




Being a Personal Representative

This booklet is for Albertans who want to learn more about what is involved in being a personal representative (previously known as 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 the person who made the will dies. If you need more detailed help or legal advice, see the last few pages of this booklet for information on where to get help.

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What is involved?

Being a personal representative

What is a personal representative (previously known as an executor)?

A **personal representative** is the person named in a **will** to carry out the directions contained in that will. The personal representative is responsible for settling the person's affairs after death. The person's **estate** (everything he or she owned) passes temporarily to the personal representative.

The personal representative is responsible for:

- locating all of the person's **assets** (everything the individual owned);
- paying the funeral costs;
- applying for **probate** (a legal procedure confirming the will can be acted upon), where necessary;
- paying the person's **debts** (money that is owed) and taxes; and,
- distributing the remaining money and property according to the instructions in the will.

The personal representative is accountable to the **beneficiaries** (people who benefit from the will) and must keep them informed. The personal representative can seek assistance from lawyers, accountants, and other professionals but ultimately he or she is legally responsible for carrying out the directions in the will.



Being named as a personal representative of an estate can be a big undertaking requiring a considerable amount of time, energy, and careful attention to detail.

Who can be a personal representative?

Any adult can be a personal representative, but being the personal representative of an estate can be a complex, difficult job. Accordingly, a personal representative 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 personal representative lives in the same city, or at least the same province, as the **testator** (the person who made the will). 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 she or he lives on the other side of the country.

In many cases, family members, such as a spouse or adult child, are named as the personal representative. They will usually have personal knowledge of the wishes of the testator and the nature and whereabouts of his or her assets, and often will not charge a fee for their work.

How difficult is it to be a personal representative?

Being named as a personal representative of an estate can be a big undertaking requiring a considerable amount of time, energy, and careful attention to detail. It can also require both a significant amount of tact and peacekeeping.

The task can be fairly straightforward if you are a personal representative 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 personal representative 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** (set up to ensure ongoing income for a beneficiary such as minor or dependent children); or,
- the will is challenged by someone who feels left out of the will.

What are the duties of a personal representative?

The *Estate Administration Act* states that a personal representative's main duties fall under four categories.

1. Identifying the estate's assets (things owned) and liabilities (what is owed), including:
 - getting a list of safety deposit box contents;
 - making a list of all property owned, including outstanding mortgages; and,
 - applying for pensions, death benefits, and life insurance payable to the estate.
2. Administering and managing the estate, including:
 - communicating with beneficiaries;
 - advising insurance companies of the death;
 - managing, protecting, and securing the safety of the estate property; and,
 - recordkeeping, including preparing financial statements.
3. Paying the debts of the estate, including:
 - filing and paying income tax; and,
 - arranging for payments of outstanding expenses.
4. Distributing and accounting for the administration of the estate, including:
 - finding and notifying all beneficiaries listed in the will;
 - informing any joint tenancy beneficiaries;
 - informing any beneficiaries outside the will (i.e. life insurance recipients);
 - managing any trusts; and,
 - distributing the estate property.

I have just been asked to be a personal representative. Do I have to agree?

If someone asks you to be a personal representative and you don't want to do the job, you can simply say no. It's best to agree to act as personal representative only if you feel you can do the job well and give it your time and attention. Be sure to also consider any family dynamics in taking on the job.

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

Consider requesting some of the following information:

- The testator's wishes regarding his or her funeral or memorial service and cremation and/or burial.
- Details of where the original will and any **codicils** (a document changing a will) are kept and how to access them. You should also have copies of all these documents.
- If appropriate, details of everything that the testator owns and owes. For example, bank accounts, RRSPs or RRIFs, insurance policies, real estate, and pension benefits. Note any items that are owned in **joint tenancy** (where there are two or more property owners) or that name a specific beneficiary, as these items are dealt with outside of the estate.
- The names and contact details of any person named as an attorney in a power of attorney and any person named as an agent in a personal directive.

You should also consider asking the testator to:

- Keep an up-to-date, detailed record of all that she or he owns and owes and to let you know where this updated list can be found.
- Talk to family members and any other beneficiaries about what his or her plans are for the estate so that future problems can be prevented.
- Keep you informed of any updates or changes to the will and/or codicils.

