

Being an

Executor

in Alberta

This booklet explains what is involved in being an Executor. It is divided into two sections:

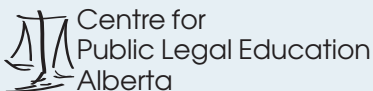
- *a question and answer section that looks at issues to consider before you accept the job as well as common questions and examples; and*
- *a checklist section that helps guide you when the testator—the person who made the Will—dies.*

This booklet gives general information only, not legal advice. It is not a do-it-yourself guide. For that, you need a more detailed self-help publication or legal advice. See the last few pages of this booklet for information on where to get help.

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You should **not** rely on this booklet for legal advice. It provides general information on **Alberta law only.**



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1. Should I agree to the job?

Top 10 general questions about what's involved in being an Executor

1.1

What is an Executor?

An Executor is the person named in a Will to carry out the directions contained in that Will. The Executor is responsible for settling the person's affairs after death. The person's estate (everything he or she owned) passes temporarily to the Executor. The Executor locates all of the person's assets, pays the funeral costs, applies for probate (if necessary), pays the person's debts, and taxes, and then distributes the remaining money and property according to the instructions in the Will.

The Executor is accountable to the beneficiaries. For example, the Executor must let the beneficiaries know if or when he or she is applying for probate and must keep records and give all beneficiaries a final statement of accounts.

Being named as an Executor of an estate is a big undertaking requiring a considerable amount of time, energy, and careful attention to detail. An Executor can get help from friends and family members and also from a lawyer, an accountant, or other professionals if necessary. Nonetheless, the Executor remains the person who is legally responsible.

If you agree to be an Executor, you will be entrusted to handle the financial affairs of the deceased and you owe it to him or her to make sure you know what is required of you.

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1.2

Who can be an Executor?

Any adult can be an Executor, but being the Executor of an estate can be a complex, difficult job. An Executor is responsible for such things as:

- the testator's funeral arrangements (if applicable);
- obtaining probate of the Will (see question 2.9);
- managing the assets of the testator until they are sold or given to beneficiaries;
- paying the testator's bills;
- preparing and submitting the testator's taxes;
- distributing the testator's estate as s/he requested;
- possibly establishing and maintaining trusts for children; and
- dealing with the legal and accounting matters relating to the estate.

Accordingly, an Executor should:

- be honest and trustworthy;
- be capable of doing the job (you do not need to be an expert, but you should at least be someone who does a good job of managing your own affairs); and
- have the time and willingness to do the job.

In addition, it is convenient if the Executor lives in the same city, or at least the same province, as the testator. This factor, however, should not overshadow the above three criteria. A person who is trustworthy, capable and willing is more suitable than someone who is not, even if s/he lives on the other side of the country.

A last consideration is the issue of the Executor's interest in the testator's estate. On the one hand, it can be beneficial if the Executor has a direct interest in the estate, as s/he would have more incentive to get things done in a timely fashion. On the other hand, one must be careful that one's interest as a beneficiary does not overshadow one's legal duties as an Executor.

1.3

How difficult is it to be an Executor?

Being named as an Executor of an estate can be a big undertaking requiring a considerable amount of time, energy, and careful attention to detail. It can also involve a significant amount of diplomacy.

The task can be fairly simple if you are an Executor of a small and simple estate, such as one with only a car, a house, some personal belongings, and a bank account.

On the other hand, the job of Executor may be considerably more complicated if:

- there are many beneficiaries and they are difficult to locate;
- the testator owned a business;
- the testator had a lot of investments and debts;
- the Will includes a trust (such as for minor or dependent children); or
- the Will is challenged by someone who feels left out of the Will.

1.4

What exactly are the duties of an Executor?

While the responsibilities of an Executor may vary as needed, the basic duties include:

- arranging the funeral and cremation and/or burial or cremation, if applicable;
- completing an inventory and a valuation of all assets and debts;
- gathering names and addresses of all beneficiaries and next-of-kin;
- cancelling subscriptions, accounts, and credit cards, redirecting mail and winding up all other personal matters;
- taking control of all assets, including the transfer of ownership registrations and the collection of any debts owed to the estate;
- applying for probate, if applicable;
- paying all the proven debts of the estate (The Executor may be held personally liable for these debts if a creditor remains unpaid after the distribution of the estate);

- filing tax returns for the testator and for the estate;
- selling assets as necessary and distributing the estate; and
- preparing and obtaining approval from the beneficiaries and/or the court for accounts showing assets, receipts, disbursements, and distribution of the estate.

1.5

I have just been asked to be an Executor. Do I have to agree?

If someone asks you to be an Executor and you don't want to do the job, you can simply say no. No one can force you to take on this job.

It's best to agree to act as Executor only if you feel you can do the job well and give it your time and attention. Be sure also to consider family dynamics.

1.6

I have just agreed to be someone's Executor. What information should I get right now?

Here are some kinds of information you should consider requesting:

- the testator's wishes regarding his or her funeral or memorial service and cremation and/or burial;
- additional details about the testator's wishes, especially with respect to any issues that you or the testator suspect might become contentious;
- details of where the original Will and any codicils are kept and how to access them, as well as copies of all these documents;
- if appropriate, details of all that the testator owns and owes. For example, bank accounts, RRSPs or RRIFs, insurance, real estate, and pension benefits. (Note any items that are owned in joint tenancy or that name a specific beneficiary. These are dealt with outside the estate, so the Executor does not have to manage them.); and
- the names and contact details of any Attorney (in a Power of Attorney) and Agents (in a Personal Directive) named by the testator.

1.7

I have just agreed to be someone's Executor. Is there anything I should ask the testator to do in order to make my job easier when the time comes?

You should consider asking the testator to:

- keep an up-to-date, detailed record of all that s/he owns and owes and let you know where this updated list can be found;
- talk to family members, the beneficiaries, or anyone who may be entitled to a share of the estate. Explain what his or her plans are, as this may prevent problems for you later; and
- keep you informed of any updates or changes to the Will and/or codicils.

1.8

I am receiving a gift under my wife's Will. Can I still be her Executor?

Yes. An Executor can also be a beneficiary under the Will.

1.9

Can I get paid for being an Executor?

Often an Executor does not accept a fee. This is common if the Executor is a spouse, adult interdependent partner, family member, or close friend.

