



# Probate of an Estate

In Newfoundland and Labrador

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## Valuable Information for Executors

This brochure is intended to help you understand your responsibilities and the procedures you must follow. It is advisable to read this before you agree to become an executor.

An executor is a named representative in the Will of a deceased individual. This handout is specifically written for that situation. If you wish to manage the estate of a deceased individual and you are not named in the Will please ask us for a booklet describing Estate Administration. The Estate Administration booklet also addresses how you may become responsible for managing the estate of a living individual who is incapable of managing their own affairs. The processes, and your responsibilities, are different in these situations and the Estate Administration handout addresses these differences.

### You are an Executor. What Now?

You have the choice to agree to be an executor or not. To ensure you make an educated decision, we outline below some information about the responsibilities, demands and potential personal consequences of this position. The role of an executor can be a time-consuming appointment. If you agree to take on this job, you agree to become a personal representative of an estate until all aspects of the Will are administered and you have been discharged by the court. Depending upon the size and complexity of the estate and Will, managing the affairs of a deceased can be a time consuming task for the period it takes to administer the Will. Finally, as executor you will also be open to personal liability if you act improperly in your duties.

As an executor you may be liable for:

**Mismanagement** – If you mismanage the property or cause it to waste away through neglect or squander, you may be liable to the estate and beneficiaries. The amount of money you may be ordered to pay will depend on the specific circumstances.

**Improper Accounting** – It is advisable to maintain detailed, complete and accurate records of all aspects of the estate and your dealings with it. You should provide the beneficiaries with a copy of your accounting of the financial affairs of the estate when you give them their inheritance and ask them to sign a release, a document confirming their agreement with your accounting and their acceptance of the bequests. As a general rule, this bars them from suing you at a later date as long as you were not fraudulent in your accounting. If the beneficiaries do not agree with your accounting, then they may take the matter to court. Accordingly, a detailed correct accounting will ensure you are not wrongly found to have mismanaged the estate.

**Unreasonable Pursuit or Defense of Litigation on Behalf of the Estate** – Hire a competent lawyer you trust. If they advise you that a course of action is unreasonable, then be wary of proceeding. The choice to proceed is yours but, if your decision was unreasonable, you may have to pay the costs of the action from your own pocket. Costs for both sides to a dispute may be a very large sum.

**Carrying on the Deceased's Affairs without Due Care** – If you do this and you materially diminish the estate's value, then you may have to account for money lost. You may wish to hire an investment advisor. They can ensure that all the investments are prudent and reasonable. The estate will pay reasonable costs for an advisor.

The beneficiaries may also take you to court if you unreasonably delay the administration of the estate. As a general rule, you should attempt to administer the estate within one year. If the estate is complex and you will be unable to manage this, you may make an interim distribution and give the beneficiaries a portion of their entitlement. Be careful to ensure that you only distribute what you are certain they are entitled to receive and retain enough to pay any debts or taxes.

Being an executor is not as bleak as it appears in the face of the negative aspects. Remember you were personally chosen to fill this role and your loved one believed you would do the best job. There are tools available to help you administer the will properly and protect yourself in the process.

All reasonable costs associated with the administration of the estate will be paid by the estate. This includes all reasonable probate fees, court fees, administration costs and costs for professional advice. You may hire a lawyer, an accounting or a tax adviser and a financial planner to help you administer the estate if the complexity warrants this. They will help ensure that you are not open to liability by keeping a record of all accounting, legal advice and providing a timeline of events.

As an executor, you are entitled to be paid for the time and effort you expend on behalf of the estate. The deceased may have specified the amount of compensation you are to receive in their Will. If an amount was specified, this is the amount you will receive. If an amount was not specified, you may be compensated in accordance with the size of the estate, the care, responsibility, skill and ability you have shown, the time you expended and the success you achieved in accordance with established rules. Generally, compensation is in accordance with the Registrar Compensation Rules set out by the legislature in the *Rules of the Supreme Court, 1986*.

***Some individuals choose 2 people to represent them known as co-executors. If the other executor acts improperly you are liable for their acts too. If you agree to become a co-executor, be certain you trust the other individual and oversee their activities.***

## Duties of an Executor

By law, you will be responsible to ensure the deceased receives a proper burial. In reality, the immediate family usually takes care of this but, if they cannot, or there is no immediate family, you may have to take on this role. In any case, you must ensure that a proper burial takes place. You have the final say in all funeral matters.

You should begin by reading the Will. A properly drafted Will will set out your responsibilities and authority. If you are uncertain about the meaning of certain clauses in the Will, it is wise to ask your lawyer for advice and consider requesting direction from the court.

During this initial period, you should also determine the exact nature of the estate, what property is owned and what liabilities exist. You may need to advertise for creditors to ensure that you are not liable to creditors that come forward later on. You also have a duty to collect all debts owed to the deceased. To carry out the wishes of the deceased, you must administer the Will following a process which is known as the “probate process”. This process ensures that the Will and your role as executor are recognized by the courts. This recognition and permission to proceed by the court will protect you during performance of your duties and give you the legal right to administer the estate.

## **The Probate Process**

This is merely an outline of the process and the documents required to be filed. There are certain formalities required in some of the documents and more information may be required in certain situations. Your lawyer will ensure each requirement is followed and advise you during the process.

The probate process begins with the filing and posting of a Five-Day Notice. This document is posted in the registry of the Supreme Court and serves as notice to the world that you intend to petition to the court for Letters of Probate to enable you to deal with the estate.

You may file the petition after the five days has passed. It must be supported by a sworn written statement from you or your lawyer called an affidavit. The petition must include information such as: information to identify the deceased, their address, occupation, marital status, date and place of death and whether they married after making their Will. You must also include information regarding all known beneficiaries, their names and addresses, whether they or their spouse witnessed the will and if there are any minors. Finally, you must include information about the estate, including an inventory setting out the estimated value.

Included with the petition must be the original Will, affidavits from witnesses, an estate inventory, a personal oath completed by you and the Order you are seeking from the Court. Upon the Order and letters of probate being granted by the judge, you may begin your duties.

Other duties will arise throughout the period it takes to administer the estate. For example, within one year of being granted the letters of probate you should provide a full accounting of the status of your administration of the estate to the Court. Your lawyer will advise you of these duties.

This may seem to be an insurmountable task. However, you must remember that the testator picked you as their executor after advice as to your duties and the estate will pay for experts to advise you in all areas requiring such expertise.

## Termination of Duties

Only the court may terminate your responsibilities to the estate. There are two methods to obtain an order stating that you have fully and satisfactorily accounted. The first is known as "passing accounts". You may file a detailed account of your administration of the estate which will be assessed by a Master of the Court. If the Master approves your accounting you may then apply for an order passing the accounts. Alternatively, you may file forms known as Registry releases, completed by all adults and the guardians of all minors with an interest in the estate, to dispense with the passing of accounts. The Registry release must be in a specific form (Form 56.29A) that is contained in the *Rules of the Supreme Court, 1986*. Once these forms are filed or the accounts are passed, a judge may order that you have fully and satisfactorily accounted and are discharged.

***You may become responsible for the estate of a deceased person who does not have an executor or a living person who is incapable of managing their own affairs. The process and your responsibilities are slightly different in these situations. If you become, or wish to become, responsible for an estate in any manner besides that discussed above please contact us. We can provide a separate booklet to address the process and your rights and responsibilities in these situations.***