I am receiving a gift under my wife's will. Can I still be her personal representative?

Yes. A personal representative can also be a beneficiary under the will. It is very common for spouses to be named as personal representatives for one another.

Can I get paid for being a personal representative?

Often, a personal representative does not accept a fee, especially if it is a spouse, adult interdependent partner, family member, or close friend. Any expenses the personal representative has while settling the estate are paid for out of the estate.

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

If the will does not list any fee, the personal representative may apply to the court for "fair and reasonable" compensation when he or she prepares the accounts for the beneficiaries to approve. If the beneficiaries do not agree with the proposed fee, they can require the personal representative to show his or her accounts to the court, who will then set the fee. Even if the personal representative is also a beneficiary, she or he may still apply for a fee, unless the will says that this cannot happen.

Sometimes the will leaves the personal representative a special gift for doing the job. In such a case, the personal representative can still get a fee, but only if the will allows.

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

I agreed to be a personal representative, 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 she or 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 give up the role.

If there are two or more personal representatives, the other person can take over.

What happens when the testator dies?

Common questions about performing the duties of a personal representative

How do I confirm that I was named as the personal representative?

After the death of the testator, you need to get the original version of the will (and any codicils) to check. 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, the death certificate (or funeral director's statement of death), and your own identification. If the will is there and names you as personal representative, 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.

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 located.

Without a will, you cannot proceed with managing and distributing the estate. You must apply for what are called "**Letters of Administration.**" You become the **administrator** rather than the personal representative. More information can be found on the Alberta Courts website at www.albertacourts.ca.

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

In Alberta, a will is valid even if it is entirely handwritten by the deceased, as long as it is signed and dated. It does not have to be witnessed to be valid. This is called a **holograph will**. However, not all provinces recognize holograph wills.



In Alberta, a will is valid even if it is entirely handwritten by the deceased, as long as it is signed and dated.

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

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 the most recent and meets all of the legal requirements for making a will.

For 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 cancel the 1992 will, but it did not meet all of the legal requirements. As such, the 1992 will is the valid one.

As personal representative, you must make a reasonable 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 testator are carried out.

Sometimes, there may be a dispute as to which will is the official one. For example, someone may 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.



As personal representative, you must make a reasonable 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 testator are carried out.

If the will was made in another province, is it valid in Alberta?

If someone dies in Alberta, but had a valid will made in another province, a personal representative 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 moving to another province.

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, which is to be distributed according to the instructions in his or her will. An estate's property is first used to pay the testator's debts and taxes, and then it is distributed in accordance with the instructions in the will.

Property that does not generally form part of the estate includes:

- Property such as land, a house, or bank accounts where 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 (occasionally, there may be exceptions to this).

Note: On the other hand, property for which the registered owners are described as **tenants in common** does flow through the estate.

- 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 her sister).

Can I get help from professionals with my duties as a personal representative?

Yes. Although many personal representatives do the work themselves, a personal representative 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 an **affidavit** (a written oath that swears the information you give is true).

Consulting with the testator's accountant or tax lawyer may also prove beneficial. For example, they can usually produce previous years' tax information, provide advice about tax avoidance strategies to minimize the taxes on the estate, and assist in transferring tax liability from the estate to a beneficiary in a lower tax bracket.

Even if a personal representative gets help, he or she is the person who remains legally responsible.

If you are a member of a profession, such as a lawyer or accountant, and you exercise your professional capacity when acting as a personal representative, then you will be held to the degree of skill expected of such a professional.

If I do get help with my duties as a personal representative, 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 services provided.

What is probate?

Probate is a legal procedure where the court determines a will's validity and confirms the personal representative's appointment. In Alberta, this happens in the Court of Queen's Bench. A personal representative must apply to the Court to probate a will. There are a number of forms available to help with this task. Visit the Alberta Courts website at www.albertacourts.ca for more information.



Probate is a legal procedure where the court determines a will's validity and confirms the personal representative's appointment.