Any expenses the Executor has while settling the estate are paid for out of the estate. Examples of expenses are photocopying, postage, and long-distance phone calls.

Sometimes the Will states an amount that is to be paid to the Executor as a fee. If it does, this is the maximum the Executor can receive.

If the Will does not list any fee, the Executor may apply to the court for "fair and reasonable" compensation. The Executor applies for the fee when he or she prepares the accounts for the beneficiaries to approve. If the beneficiaries do not agree with the proposed Executor fee, they can require the Executor to show his or her accounts to the court, who will set the fee. Even if the Executor is also a beneficiary, s/he may still apply for a fee, unless the

Will says that this cannot happen.

Sometimes the Will leaves the Executor a special gift for doing the job. In such a case, s/he can get an Executor's fee as well, but only if the Will says so. The Executor may prefer to take a gift rather than a fee because a fee is taxable, but a gift given in a Will is not.

If there is more than one Executor, the fee is split, but not necessarily equally. It depends on who does the most work.

1.10

I agreed to be an Executor, but now I have changed my mind. Can I get out of the duties to which I had previously agreed?

If the testator is still alive, you can change your mind at any time. Let the testator know as soon as possible so that s/he can ensure that the Will is properly changed.

You can also resign later, after the person has died. The law says, however, that in order to do so, you must apply to court for permission to renounce—or give up—the role.

You may **not** appoint someone else to act in your place, but if there is a co-Executor, he or she can take over. If there is no co-Executor, but the Will identifies an alternate Executor, then s/he may take your place. If there is no alternate named, someone will have to apply to the courts to become administrator of the estate.

If you have any doubts about taking on the duties and responsibilities of an Executor, you should consider giving up your role before you assume control of the estate.

2. What happens when...?

Top 20 questions about performing the duties of Executor

2.1

How do I confirm that I was named as the Executor?

After the death of the testator, you need to get the original version of the Will (and any codicils) to check this. If these documents are not at the testator's home, they may be in a safety deposit box or at the office of the lawyer who drafted them.

To look in the safety deposit box, make an appointment at the bank. Take the safety deposit box key, a death certificate (or funeral director's statement of death), and your own identification. If the Will is there and names you as Executor, the bank should let you take the Will.

You and a bank employee will then list the contents of the safety deposit box. Keep a copy of that list.

2.2

What if I can't find the Will?

If you can't find the Will, check with the testator's relatives and close friends. They may know where it is.

Without a Will, you cannot proceed with probate. You must apply for what are called "Letters of Administration." You become the Administrator rather than the Executor. The procedures are similar to those for probate. More information can be found on the Alberta Courts website listed at the back of this booklet.

As Executor, you must make the appropriate effort to ensure you are working with the correct Will, as it is your job to do your best to ensure the wishes of the deceased are carried out.

2.3

I found a Will that is handwritten, signed, and dated, but no one else witnessed it. Is it valid?

Possibly. In Alberta, a Will is valid if it is entirely handwritten by the deceased and signed and dated. It does not have to be witnessed to be valid. Such a Will is called a holograph Will. However, not all provinces recognize holograph Wills.

In Alberta, for the holograph Will to be valid, however, it must be the last Will of record. In addition, there will have to be certainty that it was in fact written by the deceased. Hopefully you or family members or friends will be able to recognize the handwriting. If there is a dispute, an estate lawyer should be able to help.

2.4

What happens if there is more than one Will?

Usually, there is only one valid binding Will. Generally the binding Will is the one that is both the most recent and the one that meets all of the legal requirements.

Example

- A testator wrote a Will in 1992 and it met all of the legal requirements.
- In 2002, the testator wrote a new Will, which attempted to revoke the 1992 Will, but it did not meet all of the legal requirements.
- The 1992 Will is the valid one.

As Executor, you must make the appropriate effort to ensure you are working with the correct Will, as it is your job to do your best to ensure the wishes of the deceased are carried out.

Sometimes, however, there may be a dispute as to which Will is the official one. For example: there may be a claim that the most recent Will was written when the deceased did not have the mental capacity to write one. A court may have to decide. If there is more than one Will and they can be read together (that is, they do not conflict), a court may take into account the provisions of both, but this is extremely rare.

2.5

If the Will was made in another province, is it valid here?

If someone dies in Alberta, but had a valid Will made in another province, an Executor may be able to act on the Will. The process, however, may be more complicated. It is always a good idea to make a new Will when a person moves to another province.

2.6

Which property forms part of the estate?

The estate consists of the property owned by the testator at the time of his or her death and which is to be distributed as per the instructions in his or her Will. This property is first used to pay debts and taxes, and then it is distributed in accordance with the instructions in the Will.

Property that does **not** flow through the Will, and therefore does **not** form part of the estate includes:

- property such as land, a house, and bank accounts for which the registered owners are described as “joint tenants”. This kind of property transfers to the remaining joint tenant(s) when the first joint tenant dies. (**Note:** On the other hand, property for which the registered owners are described as “tenants in common” **does** flow through the estate.); and
- RRSPs, pensions, life insurance policies for which the testator has designated a beneficiary other than his or her estate. Consider the following scenarios:
 - In 1999, the testator signed a designation of beneficiary form leaving the death benefit of his pension plan to his sister. In 2006, the testator then wrote a Will but did not mention his pension plan. The death benefit will go directly to the named beneficiary (his sister) and will not form part of the testator’s estate. No part of the funds can be used to pay the debts of the estate.
 - In 1999, another testator signed a designation of beneficiary form leaving the death benefit of her pension plan to her brother. In 2006, the testator then wrote a Will and in that Will she **did** make other arrangements for this benefit (she left it to her sister). The death benefit **will** form part of the estate (that is, it can first be used to pay debts and what remains will go to the sister).

2.7

Can I get help from professionals with my duties as an Executor?

Yes. Although many Executors do the work themselves, an Executor can get help from friends and family members and also from a lawyer, accountant, or other professional.

For example, you may hire a lawyer to handle probate and complex business matters and an accountant to prepare the final tax return. Lawyers can also help you if you need to provide affidavits (a written oath that swears the information you give is true). Consulting with the deceased’s accountant may also prove beneficial. For example, the accountant can usually produce previous years’ tax information, advise as to any tax avoidance strategies implemented by the deceased prior to death in order to minimize the taxation upon the estate, and assist in transferring tax liability from the estate to the beneficiary in a lower tax bracket.

