

## **INSTRUCTIONS TO ESTATE TRUSTEES**

**NOTE:** *Please read the attached document, “Estates - Plan Coverage” NOW, before you read the rest of these instructions.*

### **A. Estate Trustee’s Work**

**You should take these first 10 steps quickly! If you have any questions about these steps, please consult your lawyer.**

1. Locate the original will and read it immediately.
  2. Make funeral and burial arrangements (any special instructions in the will or elsewhere?).
  3. Find all beneficiaries and notify them, in writing, of their interests.
  4. Determine immediate cash requirements of dependents.
  5. Obtain funeral director’s Statement of Death (or provincial death certificate).
  6. Make an inventory of estate assets, which includes an accurate valuation of each asset. If you are uncertain about the value of any asset, obtain a certified appraisal to reduce your exposure to liability for any additional provincial estate administration tax, if there is a reassessment (see page 3, “C. Additional Important Information for Estate Trustees”). List all information concerning debts and assets (e.g. rent, mortgage, credit cards, lines of credit, bank accounts, safety deposit boxes, life insurance policies, real estate, mutual funds, GICs, bonds, share certificates, pensions, RRSP).
  7. Secure all estate assets (including personal belongings).
  8. Insure all estate assets (especially vacant premises).
  9. Consult your lawyer as to whether opening an estate bank account is necessary.
  10. Notify the following:
    - post office, to redirect mail;
    - credit card companies, to cancel (destroy all credit cards; consult lawyer about paying outstanding balances)
    - OHIP, SIN and Driver’s Licence, to return/cancel cards (attach copy of death certificate)
    - Old Age Security, to stop cheques
    - Canada Pension Plan, to apply for death benefits, survivor’s benefits, if applicable
    - landlord, telephone company, cable TV, memberships, subscriptions, to cancel
    - deceased’s employer, to apply for death benefits or survivor benefits
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11. Sign “Retainer and Fee Agreement” with lawyer.
  12. Consult lawyer regarding advertising for creditors and court application for “Probate” (discuss advertising costs and “probate” fees).
  13. Collect income, make investment decisions, sell/ transfer assets as appropriate, pay debts.
  14. File and pay taxes within the time limit of each relevant jurisdiction and obtain tax clearances and indemnifications. (see “Additional Important Information for Estate Trustees”)
  15. Maintain estate accounts for approval by the beneficiaries or examination by the court or tax authorities. The accounts show all dealings with the estate assets during the course of your administration. You must keep accurate records of all monies spent and received, together with the date and an explanation of the transaction. Also you must keep records of all items of estate property that come under your control and what if anything happens to them. You will need this information to properly account to the beneficiaries, and to demonstrate that you have done your job properly. Keep these records for four years, in case the estate taxes are reassessed (see page 3, “C. Additional Important Information for Estate Trustees”).
  16. Keep detailed records of your time spent and of all your out-of-pocket expenditures. This may be needed to justify a claim for “executor’s compensation” (see “Additional Important Information for Estate Trustees”).
  17. Before you distribute assets of the estate according to the terms of the Will, obtain a “Release” from each beneficiary and a federal income tax clearance certificate, or you may be personally liable.

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**B. Documents and Information that may be Required**

The following may be needed. Consult your lawyer immediately, if you need help.

Your lawyer may already have some of this. Please do not concern yourself if the information or material is not readily available. Most of it can be obtained during the course of the estate administration without causing undue delay.

1. Original Will
2. Funeral Director's Statement of Death
3. Birth Certificate and Social Insurance Card of the deceased
4. Marriage certificate (if spouse alive); birth certificate for spouse and each dependant child
5. All health insurance cards (e.g. OHIP, Greenshield, Blue Cross)
6. Name and address of deceased's employer
7. Names and addresses of all estate trustees and beneficiaries
8. Passbook and/or statements for all bank accounts held by the deceased alone or jointly with another person, showing all entries on or after the date of death.
9. Confirmations for all term deposits held by the deceased alone or jointly with another (including those which matured on or after the date of death)
10. Safety deposit box key, number and location
11. Certificates for all stocks, bonds, GIC.'s etc. held by the deceased at death
12. Statements and transaction slips from all investment dealers or brokers showing all transactions since January 1 of the year of death
13. Statements or transaction slips (or other information) from brokers showing the cost to the deceased of all securities held by the deceased on the date of death
14. Particulars of all pensions and annuities received in the name of the deceased on or after the date of death
15. Information regarding RRSP's, RRIF's, annuities, etc., and beneficiaries of same
16. Life insurance policies held by the deceased at the date of death and beneficiaries of same
17. Deeds (transfers) to all real estate held by the deceased at the date of death
18. If any of the real estate referred to above was not the deceased's principal residence, particulars of the deceased's adjusted cost base of such assets
19. Particulars of any business interests (including promissory notes, accounts receivable)
20. Driver's licence of deceased and ownership certificates for motor vehicles and boats
21. List of jewelry or other valuables
22. Estimated value of deceased's interest in household furnishing and personal effects
23. Any other assets not previously mentioned
24. Particulars of all outstanding debts, including names, addresses and account numbers of all creditors (e.g. mortgages, loans, credit cards, landlords, nursing homes, hospitals)
25. Name and address of general insurance agent(s) and copies of insurance policies on home, auto, boat, jewelry, etc.
26. Municipal property tax bills
27. Statements from various utilities (hydro, gas, oil, water and sewage etc)
28. Tax returns of the deceased and the Notices of Assessment, for the last 2-3 years.
29. Digital Assets List (e.g. PayPal, Facebook)
30. All divorce documents, separation agreements, marriage contracts (if any)
31. Death certificates or Funeral Director's Statement of Death for any deceased spouse of the deceased, or for any deceased beneficiaries named in the will of the deceased (if any)