Court fees are charged for probate – the larger the estate, the higher the fee. In June 2015, the fees were:

ESTATE VALUE	COURT FEES
Up to \$10,000	\$35
Over \$10,000 but not more than \$25,000	\$135
Over \$25,000 but not more than \$125,000	\$275
Over \$125,000 but not more than \$250,000	\$400
Over \$250,000	\$525

Does the will have to be 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.



If there is any sign that the legality of the will is in question or that there could be disagreement over the provisions of the will, then the will should be probated.

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. Personal representatives 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 pressure or threat, 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 disagreement over the provisions of the will, then the will should be probated.

How long does probate take?

Probate will probably take several weeks from the time the necessary documents are filed with the Court, depending on the complexity of the estate and the volume that the Court is dealing with. Your lawyer may be able to help you speed up the process.

As personal representative, am I required to have the estate's assets appraised?

If the will is being probated, the court will require estimated values. If values are modest and the personal representative is comfortable making the estimates, 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 any appraisals will be covered by the estate.

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 personal representative is often also the **trustee** (person who manages the trust). In larger or more complicated estates, there may be a different trustee. Sometimes the trustee may be a trust company; sometimes it 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 (note: estate tax returns must be filed separately). 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 <http://www.cra-arc.gc.ca>.

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

If the estate includes property that is not in Alberta, it may be necessary to apply for probate in the place where the property is located. In this case, you should consult an estate lawyer.

Similarly, an estate may have a beneficiary who lives outside of Canada. This can create complex issues, particularly regarding tax obligations. Contact the Canada Revenue Agency about any such beneficiaries.

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 cannot be cashed and must be returned.

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

If a tenant dies and there are no other tenants in the unit, the tenancy is terminated on the earliest date that the tenant could have terminated the tenancy under the *Residential Tenancies Act*. The termination date depends on the nature of the rental agreement, for example, whether it was periodic or fixed term. For more information, see *Laws for Landlords & Tenants in Alberta* – www.landlordandtenant.org.

It is important for a personal representative to:

- inform the landlord of the testator's death as soon as possible;
- keep the landlord updated about when the property will be removed; and,
- 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 by the landlord. The *Residential Tenancies Act* sets out rules for how the landlord is entitled to dispose of abandoned property.

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

A death benefit is a sum of money due to a beneficiary upon the death of the benefit holder. Various public and private programs offer death benefits.

Examples include: 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 (i.e. the Freemasons).

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

My father's will says sell everything and split the proceeds among his four children. I would like to keep some of the items. What can I do?

If the will says to sell (also known as liquidate) the items and you would like to keep some of them, there are various ways to do so. One way 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. It may also be possible for you to obtain several appraisals for the value of the items you would like to keep and then pay the appraised value to the estate, if your siblings agree.

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

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 personal representatives begin the distribution process, but leave enough funds to pay the anticipated taxes. This is risky and is not recommended.

When does my responsibility as personal representative end?

There is no set time when the responsibilities of the personal representative end unless the court formally discharges you. In practice, most people say it takes about a year to complete the work of personal representative for a straightforward estate. The *Estate Administration Act* says the estate should be distributed as soon as possible. A court order may be made to speed up the process if the personal representative is not acting efficiently.

The personal representative may remain responsible for looking after the estate indefinitely, particularly if assets or debts turn up years later. Even if the estate has already been distributed, the personal representative is legally responsible for dealing with any assets or debts that show up.

How can things go wrong?

What if I have disagreements with another personal representative?

If there are two or more personal representatives, the *Estate Administration Act* says they must act unanimously. If you have serious disagreements with the other personal representative(s), you may need to contact a lawyer, as disputes may have to be settled in court.

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

What if the beneficiaries are fighting?

If the beneficiaries are not in agreement as to how the personal representative intends to proceed, the personal representative should seek advice of an estate lawyer to clearly understand the will and its direction.

How the personal representative proceeds with the direction of the will is up to him or her, but keeping the peace may help avoid even more problems later. Setting a plan to sell the assets 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 helps develop confidence in the personal representative's actions. Ultimately, however, disputes may have to be settled in court. A personal representative can always make an application to the Court of Queen's Bench for advice and direction.