Even if as Executor you obtain such help, you are the person who remains legally responsible. You will make the decisions, watch over everything, and keep accurate records.

2.8

If I do get help with my duties as an Executor, who pays for that help?

Reasonable professional fees are paid out of the estate. Ask beforehand about costs, the amount of time involved, and the service provided.

2.9

What is “probate”?

Probate is a legal procedure where the court determines the Will’s validity and confirms the Executor’s appointment. In Alberta, this happens in the Court of Queen’s Bench (Surrogate Matters). An Executor must apply to the court to probate a Will. (For more information, see question 4.6.)

A range of court fees is charged for probate: the larger the estate, the higher the fee. For example, in January 2013, the fees were as follows.

- | | |
|--|----------|
| • Estate of \$10,000 and under | \$25.00 |
| • Over \$10,000 but not more than \$25,000 | \$100.00 |
| • Over \$25,000 but not more than \$125,000 | \$200.00 |
| • Over \$125,000 but not more than \$250,000 | \$300.00 |
| • Over \$250,000 | \$400.00 |

2.10

Must I have the Will probated?

No, not all Wills have to be probated. It depends on various factors such as: the amount and nature of assets, the complexity of the estate, the number and nature of beneficiaries, and the policies of the agency or financial institutions that hold the particular assets.

For example, certain assets, such as land owned in joint tenancy with another person, don't require probate. If the testator owned land or a house in joint tenancy with another person, you only have to file an application in the Land Titles Office along with the death certificate. This will register the land in the name of the surviving joint tenant. Similarly, if the testator owned a bank account or vehicle in joint tenancy, the death certificate is usually sufficient to transfer these to the surviving joint owner.

In addition, RRSPs and insurance policies, which typically name a beneficiary to receive the proceeds in case of the person's death, are not considered part of the estate and therefore do not require probate. You should give the death certificate to any insurance companies and RRSP administrators with whom the deceased person had plans. Such agencies will want the death certificate before paying money to a beneficiary.

If, on the other hand, the estate includes land held only in the name of the testator, probate will be required. Similarly, if the estate includes securities, such as stocks and bonds, you may have to apply for probate in order to transfer them. You should check with the financial institution or transfer agent involved for each security in the estate, as they will each have different requirements.

In practice, many estates end up going through the probate process. Executors are often encouraged to have the Will probated, because without this legal confirmation process, many people could become concerned that the Will is invalid, possibly signed under duress, or that there may be a more recent Will. If there is any sign that the legality of the Will is in question or that there could be contention over the provisions of the Will, then the Will should be probated.

2.11

How long does probate take?

Probate can take a few days to several weeks depending on complications, the volume that the surrogate court is dealing with, and whether the documents have been mailed or hand delivered to the court. Your lawyer may be able to tell you how to speed up the process. You can help matters by ensuring that documents are filed promptly and completely.

2.12

As Executor, am I required to have an appraisal of the assets?

If the Will is being probated, the court will require estimated values. If values are modest and the Executor is comfortable making the assumptions, an official appraisal may not be required. An appraisal is an excellent tool, however, in helping to ensure fairness and impartiality. In addition, in terms of items such as collectables and antiques, appraisals can prevent serious mistakes. The cost of appraisals will be covered by the estate.

2.13

What happens if the Will includes a trust?

A trust is a part of the estate that is set aside for a beneficiary, most often a minor or dependent child, for a certain amount of time. For small or simple estates, the Executor is often also the trustee. In larger or more complicated estates, there may be a different trustee. Sometimes the trustee may be a trust company. Sometimes the trustee may be the Public Trustee. If there is such a trust, contact the Office of the Public Trustee for advice and direction. For a list of situations in which you *must* involve the Public Trustee, see: <http://humanservices.alberta.ca/guardianship-trusteeship/opt-deceased-persons-common-questions.html>.

If you are acting as trustee, you are responsible for making sure that all the trust assets are invested or kept in a safe place and for filing annual trust tax returns. You are also responsible for making payments from the trust to the beneficiary as directed by the Will.

You can get help with these tasks from a lawyer and an accountant. You may wish to contact the Canada Revenue Agency for a copy of the booklet called “T3 Trust Guide.” You can download this guide from their website at www.ccr-aadrc.gc.ca.

2.14

What if I am the Executor for an estate with a property that is not in Alberta?

If the estate includes property that is not in Alberta, you may want to make sure the estate is probated in that other jurisdiction as well. Depending on the nature of the property, it may **have** to be probated in that other jurisdiction. An estate lawyer should be able to provide direction.

Similarly, an estate may have an outside-of-Canada beneficiary. This can create its own set of complex issues, such as tax obligations. Be sure to contact the Canada Revenue Agency about any such bequests or beneficiaries.

2.15

Can the estate keep all income that arrives after the testator’s death?

Not necessarily. It depends on the kind of income. For example, any Canada Pension Plan and Old Age Security cheques for the month after the month in which the person died must be returned uncashed.

Probate is a legal procedure where the court determines the Will’s validity and confirms the Executor’s appointment. In Alberta, this happens in the Court of Queen’s Bench (Surrogate Matters).

2.16

My testator was in rental accommodation at the time of death. What are my obligations as Executor?

If a tenant dies and there are no other tenants in the unit and the rent ceases to be paid, the tenancy is deemed to be terminated on the earliest date that the tenant could have terminated the tenancy under the *Residential Tenancies Act* (the exact number of days depends on the nature of the rental agreement, for example, whether periodic or fixed term). As of that date, the property of the testator in the rental unit can then be treated as “abandoned” property.

As a result, it is prudent for an Executor to:

- inform the landlord of the testator’s death as soon as possible;
- keep the landlord apprised of when the property will be removed;
- make arrangements with the landlord to protect the property (such as continuing to pay rent while you make arrangements to move the property).

If this is not done, the property may be treated as abandoned. The *Residential Tenancies Act* sets out rules for how the landlord is entitled to dispose of such items.

