁵.
- If the deceased has included charitable beneficiaries, ensure that you declare the estate to be a Graduated Rate Estate (GRE) on the terminal T1 tax return to maximize the tax benefits of charitable tax credits. Only one estate may be declared a GRE so for people with more than one will, the executor needs to coordinate with other estate trustees to maximize the tax benefit of charitable gifts.
- Notify the charities, if you haven't already done so, and make an effort to speak with the charitable gift planner. There are tax-effective ways to distribute assets that gift planners may be aware of that other advisors may not.
- An executor can ask charities to confirm by letter the value of specific gifts named in a will, and the letter may be submitted with the tax return. CRA may accept the letter accounting for the gift pledge in lieu of submitting taxes.

Begin the distribution of assets and funds to the beneficiaries:

- Determine if the will provides for outright distribution. If so, acquire a release of distribution (or receipt) and transfer assets or funds to beneficiaries. Be sure to keep enough funds in a reserve for any outstanding accounts and debts as well as income taxes.
- Determine if the will provides for trusts. If so, arrange for testamentary trusts and organize an ongoing review of investments. Also arrange a review to ensure an ongoing compliance with the rest of the terms of the trust.

Obtain beneficiary approval and complete the distribution:

- Prepare the estate accounts for approval or passing by beneficiaries and prepare releases for them to sign.
- Executors are entitled to reasonable compensation. This should be included in the accounts to be sent to the beneficiaries.
- If you have paid for other professionals to do your job as an executor it is your responsibility to compensate them, not the estate's. This is normally done by reducing the executor's claim for compensation.
- When accounting has been completed, write to the beneficiaries to request their approval.
- Confirm that all releases have been received and account approval has been given by all the beneficiaries.
- After obtaining the beneficiaries or if necessary, court approval, take the executor's compensation, maintain a holdback/reserve pending the receipt of clearance certificates, and distribute and deliver any remaining funds or assets.

⁵ A T3 Trust Information Return is used to file a tax return for the estate itself, as opposed to the deceased person. An estate or trust is considered a "person" for taxation purposes. Just as a living person files a tax return each year to report income, so does an estate or trust.

Finalizing affairs:

- If the accounts need to be audited by the courts, request that the solicitor or estate professional prepare an application and all necessary notices and make an appointment.
- Apply for a tax clearance certificate.
- After confirming that all written cheques have cleared, organize the closure of the estate bank account.
- Write a detailed report regarding all aspects of the estate administration and send it to beneficiaries.

SPECIFIC CHARITABLE GIFT ESTATE ADMINISTRATION NOTES

There are charitable gifts in the will. What do I do next?

1. If we are a charitable beneficiary of the estate you are administering, please notify us of the donor's intentions by sending us a copy of the will as soon as possible.
2. Please also include the name and address of the person whom we can thank for the generosity and thoughtfulness of the deceased, so that we can send a letter with our thanks.
3. Please stay in touch! As a charity, we have a legal duty to ensure that any legacy we receive is administered correctly – so we are happy to answer any questions you may have. We may reach out to you if we have questions.

Do I need to get a release signed by you, the charity?

At the end of the administration of the estate, most trustees ask us to formally "release" them from their responsibilities as estate trustee. If you would like us to sign a release acknowledging we have received the bequest, we are happy to consider it.

SPECIFIC GIFTS: It is not necessary to have the charity sign a release for a specific gift. We will provide an income tax receipt which is used as proof that the gift was received.

RESIDUAL GIFTS: In order to release the executor or trustee for a gift of residue, we are required to review the administration of the estate. To do this we will need to have the following on hand: the last Will & Testament, the Statement of Original Assets and Liabilities, the Capital and Revenue Transactions, and a Statement of Proposed Distribution including Executor/Trustee Compensation. These are described in more detail on the next page.

If you choose to have the estate accounts passed in court instead, please send us the documentation confirming this was done, so we can close our file.

Special Requirements for Gifts of Residue

The following documents are helpful so that we can ensure that every legacy we receive is calculated correctly and that we are not overpaid or underpaid.

1. Statement of Original Assets and Liabilities at the Date of Death

WHAT: This document lists all the possessions of the deceased (for example, property, money or investments). It also lists any outstanding debts. The statement of assets and liabilities helps us understand the gift that has been left to the WDMH Foundation and helps us to plan ahead. We can also use it to identify ways that the executors can save the estate money, by giving in a tax-smart way (e.g. giving securities directly).

WHEN: As soon as it is available.

2. Estate Accounts

WHAT: The estate accounts list all transactions that take place over the course of the administration of the estate. For a straightforward estate, this may be a simple document. For an estate that is more complicated, it will list the revenue transactions and capital transactions separately.

WHEN: Please send us a copy as soon as possible. It is acceptable to send interim accounts with an interim distribution, and final accounts must be sent at the end of the administration process.

HOW THE ESTATE CAN PAY LESS TAX

There is no inheritance tax in Canada. However, the executor will need to submit a final individual (T1) income tax return for the deceased, and the estate may have to pay income tax and/or capital gains on appreciated assets. It is important for the estate to claim the income tax credits that result from charitable gifts made under the will, as the resulting tax refund will result in a larger distribution for the heirs. Here are two simple ways in which a charitable gift in a will can offset the taxes owing:

1. Reducing Income Tax with the Charitable Tax Credit

When an estate makes a gift to a charity, the charity issues an income tax receipt in the name of the estate. That income tax receipt can be used to reduce income taxes for the Terminal T1 Return⁶ (the last year of life) and the year immediately preceding that one. The maximum amount allowed to be claimed is 100% of the deceased net income in the year of death and the immediately preceding year. Tip: registered funds (an RRSP or a RRIF) are considered income on the final day of an individual's life, so their income (and the corresponding income tax) is often the highest ever. The tax relief of a charitable gift is particularly welcome when you consider these extra taxes that need to be paid.