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### **C. Additional Important Information for Estate Trustees**

#### **Debts of the Deceased**

You are responsible to ensure that the debts of the deceased are paid from the Estate assets. You should discuss this with your lawyer.

#### **No Distribution Until Surviving Spouse Consents (Contact a lawyer immediately)**

An estate cannot be distributed to any beneficiaries until the rights of a surviving spouse have been properly determined. A spouse may have property or support rights and the estate trustee must review these possible entitlements with a lawyer before proceeding to administer the estate.

#### **Joint Assets**

Do not make any assumptions about who is entitled to assets that were held jointly with the deceased at the date of death. Consult a lawyer about this.

#### **Distribution to Minors and to “Children”/“Issue” Out of Wedlock**

If the will or any amendment (codicil) was executed after March 31, 1978, the terms "child", "children" and "issue" include those born out of wedlock unless the will specifically states otherwise. Also, you should not distribute funds directly to a minor (under 18) - discuss these issues with your lawyer.

#### **Estate Administration Tax**

An estate trustee is required to keep at home or place of work, records and books of account with any information that will allow for an accurate determination of tax payable. It is advisable to provide two lists of assets to the Ministry, one to cover those assets included in the estate, and one for those (like life insurance and registered plans payable to named beneficiaries) that are not. If you are uncertain as to the accurate value of an asset, it is advisable not to distribute it until you have received a certified appraisal.

Since the Minister of Revenue can reassess the tax owing, at any time up to four years after the date that the tax is due (and longer in some circumstances), it is advisable to keep these records for at least that period of time. Failure to comply with a request for information is a serious offense and you may be held personally liable for the penalty. You may also be held liable for the additional tax payable if there is a reassessment, so consider whether you should hold back some funds to cover that potential liability.

#### **Income Tax Issues - See an Accountant or Other Tax Specialist As Soon As Possible**

The Unifor Legal Services Plan does not give any tax or financial planning advice, nor does it prepare or file any income tax returns or “elections”. Therefore it is important for you to see an accountant or other tax specialist as soon as possible. It is a complex task to determine the number and types of income tax returns and “elections” to be filed. Substantial tax savings may be achieved through the use of the proper choice of tax returns and “elections”.

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**Estate Trustee Insurance**

Speak to your lawyer about purchasing Estate Trustee's Liability Insurance.

**Obtain Tax Clearances and Indemnifications**

An estate trustee who fails to file the necessary tax returns, pay any tax found to be owing, and obtain a clearance certificate from the Canada Customs and Revenue Agency ("CCRA", formerly called Revenue Canada), may be personally responsible for any unpaid taxes, interest and penalties to the extent of the lesser of (a) such tax liability; and (b) the value of the estate. Therefore, it is prudent for you not to distribute the entire estate until a clearance certificate is received.

Hold back whatever amount is appropriate to cover any potential tax liability which may arise. You may also require a written indemnification from the beneficiaries, against any income tax liability which may arise to the extent of such beneficiary's proportionate share of the estate.

**Purchase of Estate Assets By Estate Trustee**

It is a well established principal of estate law that an estate trustee must not purchase estate assets unless there is specific authorization in the will, or unless the purchase receives court approval. If you purchase estate assets without such authorization or approval, the purchase may be set aside or you may be required to account to the beneficiaries for any profits you make from the purchase.

**Estate Trustee Compensation**

An Estate Trustee in Ontario is entitled to compensation for the care, effort and time spent in administering the estate. The usual amount of compensation is 2.5% of capital receipts and disbursements and 2.5% of revenue receipts and disbursements. These are approximate figures, and will depend on the complexity of the estate. You must pay income tax on any fees received. Discuss this with your lawyer. Please also see paragraphs 4 and 5 of your Retainer and Fee Agreement.

**THIS IS GENERAL INFORMATION ONLY. SEE YOUR LAWYER FOR FURTHER DETAILS .**