

Your Role as an Executor

Estate Administration Self-Help Guide



2

Public Guardian and Trustee of Yukon

Information Resources - Whitehorse, Yukon

Office of the Public Guardian and Trustee

867-667-5366; toll free (in Yukon) 1-800-661-0408, ext. 5366

Email: publicguardianandtrustee@gov.yk.ca

Web site: www.publicguardianandtrustee.gov.yk.ca

Location: Third Floor Andrew A. Philipsen Law Centre, 2134 – 2nd Avenue

Yukon Public Law Library

867-667-3086; toll free (in Yukon) 1-800-661-0408, ext. 3086

Email: yukon.law.library@gov.yk.ca

Web site: www.justice.gov.yk.ca/prog/cs/library.html

Location: Ground Floor Law Courts, 2134 – 2nd Avenue

Registry of the Supreme Court of Yukon

867-667-5937; toll free (in Yukon) 1-800-661-0408, ext. 5937

Email: courtservices@gov.yk.ca

Web site: www.yukoncourts.ca/courts/supreme.html

Location: Ground Floor Law Courts, 2134 – 2nd Avenue

Non-Government

Yukon Public Legal Education Association (YPLEA)

867-668-5297; toll free (in Yukon) 1-866-667-4305

Email: ypleayt@gmail.com

Web site: www.yplea.com

Law Society of Yukon (Lawyer Referral Service)

867-668-4231

Email: info@lawsocietyyukon.com

Web site: www.lawsocietyyukon.com

Lawyer Referral Service - half-hour consultation with a lawyer - \$30 plus GST

Lawyers

To contact a lawyer's office, look in the phone directory under "Lawyers" in the Yellow Pages or under names of local law firms

IMPORTANT!

This guide has been produced by the Office of the Public Guardian and Trustee in the Yukon Department of Justice. It is intended to be used as a guide only and is not considered a comprehensive legal resource.

The information provided does not replace a lawyer's advice and cannot teach you everything you need to know. Even if you decide to proceed without a lawyer, you should consult a lawyer for interpretation of the law that applies to your case and for other legal advice.

The information provided in this guide is believed to be correct as of its date of publication. Please refer to the **List of Key Words Estate Administration Resource Guide** for definitions of any unfamiliar terms that are highlighted in this guide.

YOUR ROLE AS EXECUTOR OF AN ESTATE

If you are an executor/executrix you may wish to seek the help of professionals like lawyers and accountants. However, as the executor, you will be the person who is legally responsible for administration of the estate.

The information in this guide applies to cases where there is no disagreement about the appointment of the person who applies to be the executor. If the application is contested, or if you intend to oppose the application, you should seek legal advice and refer to the Supreme Court rules and forms for the process used in such cases.

Do I have to act as the executor?

If you have been named as an executor and you do not wish to act in that role, the law does not require you to do so.

If you are unable or unwilling to act as an executor, you must advise the **co-executor**, if there is one, the **alternate executor** named in the will (if one has been identified), or the family of the deceased of your decision. Case law says that you must not have "intermeddled" in the estate in order to resign. It is recommended that, if you intend to resign, you do so before you make decisions that affect the estate.

You should speak to a lawyer on how to legally step away from your duties as executor, as you will need to notify the court about your intentions. That way you can allow an alternate executor to apply to probate the will.

Where there is no known next of kin, the Public Guardian and Trustee may assume administration of an estate as an administrator of last resort. If the deceased person has a spouse, child, sibling or close friend living in Yukon who is capable of acting as the administrator of the estate, it is always best to have them administer the estate. (See the guide **Duties of an Estate Administrator** and the fact sheet on **Estate Administration** for further information.)

Will I get paid for acting as an executor?

In some wills the **testator** states that their executor is entitled to a fee. Where a fee has been fixed in the will, the executor is entitled to that fee if they carry out the duties of the executor. An executor may also choose to take no fee at all for acting as the executor.

If the will does not set out the executor's fee, all **beneficiaries** of the estate must agree on the amount before an executor's fee can be paid. The executor is responsible for paying costs incurred in administering the estate. As the executor, you are entitled to be paid for any out-of-pocket expenses you take on while administering the estate. The court can be asked to review all disbursements and costs incurred to ensure they are accurate, so you must keep detailed financial records connected to estate administration.

Do I need professional help?

Yukon law does not require that a lawyer prepare the documents an executor will require to probate the will, but the forms required to file for the **Grant of Probate** can be confusing and complicated. For this reason, as well as to ensure that you have collected all the information necessary and considered all the possible legalities regarding the estate, it is advisable to seek the advice of a lawyer and an accountant. (Please also see the guide **What is Probate?**)

Where should I start?

Please refer to the checklist at the end of this guide for information on tasks you may have to do to settle an estate. You should also refer to the fact sheet **Will (Testate) or No Will (Intestate)** for some more specific details about what to do next.

Estate debts

Along with determining the assets of the estate, an executor must calculate the deceased's debts. The executor will be responsible for paying those outstanding debts, and also for paying the funeral expenses. An executor cannot pay any outstanding debts of the deceased until the court orders a Grant of Probate.

Where there is an **insolvent estate**, it is very important for an executor to examine and verify all the deceased's debts. It is also important that the debts are paid before distributing any of the estate to the beneficiaries. For further information about dealing with insolvent estates, please refer to the guide **Closing an Estate**.