⁶ A Terminal T1 Tax Return reports all of the deceased's income from January 1 of the year of death, up to and including the date of death.

EXAMPLE:

Susan and Jack passed away within four years of each other, her from breast cancer and him from a stroke. During their life, she and Jack knew they wanted to make a gift to WDMH in their will of \$75,000 to help with whatever the hospital needed, as they had both received such great care there. As the last surviving spouse, Susan's income in the year of her death was \$50,000, and so, she wouldn't be able to claim the entire \$75,000 gift against that income (you can only claim up to 100% of your income in the year of death). But, Susan requested that her executor and lawyer ensure that her estate would qualify as a Graduated Rate Estate⁷ (GRE), so that as much of the remaining \$25,000 could be claimed against her previous year's income, also up to 100% of her income for that year (which also happened to be \$50,000).

In Susan's case, at \$50,000 of income, only about \$17,000 of donations would be required to reduce her tax to zero. So, hypothetically, she could apply \$17,000 of the gift to the year of her death, another \$17,000 portion to the year before her death and then carry the rest (\$41,000) forward in her estate, for up to five years after death (\$75,000 - \$17,000 in year of death - \$17,000 year before death = \$41,000 to carry forward into future tax years for the estate). This \$41,000 could help to offset an extra amount owing on someone's death like a cottage, or a RRIF, just so that the estate gift's donation credits aren't wasted.

Resulting from the gift, Susan's estate would receive approximately a \$6,800 tax credit against her Terminal T1 Return, and an approximately \$6,800 credit against the return filed for the year prior to her death (assuming an approximate 40% tax credit rate, and assuming taxes of more than those amounts would have been paid in those years). The remaining credits would be applied to future years' returns within the estate, for up to five years after death.

REDUCING INCOME TAX WITH THE CHARITABLE TAX CREDIT	
Amount of bequest	\$75,000
Net Income in the year of death	\$50,000
Income Amount claimed on Terminal T1 Return	\$50,000
Tax credit/savings on Terminal T1 Return (T1)*	\$20,000
Residual Amount can be claimed on return for the year prior to death	\$25,000
Tax refund on return for the year prior to death**	\$10,000
Total savings/refunds to the estate	\$30,000
<i>* claiming 100% of Net Income at 40% approximate tax credit rate in the province of Ontario, varies by province</i>	
<i>** assumes taxes of more than \$10,000 had been paid in that year</i>	

⁷ A Graduated Rate Estate (GRE) is an estate that arises as the result of the death of a person on or after December 31, 2015, and no more than 36 months after the person's death. The estate at that time must be a testamentary trust. There can only be one GRE per deceased person, and it must meet the following criteria: the estate must designate itself as a GRE on the first year's tax return; no other estate of the individual can be designated as a GRE; and the estate must use the deceased's Social Insurance Number on each tax return during the 36-month period following his or her death. Benefits of classifying as a GRE include: having access to graduated tax rates; and flexibility in claiming donation tax credits.

Disclaimer: Please note that the information included in this brochure is not intended as legal, financial or tax planning advice. Before acting on material contained in this document, readers should seek advice that is appropriate to their personal circumstances from a professional advisor.

2. Reducing Capital Gains Tax

When someone dies, their stocks are considered to have been sold at fair market value immediately prior to death. There will be tax on the capital gain. However, capital gains are eliminated when appreciated listed securities are donated directly to a charity. Therefore, you may want to consider having the estate give shares directly to the WDMH Foundation. This will satisfy the bequest, eliminate capital gains tax, and generate a tax receipt that can be used as noted above. Contact us for more information, or [visit our shares and securities section on our website](#).

You will also find valuable guidance at the Canada Revenue Agency's website:
www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc4111.html

What if I don't want to be an executor?

Being named as an executor can be an honour – it's a sign that a friend or family member trusted you enough to administer their estate. However, no one can be forced to be an executor and a named executor who does not wish to act and has not yet administered the estate can renounce, or turn down, the appointment. An executor who wants to renounce their appointment isn't required to provide an explanation.

If you know you have been named as an estate trustee (or executor) of a living person's will, you can ask them to see their will, although you are not entitled to see it, it's considered courtesy. This way, you can inform the person whether or not you feel comfortable being named as executor or trustee, while there is an opportunity to identify someone else, or provide an alternate. If you only find out that you've been named as an executor or trustee once this person has passed away, you can opt to review the will and then decide if you're comfortable administering the estate.

Whatever the reason an executor has for renouncing, the renunciation must occur before probate has been granted (and should occur before the executor has started to administer any assets – or the executor may be said to have "intermeddled" with the estate). So, how does an executor officially renounce or turn down an appointment? This can be done by completing a renunciation (which is form 74.11 under the Rules of Civil Procedure and officially called a "Renunciation of Right to a Certificate of Appointment of Estate Trustee (or Succeeding Estate Trustee) With a Will").

Currently preparing your will?

It can take up to 12-18 months to settle an estate. An executor will often need to do 40 or more tasks during this time. If you don't know anybody you can name as executor, you can hire a trust company to do this for a fee of up to 5% of your total estate.



TALK WITH YOUR FAMILY. TALK WITH YOUR ADVISOR. TALK WITH US.



CHELSEA MCINTYRE, CFRE
Manager of Major & Planned Giving
Email: cmcintyre@wdmh.on.ca
Phone: 613-774-2422 x 6769
Website: www.wdmhfoundation.ca

WDMH Foundation
566 Louise Street
Winchester, Ontario
K0C 2K0

Please note that the information included in this fact sheet is not intended as legal, financial or tax planning advice. When considering any planned gift, you should always consult professionals and your family (as preferred).