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

A personal representative must follow the wishes of the testator as expressed in the will. If a personal representative fails to act reasonably, or acts in a way that is not at all consistent with the will, the beneficiaries can take legal action. A personal representative who acts in an irresponsible manner may be liable to the beneficiaries for his or her actions.

As a result, it is best for the personal representative to keep the beneficiaries up-to-date, and where possible, ask them for input. If the will is unclear on a particular matter, it is recommended that the personal representative not proceed without written agreement from the affected beneficiaries or a court order.

What happens if the testator leaves more debts than assets?

If there are more debts than assets, the estate is known as an insolvent estate. As personal representative, you must sell the assets the testator had and pay the debts. The debts must be paid proportionately and without any preference or priority. The *Estate Administration Act* sets out rules for how this is to be done, called marshalling. This means that funeral expenses, estate administration expenses, debts, and liabilities will be paid in a set order as outlined in the *Act*. The result may be that beneficiaries do not receive the full value of what they were promised in the will.

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

Checklists

10 steps to take when the testator dies

While being a personal representative does not have to be difficult, because there are many details, you need to be organized. For immediate help, look to the schedule at the end of the *Estate Administration Act*, it contains a helpful list of the activities that a personal representative may need to take on.



It is recommended that you start a filing system to keep track of all the matters that come up and the decisions that you make.

It is recommended that you start a filing system to keep track of all the matters that come up and the decisions that you make.

Here are the ten most common steps that a personal representative may take when the testator dies.

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 or with their lawyer. To look in the safety deposit box, make an appointment at the bank. Take the safety deposit box key, the death certificate (or funeral director's statement of death), and your own identification. Tell the manager of the financial institution that you are the personal representative and are looking for the original will. If the will is there and names you as personal representative, the bank should let you take the will.

Note: If you cannot find the safety deposit box key, it can be drilled open for a charge.

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.

2. Register the death, arrange for cremation and/or burial, and obtain the death certificate

The personal representative, 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 on the death registration process, and to obtain a death certificate, contact a registry agent for vital statistics. A list of such agents is available at www.servicealberta.ca/1641.cfm.

Legally, the personal representative 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 personal representative has the legal authority to decide.

3. Determine the testator's assets and debts and make a list

Determine assets (what the testator owned) and liabilities (what the testator owes) 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 can include (if applicable):



TASK

- Considering the immediate financial needs of the surviving spouse, adult interdependent partner, and dependents.

- Determining eligibility 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 tax (T1) returns.

- Acquiring all title documents for property, mortgages, share certificates, bonds, debentures, and guaranteed investment certificates.

- Obtaining estimates (appraisals) 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.

- 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.

- Compiling a complete list of assets and liabilities, listing them by their class and value. Include all certificate numbers, registration particulars, maturity dates, interest rates, and payment frequency.

- Discuss probate requirements, beneficiary notice, and administrative concerns with an estate lawyer.

It is recommended you turn this information into a formal written list. If you obtain probate, you will require a formal list known as the “Statement of Assets and Liabilities.” Even if you do not obtain probate, such a list is useful. Specifically, make a list of:

- Real property (for example, the testator’s home and other land holdings). You may wish to subdivide the list by class and value. 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.
- Personal property (for example, cash, jewellery, furniture, pension and death benefits). Again, you may wish to subdivide by class and value. To determine market value for probate purposes, you may need to contact an appraiser or dealer.
- All debts (and any dates by which they must be paid). 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.
- People to whom you will be distributing the estate (for example, beneficiaries’ names, addresses, relationship to deceased, and gifts they are to receive).

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.

4. Protect the assets.

As personal representative, 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:



TASK



Gain access to and list contents of the testator's safety deposit box(es).



Arrange for safe storage of valuable items.



Gain access to the testator's motor vehicle and ensure it is stored in a safe place.



If the testator has minor children, ensure the care of those minors.



Gain access to the testator's residence to take care of pets, make sure appliances are off, take in mail, mow the lawn, collect the newspapers, etc.



If the testator was in a rental unit, make 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, notify any insurers, government departments, banks, and other financial institutions of the death of the testator.



Cancel the testator's driver's license, utilities, subscriptions, memberships, etc. Request refunds, where possible.