- If a landlord believes that the abandoned items have a market value of less than a particular amount set by the law, s/he can simply dispose of them however s/he wants. The law currently has set that amount at \$2,000.
- If a landlord believes that the items have a market value of around \$2,000 or more, but that it would cost more than their value to remove, store, and sell the items, s/he can sell them in any way that s/he believes is reasonable. The landlord can also sell them if it is going to be unsafe or unsanitary to store the items or if the value of the items is going to decrease the longer they are stored.
- If the items are worth more than \$2,000, are not going to deteriorate in storage, and are worth selling, the landlord must keep the items for a period of time – set by law – after the tenant has left the premises. The current period is **30 days**. After 30 days, the landlord can sell the items at public auction or by private sale. In order to sell the goods by private sale, the landlord **must** have the approval of the court.

Note that court approval is necessary before a landlord can dispose of the goods by private sale. If a landlord sells items, either by private sale or by auction, s/he can use the money received to reimburse him- or herself for the costs of any moving, storing, or selling of the goods.

A landlord must keep a record of any abandoned goods s/he deals with. The record must be kept for at least three years after the goods are sold, returned to the tenant, or disposed of. More information on the topic of abandoned property is available at www.landlordandtenant.org.

2.17

What are “death benefits” and what do I need to do to get them for the estate?

Various public and private programs offer death benefits. This is a sum of money due to a beneficiary upon the death of the member of the program. Examples include: the Canada Pension Plan (federal government), Old Age Security (federal government), public pension plans (example: for Alberta government employees and former employees), and private company pension plans (for employees or former employees of those companies). Other groups that commonly have death benefits are unions (for current or previous union members), trade organizations, and social groups (for example, the Masons).

As Executor, if you find any indication that the testator was a member of such a program, group, or club, you should enquire into any possible death benefits.

Various public and private programs offer death benefits. This is a sum of money due to a beneficiary upon the death of the member of the program.

2.18

My father’s Will says sell everything and split the proceeds among four of us. I would like to keep some of the items. What can I do?

If the Will says to liquidate the items and you would like to keep some of them, there are various ways to accomplish both. One of these ways is to have an estate auction where the estate can be sure that all of the items are liquidated. At the auction, you can buy the items you want to keep, knowing that you will be getting your share of some of the proceeds from the sale. An auction will also address a situation where two heirs want to buy the same item.

Some Wills may provide for heirs to take what they want from the physical assets before the remainder is sold. An estate lawyer can help you with this issue.

2.19

Can I distribute assets before the debts and taxes are paid?

Not really. The law requires that debts and taxes be paid in full. Practically speaking, however, some tax issues can take a while to resolve. As a result, some Executors begin the distribution process, but leave enough funds to pay the anticipated taxes. This is risky and is not advisable.

2.20

When does my responsibility as Executor end?

There is no set time when the responsibilities of the Executor are finished unless the court formally discharges you. In practice, most people say it takes about a year to complete the work of Executor for a straightforward estate (what is commonly referred to as the “Executor’s Year”).

That said, the Executor remains responsible for looking after the estate if assets or debts turn up years later. Even if the estate has already been distributed, you will be legally responsible for dealing with them. This is why it is important to advertise for creditors before you distribute assets (see more below).

3. How can it go wrong?

Top 5 questions about the most common problems

3.1

What if I have disagreements with another Executor?

If the Executors do not agree, it may cause problems. For example, if one Executor wants to sell the house and the other disagrees, there will be no sale. If you have serious disagreements with other Executors, you may need to contact a lawyer. Disputes may have to be settled in court.

If there is more than one Executor, you are legally responsible for what the other Executor does. For example, if the other Executor takes funds from the estate, you have to make up the loss. You can then sue the other Executor.

3.2

What if the estate beneficiaries are fighting?

If the beneficiaries are not in agreement as to how you intend to proceed, make sure you, as Executor, have the advice of the estate lawyer and clearly understand the Will and its direction.

How you proceed within the direction of the Will is up to you, but keeping the peace may help avoid even more problems later. Setting a liquidation plan and then sharing that strategy with all the beneficiaries at the same time may build trust and provide a setting where they hear each other ask questions and get answers. In addition, any agents hired to sell assets could meet with everyone at the same time. Keeping all beneficiaries informed also helps develop confidence in your actions. Ultimately, however, disputes may have to be settled in court.

3.3

What if I do not exactly follow the directions in the Will?

An Executor **must** follow the wishes of the testator as expressed in the Will. Sometimes beneficiaries are not happy with the way in which the Executor conducts the settlement, but generally speaking, Executors have the right to proceed as they see their duty in accordance with the provisions of the Will.

If an Executor fails to act reasonably, or acts in a way that is not at all consistent with the Will, the beneficiaries can take legal action to pursue a remedy. An Executor

who acts in an irresponsible manner may be liable to the beneficiaries for his/her actions.

As a result, it is best for the Executor to keep the beneficiaries up-to-date, and where possible, ask them for input. If the Will is a little unclear on a particular matter, it is advisable not to proceed without either the written agreement of the affected beneficiaries or a court order (remember – you can always ask a court for advice and direction).

3.4

What happens if the testator leaves more debts than assets?

If there are more debts than assets, the estate is known as “insolvent”. As Executor, you must liquidate the assets you do have and pay the debts and taxes. Reasonable funeral costs, probate costs, taxes, and any Executor’s fee must all be paid before payments are made to creditors or beneficiaries. The result is that some of the creditors may not be paid in full and some or all of the beneficiaries will receive nothing.

If the estate does not have enough money to pay all outstanding debts, it is very important to get advice from a lawyer so that you do not become personally liable for the debts.

3.5

What happens if I can pay the debts and taxes, but there is not enough money to go around to all of the beneficiaries?

Perhaps not all of the beneficiaries will receive what they were bequeathed. In general, the Executor gives specific gifts first, often in the order written in the Will, and the residue, if there is one, is divided as per the Will. Alternatively, if there are insufficient funds for the gifts, the funds can be divided proportionately.

For example, assume a Will wherein 5 beneficiaries are to receive \$10,000 each, but there is only \$25,000 left. Each beneficiary can receive \$5,000 instead. Again, it is advisable not to proceed without either the written agreement of the affected beneficiaries or a court order. Remember – you can always ask a court for advice and direction. Ultimately, disputes may have to be settled in court.

4. The time has come: where do I begin?

Checklist: 10 steps upon the death of the testator

While being an Executor does not have to be difficult, there are many details and you need to be organized. Here are the ten most common steps that an Executor will take when the testator dies.

