

deceased's lawyer when you call to see if there are any instructions left. Also, you should check with your lawyer before ordering a Department of Vital Statistics Death Certificate, as it may not be necessary. Finally, if you have any doubts about the ability of the deceased's estate to pay, you might wish to make some inquiries before finalizing arrangements for an expensive funeral.

What are my risks as an Executor or Administrator?

The main risk is that you may be personally financially liable to beneficiaries if you make a mistake. For this reason, you should make sure estate assets are secure and insured. In addition, you should never distribute estate assets or money until you have met with your lawyer and have ensured you first, have authority and second, will not make a mistake. If you distribute the estate and a creditor is entitled to be paid, they can claim the money from you unless you do certain things to protect yourself.

What if there are problems?

If problems arise, you should contact your lawyer as soon as possible. This is part of the reason why money is not released to the beneficiaries right away.

Are there other things I need to deal with?

Ultimately, you may need to arrange for sale of estate assets, tax returns,

investigations into family trees, and so on. You will need to go through any important documents of the deceased and bring in anything that you are not absolutely sure about. You may need to make insurance, pension and other claims. You must keep detailed and clear records of any money handled. Your lawyer will be able to advise you in respect of all of these matters and more.

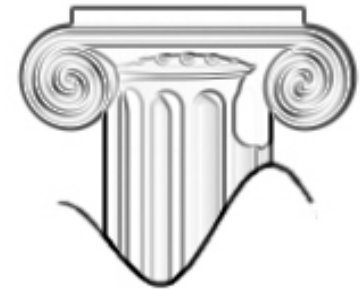
I'm the Executor, don't I get to decide who gets what?

The simple answer to this question is "No." As an Executor, you must see to it that the deceased's wishes, as expressed in the Will are carried out and, if there is no Will, as an Administrator, you must see that the remainder of the estate is distributed according to law. Sometimes you may be given power to decide what is to be sold and what may be given as is to someone who wants it, or you may be allowed to decide between rivals who gets something. Before you do so, however, you should seek the advice of your lawyer.

How long will it take?

The time needed to settle an estate depends entirely upon how long it takes to go through the steps involved and how quickly information is provided to your lawyer. Generally there is an initial distribution once most assets are gathered in, bills paid, and Income Tax Returns done. The final step, and the final distribution, can take as much as a year or more after the last Income Tax Return has been done and assessed by the Tax Department.

Settling an Estate



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Why do I need a lawyer?

For most people settling an estate is something they do only a very few times during their lifetime. A lawyer who practices in the area of estates will handle many estates each year and must keep up with changing laws. In addition, your lawyer will, over time, develop experience in dealing with the sort of issues that may arise. As an Executor or Administrator, you are personally financially liable if you make a mistake. Your lawyer's job is to do all things a reasonable and prudent lawyer should do to protect you.

In addition, certain well-established procedures have developed over the years which lawyers know and can rely upon. Finally, lawyers must be insured, so you have a means available to recover certain losses suffered due to errors or omissions.

When should I contact a lawyer when someone dies?

The first thing we all do is to grieve the loss of a friend or loved one. Our general practice is to recommend that when a person makes their Will, they contact their proposed Executor(s) to ensure they are willing to act. At that time, they should either indicate their funeral wishes or let the Executor know where to find them. The Will is rarely read until after the funeral, and then it is too late. Apart from confirming there are no funeral instructions left in or with the Will, the first step is to make arrangements for the service and burial with your Funeral Director.

Depending upon the needs of the beneficiaries and the travel plans of the Executors, arrangements can wait or, if necessary, we can often deal with important matters right away, while out-of-town or out-of-province Executors are here for the funeral.

What is "Probate?"

Many people make more than one Will during their lifetime, as circumstances change, children grow up and so on. If it were merely a race to the bank, someone with an older, out-of-date Will might get there and take the money before the rightful Executor can look after things. Instead, there is a race to the Court. First, Probate can't be applied for until seven days after death, fourteen days in the case of Administration. Second, it generally takes three weeks or so for the Court to process the papers. Finally, if a new Will were to surface after Probate issued, the Court would cite the first Executor to return the Letters Probate and account for any money handled. Also, those who must deal with executors know that if they are given a copy of the Letters Probate, they can safely release money or other assets.

How is "Probate" different than "Administration?"

Probate is done where there is a Will and a named Executor or Alternate Executor is applying to the Court. Administration is done where there is no Will or there is a Will but the named Executor(s) have all predeceased or don't want to act.

How much will it cost?

Probate fees are charged by the Court. They are \$50.00 for up to \$10,000.00, plus \$6.00 per \$1,000.00 or part thereof.

In addition, there are lawyer's fees which are set out in the Rules of the Court of Queen's Bench for an estate of average complexity. They are based on the total value of the estate assets and are 3% of the first \$10,000.00, 2% of the next \$90,000.00, 1% of the next \$200,000.00 and by agreement thereafter. In addition there are common disbursements such as long distance charges, copies, postage, and so on.

Most estates are of average complexity. There are, however, some estates of more than average complexity due to a large number of beneficiaries, large numbers of and varied types of assets, or other factors. Generally speaking the cost of these estates will be charged based upon the time spent at the lawyer's hourly rate. Also, there are frequently additional and separate matters that arise such as, Court applications, sale of estate assets, and so on that are either charged separately under the Court Rules or are simply separate matters charged like other similar matters done by the lawyer where there is no estate involved.

What do I say to the funeral director?

There are some things that you might wish to consider. If you are not absolutely sure you have authority to make arrangements, you might wish to ask the