



Little Black Book Of **PROBATE**

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Note From The Author

I understand family loss and the challenges that face you upon someone's passing. During a time of mourning, there are so many tasks that need to be done, so many papers that need to be completed, and so many financial affairs that need to be attend. It can be overwhelming and exhausting.

This "Little Black Book of Probate" is designed as a general guide to help organize your thoughts and help answer some of the most common questions I receive after someone's passing.

The checklist at the back of the book is a tool to help you keep track and take notes.

Always consult your estates lawyer for help and questions.

In three words I can sum up everything

I have learned about life:

It goes on. --- Robert Frost

Question:

What is my "Estate"?

Answer:

Your "estate" consists of all the things that you own alone at your death. Your car, bank accounts, clothes, jewelry, business interest, etc. If you own it, (not including jointly held assets), it is part of your estate.

Question:

What is an Executor or an Estate Trustee?

Answer:

The Executor or "Estate Trustee" is the named person who is in charge of the estate and distributes the estate. If there is no will, then the Ontario *Succession Law Reform Act* directs who may apply to become the Executor of the estate as well as who the beneficiaries will be.

Definition: "Jointly held" means that two people are the legal owners of the entire asset. If one person dies, the survivor automatically owns the asset.

Question:
What is Probate?

Answer:
Probate is the administration process for when a person applies to the court to be appointed as the Executor, obtains a "Certificate of Appointment", collects all the assets, pays all the debts, prepares final accounting, prepares tax returns, and then distributes what is left to the beneficiaries. This is a high view answer. It is non specific and non exhaustive.

Question:
Do I have to probate?

Answer:
When someone dies owning an asset (bank account, property, vehicle etc.) by themselves, in order to transfer the ownership of that asset, you most likely need to probate the estate.

Question:
What is excluded from Probate?

Answer:

- Jointly owned assets with a right of survivorship
- RRSPs, RRIFs, TFSAs with a named beneficiary
- Insurance proceeds paid to a named beneficiary
- Real estate owned outside of Ontario
- Gifts made during your life
- Assets in a trust created during your lifetime

Definition: "Certificate of Appointment" use to be called "Letters of Probate".

Question:

How long does it take to probate?

Answer:

Completing and processing the Application for a Certificate of Appointment for Estate Trustee [with or without a Will] takes some time. You need to collect all the estate information and values. Once submitted to the court it could take anywhere from 4-14 weeks, depending on the workload of that particular court house, to receive the Certificate.

Once the Certificate is received, the Executor has the power to collect the assets, pay the debts, follow the will, file tax returns and make beneficiary distributions.

Overall, probate typically takes at least one year to fully probate an estate. If there is litigation, trusts or other complicated issues, it could take years. There are many tasks and duties involved with probating an estate, and legal counsel should be sought for guidance.

Question:

What is the “big picture” of probate?

Answer:

Here is the “big picture”. Every estate has it’s own needs so legal counsel should be sought to determine the additional steps needed.

1. Locate the Last Will and Testament or determine that there is no Will.
2. An Executor needs to be formally appointed to have the legal authority to handle the estate. Apply to the court for an Application for a Certificate of Appointment of Estate Trustee. (This used to be called “Letters of Probate.”)
3. Collect the assets
4. Advertise Legal Notice to Creditors
5. Pay debts
6. Prepare and pay taxes
7. Request a Clearance Certificate from CRA
8. Prepare estate accounting
9. Pay out gifts
10. Distribute to the beneficiaries
11. Obtain final releases

(This is a non-exhaustive list and is meant as a guide only.)

Question:

Who can be the Executor?

Answer:

The person named in the Last Will and Testament can apply to be appointed as the Executor or Estate Trustee.

If there is no will, the *Ontario Succession Law Reform Act* directs who is entitled to apply.

Question:

I am named as the Executor and do not want to be the Executor. What can I do?

Answer:

A named person can “renounce” their right to apply for the Certificate of Appointment. In other words, you can step down.

Question:

I want to be the Executor. What can I do?

Answer:

If there is no Executor named, or willing to act, you can apply to be the Executor with the consent of the beneficiaries. Posting a security bond may be required.

Question:

I do not know if there is a will, what can I do?

Answer:

If you are not able to locate a Last Will and Testament, there are a few things you can do: (a) contact the estates court of the local Superior court in the region where the deceased lived to see if a will was registered. (b) Place an advertisement in the Ontario Reports, a regular publication sent to lawyers, requesting that any lawyer known to have a prepared and/or stored a will for the deceased, contacts you. (c) Ask, Ask, Ask!! Ask people who were personally and professionally tied to the deceased such as the accountant, life insurance broker, financial broker, lawyer, and closest friend, as to whether they know of any Will the person may have left.

Question:

There is no Will...now what?

If there is no Last Will and Testament, then the estate will follow the rules under the Ontario *Succession Law Reform Act* as to who can apply as the Executor and who the beneficiaries will be.

Definition: "Intestate" means that someone died without leaving a last will and testament.

Question:

Who is entitled to see the Last Will and Testament?

Answer:

During the testator's life no one is entitled to see the Will without the Testator's consent.

Once you pass, the Executor and the residual beneficiaries are the only people entitled to see the entire Will.

If you are a beneficiary of a specific item or cash amount, you are only entitled to see that one paragraph that pertains to you.