The order is not written in stone – it will depend on the situation. No two Wills or estates are exactly the same. Many of these steps occur at the same time, with much of the work being required early on in the process. It may seem like a lot to do in a short time, but you will find that one step leads to another. You may also wish to consider talking to someone you know who has been an Executor.

You are wise to start a filing system, such as a binder, to keep track of all the matters that arise and the decisions that you make. As you do so, you can also create a checklist for yourself, in order to ensure that nothing is forgotten.

4.1

Locate the Will and any codicils and read them as soon as possible.

Many people keep their original Will (and codicils) in a safety deposit box. Try to find the keys. To look in the safety deposit box, make an appointment at the bank. Take the key, a death certificate (or funeral director's statement of death), and your own identification. Tell the manager of the financial institution that you are the Executor and are looking for the original Will. If the Will is there and names you as Executor, the bank should let you take the Will. If you cannot find the key, the box can be drilled open for a charge.

You and a bank employee will then list the contents of the safety deposit box. Keep a copy of that list.

Some people leave the Will with their lawyer. Problems can arise, however, if they have not kept in touch with the lawyer or notary, who may have died, or moved, or sold the business.

Be sure to read the Will carefully, as it may have instructions about the person's wishes for organ donation (also look at the back of the testator's driver's licence), cremation and/or burial, funeral or memorial service. It may not, however, and you may have to search for another document containing these instructions. Alternatively, you may need to consult with family members and friends who knew the testator's wishes on these issues.

See questions 2.1 to 2.5 for additional questions about this task.

4.2

Register the death, arrange for cremation and/or burial, and obtain the Death Certificate.

The Executor, spouse, next of kin, or a person who has full knowledge of the facts surrounding the deceased is responsible for completing a Registration of Death form. This form is usually completed at the funeral home when funeral arrangements are being made. The funeral home will provide a Funeral Director's Certificate of Death and will send the original documents to the provincial office of Vital Statistics. This form becomes a permanent legal record of the death event. It is very important that it be completed fully and accurately. This information is used to produce death certificates. For information or clarification on the death registration process, contact the Vital Statistics office (for contact information, see "Community resources" at the end of this document).

Legally, the Executor is responsible for arranging cremation and/or burial. Often people leave instructions about what they want – but not always in their Will. Be sure to look for any records pertaining to this issue (such as a pre-purchased burial plot). If there is any doubt about what the person wanted, the Executor has the legal authority to decide.

You are wise to start a filing system, such as a binder, to keep track of all the matters that arise and the decisions that you make. As you do so, you can also create a checklist for yourself, in order to ensure that nothing is forgotten.

In order to cremate, bury, or otherwise dispose of the body of a deceased person, a burial permit is required. Some funeral homes print permits when funeral service arrangements are being made. Burial permits may also be obtained from a hospital registrar. A cemetery will not consent to a burial, nor a crematorium to a cremation, without the burial permit. For more information, contact the Vital Statistics office.

Obtain the death certificate by contacting a registry agent for Vital Statistics. A list of such agents is available in the Yellow Pages under “License and Registry Services” or on the internet at www.servicealberta.ca/1641.cfm. You will need to complete the Application for Certificate.

4.3

Determine the assets and debts and start to list them.

Determine assets and liabilities of the testator by going through the testator’s important documents and writing for information to financial institutions, insurance companies, brokers, employers, government pension offices, and RRSP and/or RRIF trustees.

Specific tasks under this heading can include:

- if applicable, considering the immediate financial needs of the surviving spouse, adult interdependent partner, and dependents;
- determining entitlement to and applying for Canada Pension Plan Death Benefits, Survivor’s Benefits, and Orphan’s Benefits;
- contacting current and previous employers to determine any survivor pension benefits or insurance proceeds;
- reviewing tax returns from past years and completing and filing any previous outstanding T1 returns;
- acquiring all title documents for property, mortgages, share certificates, bonds, debentures, and guaranteed investment certificates;
- obtaining evaluations of all real estate, securities, automobiles, and any personal property;
- reviewing insurance policies to determine adequacy of coverage and making changes if necessary;
- advertising for possible creditors to make sure all legitimate debts are paid;
- compiling a complete list of assets and liabilities, listing them by their class and value; ensuring that you include

certificate numbers, registration particulars, maturity dates, interest rates, and payment frequency;

- obtaining evidence of any family law entitlements of the surviving spouse or adult interdependent partner (and any previous spouses or adult interdependent partners), and dependents; and
- discussing probate requirements, beneficiary notice, and administrative concerns with an estate lawyer.

As part of this process, it is wise to turn this information into a formal written list. If you eventually obtain probate, you will require a formal list known as the “Statement of Assets and Liabilities.” Even if you do not ultimately obtain probate, however, such a list is very effective for your own organization.

Specifically, make a list of:

- real property (for example, the person’s home and other land holdings). You may wish to subdivide the list by class and value;
- personal property (for example, cash, jewelry, furniture, and pension and death benefits). Again, you may wish to subdivide by class and value;
- all debts (and any dates by which they must be paid); and
- people to whom you will be distributing the estate (for example, beneficiaries’ names, addresses, relationship to deceased, and gifts they are to receive).

If you obtain probate (discussed in step 4.6), you will need to value all of the items on the list. The terms of the Will may also require some sort of valuation. To determine the market value of the person’s home, refer to the Property Assessment Notice. You may also wish to consult a real estate agent. For other assets you may need to contact an appraiser or dealer. If the asset has no value, put “nil” or “none”.

Do **not** list assets that are owned in joint tenancy or that are to go to a specifically named beneficiary outside of the Will (for example, RRSPs, pension plans, and life insurance policies). These do not form part of the estate.

If you are not sure of all the debts, you may wish to advertise for creditors who have claims against the estate. This is all the more necessary if the person owned a business. Advertising for creditors is, in fact, always advisable in order to protect yourself. A lawyer can help you with this task.

See Section 2, above, for more questions about this task.

4.4

Protect the assets.

As Executor, it is your responsibility to protect the testator's assets. For example, you may want to make sure they are insured and safe. You may wish to place valuable papers, cash, or jewellery in a safety deposit box. If the person owned a business, you will need to arrange for its ongoing and proper management.