Dealing with interested persons

An executor is considered the legal representative of the estate. The executor is the person who will discuss with third parties about matters relating to the deceased's personal affairs and, in some cases, business affairs. An executor is responsible for advising any beneficiaries identified in the will of the contents of the will and for providing information to those beneficiaries about the administration of the estate. An executor is expected to act in the best interest of the beneficiaries when handling the estate assets. Keeping the beneficiaries informed is an important function of the executor's role.

Sometimes an executor has to deal with difficult situations, such as when a child or spouse is not included as a beneficiary in the will, or when the distribution of the estate does not adequately account for the financial needs of a dependent adult. In such cases the executor may need to speak to a lawyer to obtain advice on how to proceed. A dependent may have a legal claim to the estate and may also require legal advice and representation.

Dealing with creditors

An executor may also have to deal with creditors of the estate, so it is important to be aware of the estate's assets and debts. This will allow the executor access to estate funds. It is not uncommon for an executor to feel pressured to pay any outstanding debts immediately, but the appropriate time to pay these debts depends on the complexities of the estate. It is wise to remember to use your best judgment when determining how to proceed with the estate.

Closing an estate

Closing an estate may require completing a series of financial and other transactions. Please refer to the guide **Closing an Estate** for further details about closing an estate.

EXECUTOR CHECK LIST

The following steps are often taken after a death occurs. The purpose of this list is to draw attention to some of the details you will need to address. It is not intended to be thorough and complete. You are encouraged to obtain advice from a lawyer before you file any documents in court.

Immediate Duties

- Locate the will if there is one (check safety deposit box, law firms, personal effects)
 - Determine whether there are any special funeral directions
 - Notify relatives, friends, others of death
 - Speak to family if deceased did not leave instructions for either cremation or burial
- Make funeral arrangements
 - Arrange for copies of Certificate of Death from Vital Statistics (there will be a fee attached)
- Review the deceased's financial affairs
- Arrange appointment with Coroner (to obtain personal effects and information on death if applicable)

Protect the Estate

- Ensure safe custody of personal valuables
- Locate, identify and inventory assets
- Secure and protect important documents such as: property titles, mortgages, insurance policies, banking and investment documents (may include share certificates, bonds, debentures, guaranteed income certificates), personal income tax returns, pension plan information, Social Insurance Number

NOTE: where a beneficiary of insurance, pensions, etc. has been named, these items are not considered estate assets. Speak to a lawyer about such matters.

- Contact utility services to ensure services continue in order to protect the value of property
- Confirm identity and current addresses of beneficiaries including common-law spouse, children or separated spouse
- Redirect mail at post office (register change of address)
- Notify Land Titles Office of death if titled property (real estate) is involved
- Notify Public Guardian and Trustee of any minor children or dependent adults

Cancellations/Changes

You may need copies of the funeral director's statement of death or the Certificate of Death to notify these offices, arrange for bill payment from the estate, cancel the account or change the name of the account holder:

- Credit bureau - to assist in determining outstanding debts
- Credit cards - bank, department stores and others

NOTE: outstanding balances on credit cards, bank credit lines, loans and mortgages may be covered by insurance. Before you pay any outstanding amount, check to see if it is life insured.

- Cable/satellite TV
- Driver's licence
- Electric/utilities
- Health insurance coverage - provincial, territorial, extended health packages
- Internet/email
- Life insurance
- Memberships - associations, clubs
- Rental/lease agreements
- Subscriptions - newspapers, magazines
- Telephone
- Vehicle registration

Value the Estate

- Contact the following to determine assets and liabilities and to find out if a certified true copy or original Certificate of Death is required:
 - Financial institutions - banks, credit unions
 - Brokers - stock brokers, mortgage brokers
 - Investment advisors and companies holding investments
 - Insurance companies
 - Business partners
 - Employer
 - RRSP/RRIF trustees
- Advertise for creditors

Other Notifications

Government offices/programs – see also Service Canada web site for assistance

- Canada Pension Plan – to apply for death/survivors' allowances and benefits
- Canada Revenue Agency – preparation of tax returns and Certificate of Clearance
- Child Tax Credit – if children are involved
- Citizenship and Immigration Canada - to cancel Canadian citizenship card
- First Nation – re entitlements or claims under Self-Government Agreement
- INAC/DIAND
- Old Age Security Pension
- Social Insurance Number
- Passport Canada – to cancel Canadian passport

- Pensions - employee, military

Other

- Associations, unions, societies
- Church/synagogue/temple
- Clubs
- Contractors
- Dentist, doctor, chiropractor, other health practitioners
- Hospital – to obtain personal effects, information
- Lawyer
- Library
- Pensions (other) – may be non-government employer or from another country
- Pets
- Schools/colleges/universities/institutes

Court Documents

- Obtain forms from the Supreme Court of Yukon to apply for Grant of Probate
- Complete all forms required for filing in court
 - Requisition (Form 4)
 - Affidavit of Executor (Form 72)
 - Affidavit of Notice of Application (Form 73)
 - Notice of Application for Probate or Administration (attached to Form 73)
 - Grant of Probate (Form 115)
- Arrange to meet with a notary to swear completed court documents
- File notarized documents with the court

NOTES

NOTES

© 2016 Government of Yukon

ISBN 978-1-55362-480-6

For more information, or to obtain copies of these publications, please contact:

Government of Yukon, Department of Justice

Public Guardian and Trustee

Third Floor, Andrew A. Philipsen Law Centre

Second Avenue (between Wood Street and Jarvis Street)

Box 2703, Whitehorse, Yukon Y1A 2C6

www.justice.gov.yk.ca