Definition: "Testator" or "Testatrix" means the person who is writing the last will and testament.

Question:

Do I have to pay a tax to probate? I thought there was no “death tax”?

Answer:

While there is no “death tax” in Ontario, you do have to pay an “Estate Administration Fee” (use to be called a Probate Fee). This fee is calculated based on the total value of all assets owned by the deceased at the time of death that will go through the probate process. It is about 1.5% of the value of the estate.

This fee is payable to the Minister of Finance at the time you submit your Application of a Certificate of Appointment of Estate Trustee.

Be aware that Executors are required to sign an undertaking to the court swearing that they will report to the court any additionally discovered property or any discrepancies in the estate value.

Definition: “Undertaking” means a formal (in this case written) promise to do something.

Question:

Do I have to file taxes for the deceased?

Answer:

Yes! The Executor must file two returns on behalf of the deceased. A return reflecting the time period during the year the person was alive, and then a second final return for the remaining of the year. Executors should seek the advice of an accountant who is familiar with processing terminal returns.

Executors should also request a Clearance Certificate from the CRA to confirm that all assessments are final. Until the receipt of this CRA clearance, it is suggested that the final distribution of the estate not be made to protect the estate in case there is an amount due.

NOTE: Generally, tax returns are due on or before the following: if the death occurred between Jan 1 - Oct 31, the due date is April 30th of the following year. If the death occurred between Nov 1 - Dec 31, then the due date is 6 months after the date of death.

Question:

What kind of benefits might I get?

Answer:

It is possible as a spouse or a common law spouse, that you may be entitled to some benefits. The funeral Director often helps in this area and is a wealth of information.

Here are some possibilities:

1. CPP Death benefit to Spouse
2. CPP Death benefit to child
3. CPP Survivor's pension
4. Survivor's Allowance
5. Veteran's benefits
6. Current or past employee benefits

Other items you should think about that may be payable under a beneficiary designation:

1. Life insurance proceeds
2. RRSP accounts
3. TFSA accounts
4. RIF accounts

Definition: "Beneficiary Designation" refers to a specific form that is linked to certain types of accounts or policies that designate who is the beneficiary. The advantage is that this falls outside of the estate and avoids probate.

Question:

What do I do with the car?

Answer:

Here are some tips.

- 1. Cancel the deceased's driver's license with Service Ontario.**
- 2. Cancel the car insurance**
- 3. Cancel CAA**
- 4. Advise any financial lender or leaseholder; determine if there is a lien on the vehicle.**
- 5. Transfer the ownership by visiting Service Ontario. You will need either the Certificate of Appointment and a copy of the will, or a letter from your lawyer stating the probate was not required.**

Question:

What is this new Estate Information Return?

Answer:

Executors beware! The Estate Trustee or Executor, must now file an “Estate Information Return” to the Ontario Ministry of Finance within 90 calendar days of the issued Certificate of Appointment. This is a detailed inventory reflecting everything a person owned at death and the value of those assets. There are heavy penalties and a continuing duty to report any changes in the estate value. Audits are being performed and penalties may be imposed.

The Registrar has reported that the amount of administration tax collected has already tripled since the rule has been implemented. You can bet that this requirement is not going anywhere!

It is suggested that once you receive the Clearance Certificate from CRA, the executor should request a “comfort letter” from the Ministry of Finance regarding the completion of this requirement.

A HELPFUL CHECKLIST (this is a non-exhaustive list)

Task	Done
<i>Safeguard the assets</i>	
Lock the house	
Secure valuables (list contents)	
Secure personal documents	
Locate the Last Will and Testament	
Request a Death Certificate http://www.ontario.ca/en/services_for_residents/ONT06_025762	
<i>Service Ontario</i>	
Old Age Security (OAS) 1-800-277-9914	
Canada Pension Plan (CPP) 1-800-277-9914	
Social Insurance Number (SIN)	
Health Card (OHIP) 519-893-3966	
Child Tax Benefits (if applicable) 1-800-387-1193	

<i>Professionals to call</i>	
Estates Lawyer	
Accountant	
Financial Planner	
Private Pensions (inquire with Employer)	
<i>CRA - 1 (800) 959-8281</i>	
Tax Returns	
<i>Probate (if required)</i>	
Apply for Certificate of Appointment	
Open Estate bank account	
Estate Information Return (w/in 90 days)	
Tax returns	
Legal Notice to Creditors	
Clearance Certificate - CRA	
Comfort Letter - Ministry Finance	

Vehicle		NOTES	
Cancel License - Service Ontario			
Cancel Insurance http://www.insurancedirectory.ca/			
Cancel CCA http://www.caa.ca/club-services/			
Call to verify Liens 1-800-267-8847			
Transfer ownership https://www.ontario.ca/page/buy-or-sell-used-vehicle-ontario			
Cancel any special permits			
Others to Inform			
Family Responsibility Office (if the deceased had a legal obligation to pay support)			
Banks (accounts and safety deposit box)			
Post Office			
Passport office			
Citizen and Immigration Centre			
Clubs, memberships and organizations			

About the Author

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Amy leads Hummingbird Lawyers Wills and Estates practice, bringing more than 15 years of experience to Hummingbird Lawyers. A Boston native, Amy has worked with a wide range of families regarding the administration of estates. Amy has the compassion and understanding to minimize family upset, and protect family assets.



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