Common steps to protect the assets include:

- gaining access to and list contents of the testator's safety deposit box(es);
- arranging for safe storage of valuable items;
- gaining access to the testator's motor vehicle and ensure it is stored in a safe place;
- if the testator has minor children, ensuring for the care of those minors;
- gaining access to the testator's residence to take care of pets, make sure appliances are off, take in mail, mow the lawn, and collect the newspapers, etc.;
- if the testator was in a rental unit, making arrangements with the landlord for the removal of the testator's property (or terminate lease or arrange sublease, depending on the circumstances);
- if you have not already done so, notifying any insurers, government departments, banks, and other financial institutions of the death of the testator;
- canceling the testator's driver's licence, magazine and newspaper subscriptions, cable television, club memberships, and telephone service, and request refunds if applicable;
- if applicable, canceling GST quarterly credits, Child Tax Benefit, Universal Child Care Benefits, Old Age Security, and/or Canada Pension Plan payments;
- canceling health insurance coverage;
- obtaining information on outstanding credit card balances and cancel cards;
- contacting Canada Post to reroute the testator's mail;
- ensuring change of address with all applicable parties; and
- opening an estate bank account and arrange for collection of future income. Deposit all cheques and pay all bills from the estate account. The account may also be used to provide for the testator's immediate family's financial needs if necessary.

You must notify all the beneficiaries named in the Will and anyone else who may have a legal claim on the estate such as a common-law spouse, children, or a separated spouse.

4.5

Determine the location of, and notify, all beneficiaries

You must notify all the beneficiaries named in the Will and anyone else who may have a legal claim on the estate such as a common-law spouse, children, or a separated spouse.

You do not need to have a gathering to "read the Will," as in the movies.

If you intend to apply for probate (see step 4.6, following), your notice to the beneficiaries will include a copy of your Notice of Intent to Apply for Probate.

Even if there is no requirement to go to probate, an Executor may want to consider the benefits of providing information about the Will, with a view to building trust and reducing potential conflict.

4.6

Determine if you will need to apply for probate and, if so, start the application process.

Determine whether the Will needs to be probated. Probate is the procedure that confirms that the Will can be acted on and that you have the authority to act as Executor.

You do not have to obtain probate if all the deceased's valuable assets were owned jointly with others (such as the family home being owned jointly with the spouse), the estate is not very big (you can usually avoid probate if the estate is worth less than \$25,000) or if, for example, the only asset is a bank account which the bank is willing to transfer without probate (this will depend on the bank's internal rules; some banks will allow very large accounts to pass to a spouse without probating the Will).

If, on the other hand, the testator owned real estate (not in joint tenancy), the law requires probate: the Land Titles office will not transfer land without probate. Check with any institutions that hold the person's assets to find out what they require.

Sometimes financial institutions will not release the person's money without confirmation of probate. Sometimes it depends on how confident the staff is that you have authority to act. If employees know you and your relationship to the deceased, they may be satisfied just to see the death certificate and the Will.

If there is any dispute as to the authenticity of the Will, such as the fact that it was indeed the "last" Will, or the testator's capacity at the time of signing (that is, that s/he may have been mentally incapable or unduly influenced), it is often best to obtain probate. Once the court decides these issues, you can move safely forward with your duties as Executor.

In most cases, you do not actually have to "go to court" to get probate — it's called a "desk" application. You still need to fill out specific forms. Then take the forms, along with the original Will, to the Court of Queen's Bench (Surrogate Matters). You can complete this process on your own or get help from any estate lawyer. Court clerks may assist you with terminology and the forms, but they will not provide any legal advice. You will need to pay a fee when you file the documents.

You can obtain the forms by ordering from the Queen's Printer (see "Community resources" section for contact details). There is a fee for the Surrogate Forms. The Queen's Printer package contains all forms for Probate, Administration, and Dependent Adult applications, together with completed samples of each. You may also purchase the forms at any stationery store, but examples are not included in the packages. The *Probate Guide for Alberta* (which is no longer being printed) may be available at your local library to assist in completing the forms and the Executor's duties.

Be sure to fill out the forms accurately and completely. Answer **every** question (including "not applicable" or "nil"). Blank spaces suggest that information is missing. This is one of the main reasons that forms are rejected.

You will need to sign some of the documents in front of a lawyer, a Notary Public, or a "commissioner for taking

affidavits." All court registries have such a commissioner. Some community groups do as well. When you sign, it means you are swearing that the information you are providing in the document is true.

After the court staff determines that your forms are in order and the fees are paid, you will get a "Grant of Probate." This is a legal document that allows you to deal with the estate.

If your application is rejected, the staff will tell you why. Correct the problem and reapply. You only have to pay the filing fees once. If the judge has one or more specific questions to ask you, you may be required to go to court.

See Section 2 for common questions about this task.

4.7

Remain aware of possible claims against the estate by dependents, spouses, and others.

Under Alberta law, certain individuals can apply to a court for financial relief if they are not satisfied that they have been properly taken care of under a Will.

For example, the *Wills and Succession Act* allows any child or spouse of the deceased to apply to the court to vary or change the terms of the Will. This provision has a six-month deadline, starting from the granting of probate. It is advisable, therefore, that you wait at least six months before distributing the assets. To avoid this possibility, you may wish to obtain releases from each potential claimant. Remember that you are responsible if you distribute the assets to the wrong people and you could be sued.

Also remain aware of any dispute between the beneficiaries, as this, too, could result in one or more court applications.

See Section 3 for some common questions about this task.

Under Alberta law, certain individuals can apply to a court for financial relief if they are not satisfied that they have been properly taken care of under a Will.

4.8

Collect, deal with, and liquidate the assets.

Once you are ready (either you have probate or sufficient time has passed — often as long as one year, commonly referred to as the “Executor’s Year”), you must begin to collect and liquidate the assets. The following are some of the things you may have to do. Remember these do not apply to assets that are not part of the estate.