If applicable, cancel GST quarterly credits, Child Tax Benefit, Universal Child Care Benefits, Old Age Security, and/or Canada Pension Plan payments.



Cancel health insurance coverage.



Obtain information on outstanding credit card balances and cancel cards.



Contact Canada Post to reroute the testator's mail.



Register change of address with all relevant parties.



Open 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.

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, your notice to the beneficiaries will include a copy of your notice of application for a grant of probate. You must carefully follow the rules about the notice as contained in section 11 of the *Estate Administration Act*. The form that a personal representative should use can be found in the Surrogate Rules, which are available through the Alberta Queen's Printer at <http://www.qp.alberta.ca>.



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.

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

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 personal representative.

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 are 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 or the testator's capacity at the time of signing (that is, that she or 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 personal representative.

In most cases, you do not actually have to go to court to get probate — it is called a desk application. You will still need to fill out specific forms and then take the forms, along with the original will, to the Court of Queen's Bench. 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.



If there is any dispute as to the authenticity of the will or the testator's capacity at the time of signing the will, it is often best to obtain probate.

You can obtain the forms by ordering from the Alberta Queen's Printer at <http://www.qp.alberta.ca>. 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. 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 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.

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.



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.

8. Collect, deal with, and sell the assets

Once you are ready, you must begin to collect and sell (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.

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.



TASK

- 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, etc. 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 personal representative and then to the beneficiary. These steps are often done at the same time. The Land Titles 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.

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

Pay all the outstanding debts and expenses, such as:

- reasonable funeral expenses;
- probate fees and legal costs;
- municipal and income taxes; and,
- 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 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. Review the Canada Revenue Agency booklet "T4011 – Preparing Returns for Deceased Persons." This guide is available for download from their website at www.cra-arc.gc.ca.

Note: Terminal period returns have to be filed by April 30th of the year following the year of death, or six months from the date of death, whichever is later.

After the income tax is reported, assessed, and paid, apply for a **Clearance Certificate** (issued by the Canada Revenue Agency after all of the testator's taxes have been paid). 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 or to get forms, contact the Canada Revenue Agency by calling 1-800-959-8281 or visiting <http://www.cra-arc.gc.ca>.

Note: The estate is a taxpayer under the law and a T3 income tax return must be filed for every year it exists.

10. Distribute to the beneficiaries

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



It is recommended that you do 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.



TASK



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 personal representative's task easier.

- 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 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.



TASK

- 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 personal representative’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 and compensated the personal representative (if applicable), 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.

Glossary

administration (or “grant of administration”)

A legal procedure where the Court of Queen's Bench of Alberta 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 Court of Queen's Bench of Alberta 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.

affidavit

A written document containing information. The person making the affidavit 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 that specifically name someone as the testator's beneficiary.

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).

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.

personal representative

The person, named in a will, who is responsible for managing the estate and for carrying out the instructions in the will.

probate (or “grant of probate”)

A legal procedure that confirms the will can be acted on and authorizes the personal representative to act. The procedure includes submitting special forms and the original will to the Court of Queen's Bench of Alberta.

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

A person 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 distribution of his or her property after death.

Where can I get more help?

Legislation

For print copies of Acts or Regulations, contact the Queen's Printer Bookstore:

Edmonton: 780.427.4952

Toll-free in Alberta: dial 310-0000 followed by 780.427.4952

Website: www.qp.alberta.ca

Free electronic copies of Acts and Regulations can be found by searching the alphabetical list at:

http://www.qp.alberta.ca/Laws_Online.cfm

- *Wills and Succession Act*
- *Estate Administration Act*
- *Adult Guardianship and Trustee Act (AGTA)*
- *Trustee Act*
- *Unclaimed Personal Property and Vested Property Act*
- *Adult Guardianship and Trusteeship Regulation*
- *Surrogate Rules*

Provincial Government & Court Resources

Alberta Vital Statistics

Death Information: <http://www.servicealberta.gov.ab.ca/657.cfm>

Edmonton: 780.427.7013

Telephone toll free within Alberta: 310-0000 then dial 780.427.7013

Alberta Courts

Frequently Asked Questions about probate and Surrogate Rules:

<https://albertacourts.ca/court-of-queens-bench/frequently-asked-questions>

Alberta Justice

Wills: https://www.justice.alberta.ca/programs_services/wills/Pages/default.aspx

Saying Farewell: A Guide to Assist you with the Death and Dying Process

Available online: www.seniors.alberta.ca/documents/Saying-Farewell-Dying-Process-Guide.pdf

Alberta Supports Contact Centre

Phone: 1.877.644.9992

Office of the Public Guardian & Trustee

Phone: 1.877.427.4525

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

Federal Government & Court Resources

Canada Pension Plan – Survivor’s Pension

Phone: 1.800.277.9914

Website: <http://www.servicecanada.gc.ca/eng/services/pensions/cpp/survivor-pension.shtml>

Canada Revenue Agency

Phone: 1.800.959.8281

What to do when someone has died:

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

Legal Services

Law Society of Alberta Lawyer Referral Service

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

Toll free in Alberta: 1.800.661.1095

Calgary: 403.228.1722

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

Legal Aid Alberta

Legal Aid Alberta can help with select adult guardianship and trusteeship matters, as well as certain income support and government benefit cases. Call to determine eligibility.

Toll-free in Alberta: 1.866.845.3425

Website: <http://www.legalaid.ab.ca>

Law Information Centres (LInC)

Located in Calgary, Edmonton, Red Deer, and Grande Prairie courthouses. LInC can provide information about court processes, court forms, and explain the steps to take in making a legal application. LInC cannot provide legal advice.

Website: <https://albertacourts.ca/resolution-and-court-administration-serv/law-information-centres-linc>

Family Law Information Centres

Located throughout Alberta, these Centres can provide general information about family law, court procedures, and court forms.

To find a location:

<https://albertacourts.ca/resolution-and-court-administration-serv/family-law-information-centre-flic>

Calgary Legal Guidance

Elder Law Program helps older adults who have questions about wills, estates, adult guardianship and trusteeship, powers of attorney, and elder abuse. Call to determine eligibility.

Phone: 403.234.9266

Website: <http://clg.ab.ca>

Central Alberta Community Legal Clinic (Red Deer)

Offers legal advice on wills to low income individuals. Strict financial guides apply; call to determine eligibility.

Phone: 403.314.9129

Toll-free: 1.877.314.9129

Website: www.communitylegalclinic.net

Edmonton Community Legal Centre

Can provide referrals to lawyers or firms who can assist in drafting wills for a reduced cost based on income. Call to determine eligibility.

Phone: 780.702.1725

Website: www.eclc.ca

Grande Prairie Legal Guidance

Offers legal advice on wills to low income individuals. Call to determine eligibility.

Phone: 780.882.0036

Website: www.gplg.ca

Dial-A-Law

Pre-recorded legal information available 24 hours a day, 7 days a week.

Calgary: 403.234.9022

Toll-free: 1.800.332.1091

Website: <http://clg.ab.ca/programs-services/dial-a-law>

Resources for Seniors

Older Adult Knowledge Network

A website of the Centre for Public Legal Education Alberta

Website: www.oaknet.ca

Kerby Centre

Phone: 403.265.0661

Website: <http://kerbycentre.com>

Golden Circle Senior Resource Centre

Phone: 403.343.6074

Website: www.goldencircle.ca

Seniors Association of Greater Edmonton (SAGE)

Phone: 780.423.5510

Website: www.MySage.ca

Ministry of Seniors – Government of Alberta

Programs and Services for Seniors

Website: <http://www.seniors.alberta.ca>

Being a Personal Representative

This booklet is one of many publications produced by the Centre for Public Legal Education Alberta. All publications can be viewed and downloaded for free by visiting www.cplea.ca.

Other publications related to this topic that may interest you include:

- Making a Will
- Making a Power of Attorney
- Making a Personal Directive
- Being an Agent
- Planning Your Own Funeral
- *Adult Guardianship and Trustee Act*

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Canada

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You should **NOT** rely on this booklet for legal advice. It provides general information on **Alberta law only**. November 2015.