- Close all bank, credit union, and trust company accounts held by the testator. Transfer all the money into the estate bank account.
- Send in claim forms for death benefits or pension benefits. This may involve contacting an employer, a union, Canada Pension Plan, Old Age Security, Veterans Affairs, and others. You should also check with the testator’s employer, clubs, and so on, about benefits available there.
- Collect any money coming to the person or the estate including salary, unpaid benefits, and insurance.
- If any of the testator’s loans were insured, complete the appropriate insurance forms.
- Apply to transfer assets such as real estate property, a car, bonds, and other items with a registered title. Assets of the estate are transferred first to the Executor and then to the beneficiary. These steps are often done at the same time. The land title office has the forms for transferring real estate. Licensing and registry agents handle transfers of motor vehicles.
- Keep records of all income received and any expenses paid. Keep copies of all letters and forms you send.
- Obtain contents of the safety deposit boxes and arrange to have them closed.
- For joint accounts or land (with rights of survivorship), request the accounts or land to be transferred to the surviving party.
- Invest any cash surplus according to the terms of the Will (or the *Trustee Act*, as circumstances dictate).
- Organize the sale of securities if converting to cash. Otherwise arrange for the re-registration and transfer of securities.
- Arrange for transfer or rollover of RRSP and/or RRIF proceeds.

See section 2 for some common questions about this task.

If the testator had minor or dependent children, or was otherwise the guardian of another person, contact a lawyer and the Office of the Public Guardian for information on how to proceed.

4.9

Pay the debts and expenses and file the income tax returns.

Pay all the outstanding debts and expenses. In most cases you pay them in the following order of priority.

1. reasonable funeral expenses;
2. probate fees and legal costs;
3. municipal and income taxes; and
4. all other claims as of the date of death

If the estate does not have enough money to pay all outstanding debts, it is very important to get advice from a lawyer so that you do not become personally liable for the debts.

You must also file a final income tax return (Terminal T1 Tax Return) for the person. You will also need to ensure that there are no outstanding returns from previous years. Not all taxpayers are up-to-date with their tax returns.

If the person had assets or income in another country, you may need to file a foreign income tax return as well. Ask the Canada Revenue Agency for their booklet “Preparing Returns for Deceased Persons.” This guide is available for download from their website at www.cra-arc.gc.ca/E/pub/tg/t4011/README.html. 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.

After the income tax is reported, assessed, and paid, apply for a “Clearance Certificate”. For your own protection, you should have this certificate before you begin to distribute the estate. If the estate property is distributed without a Clearance Certificate, you may be personally liable for the estate’s unpaid taxes, plus interest.

For more information and all forms, contact the Canada Revenue Agency (see “Community resources” at the end of this document).

4.10

Distribute to the beneficiaries.

It is advisable that you **not** distribute the estate until at **least** six months after probate is granted. You do this to make sure that no one is going to challenge the Will. If all those who have a claim on the estate sign a form saying they will not contest the Will, you can go ahead sooner. It is also recommended that you not distribute any part of the estate before all of the debts and taxes are paid.

The following are your general tasks. There are extra duties if the Will includes a trust, such as with beneficiaries who are minors (see also Question 2.13, above).

- Distribute gifts of cash (legacies) and gifts of personal belongings (bequests) to people or organizations named in the Will. Sometimes the person attaches a separate list with the Will that says who should receive particular items. While this is not legally binding — if the item is not mentioned in the Will — it makes the Executor's task easier.

Sub-tasks include the following.

- Examine the Will for details regarding the distribution scheme of assets. If necessary, discuss distribution of assets in kind with beneficiaries.
- Review any restrictions or time periods imposed on the distribution of estate assets.
- Prepare cheques.
- If distribution in kind is required, provide beneficiaries with securities and obtain receipts for them.
- Provide beneficiaries with personal effects and obtain receipts from them.
- Provide beneficiaries with legacies (cash amounts) and obtain receipts from them.
- Determine if the Will provides for trusts. If so, arrange for these 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 (including tax issues). Contact the Office of the Public Trustee for advice and direction.

- Prepare a final statement of assets, debts, income, expenses, and distribution. This is for the beneficiaries to approve and is called “passing of accounts.”
 - Ready accounts for approval or “passing” by beneficiaries and prepare releases.
 - When accounting has been completed, write to beneficiaries to request their approval.
 - Calculate Executor's compensation.
 - Confirm that all releases have been received once beneficiaries have given account approval.
- If any cash and belongings remain after you have distributed the specific gifts, divide the remainder (the “residue”) as instructed by the Will. If the Will does not have a residue clause, you must distribute the remainder as if there were no Will. This is set out in the *Intestate Succession Act*.
- If accounts need to be audited by the court (as required in conjunction with probate or if a beneficiary challenges your actions), prepare an application and all necessary notices and book a court date.
- After confirming that all written cheques have cleared, organize the closure of the estate bank account, making the request in writing.
- Write a detailed report regarding all aspects of the estate administration and send it to the beneficiaries.

It is recommended that you not distribute any part of the estate before all of the debts and taxes are paid.

5. What do the words mean?

Glossary

administration (or “grant of administration”)	a legal procedure wherein the Alberta Court of Queen’s Bench, Surrogate Matters, appoints someone (an administrator) to administer the estate of a deceased person who died without a Will. The Court’s authority for that administrator to act is given in a grant of letters of administration.
administrator	someone who is given authority by the Alberta Court of Queen’s Bench, Surrogate Matters, to manage and administer the estate of a deceased person who dies without a Will. When an administrator is appointed, the Court issues a grant of letters of administration. (A female administrator is sometimes called an administratrix.)
affidavit	a written document containing information. The person making the affidavit then takes an oath swearing that the information provided in the document is true.
assets	what a person owns. Assets can include things such as money, land, investments, and personal possessions such as jewellery and furniture.
beneficiary	a person or organization to whom the testator leaves something in his or her Will.
bequest	personal property left to a beneficiary.
bond	funds paid into court that insure the value of the estate.
Clearance Certificate	a certificate issued by the Canada Revenue Agency (CRA) after the CRA has confirmed that all of the testator’s outstanding taxes, including year-of-death taxes, have been paid to the CRA.
codicil	a document made after the Will that changes some of the items in the Will.
debts	what a person owes. These can also be called “liabilities” and may include credit card balances, loans, and mortgages.
estate	all of the property and belongings owned by the testator at his or her death. The estate does not include property owned with someone else in joint tenancy or joint bank accounts. The estate does not include insurance policies, RRSPs or RRIFs, or other things which specifically name someone as the testator’s beneficiary.
Executor or Executrix	the person (male or female), named in a Will, who is responsible for managing the estate and for carrying out the instructions in the Will.
holograph Will	a Will that is completely in a person’s own handwriting.
intestate	where a person has died without leaving a Will.
joint tenancy	a type of ownership where any two or more persons (related or not) may equally own property and the property passes to the survivor or survivors on the death of one (without flowing through the estate of the deceased).
last Will and testament	the legal statement of a person’s last wishes as to the disposition of his or her property after death.
liquid asset	an asset that is either cash or easily converted to cash. Liquid assets in an estate would typically include cash, bank accounts, GICs, retirement savings plans, mutual funds, stocks, and mortgages owned. Liquid assets are assets that are paper assets rather than physical or fixed assets, which could be houses, cars, furniture, or collections.
probate (or “grant of probate”)	a legal procedure that confirms the Will can be acted on and authorizes the Executor to act. The procedure includes submitting special forms and the original Will to the Alberta Court of Queen’s Bench Surrogate Matters.
tenancy in common	a type of ownership where any two or more persons (related or not) may own property, but, unlike joint tenancy, the shares need not be equal, and there is no right of survivorship. That is, on the death of an owner, the share does not flow to the other tenant in common, but rather, flows through the estate of the deceased tenant.
testator or testatrix	a person (male or female) who has made a Will.
trust	a part of the testator’s estate that is set up to ensure ongoing income for a beneficiary, usually a dependent child.
trustee	the person or company named by a testator to manage a trust.
Will	the legal statement of a person’s last wishes as to the disposition of his or her property after death.

6. Where can I get more help?

Community resources

Acts

For copies of the Acts contact the **Queen's Printer**.

780-427-4952 in Edmonton

403-297-6251 in Calgary

Toll-free service in Alberta, dial 310-0000 followed by the 10-digit phone number of the office you wish to contact

Website: www.qp.alberta.ca

Electronic copies of some of the Acts can be retrieved at www.qp.alberta.ca. See the alphabetical list of Acts for

- *Wills and Succession Act*
- *Trustee Act*
- *Administration of Estates Act*
- *Surrogate Rules*

Alberta Vital Statistics

www.servicealberta.gov.ab.ca/vitalstatistics.cfm

Edmonton: 780-427-7013

Other areas in Alberta: toll free 310-0000, then dial 780-427-7013

Alberta Vital Statistics

Deaths

www.servicealberta.gov.ab.ca/657.cfm

Alberta Vital Statistics

Ordering a Death Certificate:

www.servicealberta.gov.ab.ca/1147.cfm

Court of Queen's Bench

Probate FAQs – Alberta Courts

www.albertacourts.ab.ca/CourtofQueensBench/FrequentlyAskedQuestions/tabid/95/Default.aspx

Older Adult Knowledge Network

www.oaknet.ca

Office of the Public Guardian

<http://humanservices.alberta.ca/guardianship-trusteeship/office-public-guardian.html>

Provides information about Personal Directives and Adult Guardianship and Trusteeship.

Toll-free: 1-877-427-4525

A list of offices across the province is available at:

<http://humanservices.alberta.ca/guardianship-trusteeship/opg-contacts.html>

Office of the Public Trustee

<http://humanservices.alberta.ca/guardianship-trusteeship/office-of-the-public-trustee.html>

Alberta Health

Programs and services for seniors.

<http://www.health.alberta.ca/seniors.html>

Government of Alberta

Saying farewell: A guide to assist you with the death and dying process

<http://www.health.alberta.ca/documents/Saying-Farewell-Dying-Process-Guide.pdf>

Alberta Human Services

Guardianship and Trusteeship

<http://humanservices.alberta.ca/guardianship-trusteeship.html>

Canada Pension Plan

Survivor benefits:

<http://www.servicecanada.gc.ca/eng/services/pensions/after-death.shtml>

Canada Revenue Agency

What to do when someone has died

www.cra-arc.gc.ca/tx/ndvdl/lf-vnts/dth/menu-eng.html

Workers' Compensation Board

www.wcb.ab.ca

Toll free in Alberta: 1-866-922-9221

Victims of Crime Financial Benefits Program

Victim Service Units are staffed with trained, caring people who offer information, assistance and support during the police investigation and throughout the criminal justice process.

Call: 780-427-7217

https://www.solgps.alberta.ca/programs_and_services/victim_services/help_for_victims/Pages/default.aspx

Alberta Supports Contact Centre

Toll-free in Alberta: 1-877-644-9992

Edmonton Area: 780-644-9992

<http://www.health.alberta.ca/seniors/contact-seniors.html>

Law Society of Alberta Lawyer Referral Service

A Lawyer Referral Operator will provide you with the names of three lawyers in your area that you can consult. Each lawyer will provide a half-hour consultation free of charge.

Toll free: 1-800-661-1095

403-228-1722 in Calgary

http://www.lawsociety.ab.ca/public/lawyer_referral.aspx

Legal Aid Society of Alberta

Provides legal services to financially eligible applicants.

Phone: 780-427-7575

www.legalaid.ab.ca

Legal Services Centre

A program of Legal Aid Alberta, which provides legal information and referrals to Albertans and legal advice to eligible callers. This free service is available across Alberta.

Toll-free in Alberta: 1.866.845.3425

To see the qualifications for free legal advice, visit

<http://www.legalaid.ab.ca/help/Pages/Eligibility.aspx>

The Legal Services Centre does not provide legal information or legal advice by e-mail.

Student Legal Services

A nonprofit, charitable organization of approximately 300 volunteer law students that provide year-round free legal services to those individuals who are unable to afford a lawyer. Please call in advance as student volunteers are not always available at all hours.

11011 - 88 Avenue NW

Edmonton, AB T6G 0Z3

Phone: 780-492-8244

www.slsedmonton.com

Family Law Information Centre

Edmonton Law Courts Building

1A Sir Winston Churchill Square

Edmonton, AB T5J 0R2

Phone: 780-415-0404

Self Counsel Press

Published a do-it-yourself guide called the *Probate Guide for Alberta* (now out of print). It is available from public libraries.

Seniors Association of Greater Edmonton (SAGE)

100 - 102A Avenue NW

15 Sir Winston Churchill Square

Edmonton AB T5J 2E5

Phone: 780-423-5510

Fax: 780-426-5175

E-mail: info@MySage.ca

www.MySage.ca

Hours: Monday to Friday 8:30 a.m.-4:15 p.m.

Community Groups

In many communities there are seniors groups that can provide information about legal issues. Ask your local seniors centre, community information centre, public library, or Royal Canadian Legion.

