

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) named in someone's Will. This booklet gives general information only, not legal advice. If you need more detailed help or legal advice, see the end of this booklet for more resources.



*You should **NOT** rely on this booklet for legal advice.
It provides general information on **Alberta law only**. 2020*

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Table of contents

What is a Personal Representative?	4
Personal Representative Requirements	5
Personal Representative Responsibilities	6
Personal Representative Duties	8
How a Will Works	10
Things a Personal Representative Should Know	11
When Problems Arise	13
When the Testator Dies	15
Glossary	25
Resources	26

What is a Personal Representative?

A **Will** is a legal statement of how a person wants their property to be dealt with after their death.

A **Testator** is a person who makes a Will.

A **grant of probate** is a court order that confirms the Will is valid and confirms the appointment of the Personal Representative named in the Will.

Joint tenancy is a type of property ownership where all the owners own the property equally and the property passes to the surviving owners when one owner dies.

A **beneficiary** of an estate is a person (individual or organization) who inherits all or part of a deceased person's estate.

A Personal Representative is the person named in a **Will** who is responsible for managing the **Testator's** estate and for carrying out the instructions in the Will.

The Testator's **estate** goes temporarily to the Personal Representative. The Personal Representative settles the Testator's affairs and then distributes the estate according to the instructions in the Will.

The Personal Representative usually has to apply to the court for a **grant of probate** before they can start dealing with the estate.

WHAT IS AN ESTATE?

A person's estate is the property they own at the time of their death, including land, possessions, some investments and money. The Personal Representative uses the property in the estate to pay debts and taxes and then distributes the rest according to the instructions in the Will.

Some property does not form part of the estate because it does not flow through the Will. The following types of property do not form part of a person's estate (and do not need probate or administration):

- Property where the registered owners are described as **joint tenants**. These types of assets can include land, a house or bank accounts.
- Assets where a **beneficiary**, other than the estate, is designated. These types of assets can include investment accounts, insurance policies or pension plans.

A Will comes into effect once the Testator dies. For making decisions for the Testator while they are still alive but do not have **mental capacity**, use an **Enduring Power of Attorney** (for financial decisions) and a **Personal Directive** (for personal decisions).

Personal Representative Requirements

A Personal Representative can be a person or a registered trust company.

Any person appointed to be a Personal Representative should:

- be 18 years or older and mentally competent (because they will need to sign legal documents);
- be trustworthy and reliable;
- be able to carry out the instructions in the Will;
- have the time, confidence and ability to carry out the main duties of a Personal Representative;
- be willing to do the job.

A Personal Representative can be a family member of the Testator, a beneficiary named in the Will, a lawyer or any other person who meets the requirements above. It is helpful if the Personal Representative has personal knowledge of the Testator's wishes and the nature and whereabouts of the Testator's estate.

A Personal Representative does not have to live in Alberta. However, if at least one of the Personal Representatives does not live in Alberta, they are required to post a **bond** or other security with the court before they can deal with the Testator's estate. A court application can be made to dispense with the requirement to post a bond or pay security into court.

There may be tax consequences for the Personal Representative and the estate if the Personal Representative lives outside Canada. Consult with a lawyer for more information or legal advice.

Mental capacity is the ability to understand information that is relevant to making a decision and the ability to appreciate the reasonably foreseeable consequences of the decision.

An **Enduring Power of Attorney** is a type of Power of Attorney that continues on even if its creator loses mental capacity.

A **Personal Directive** is a written, signed, dated and witnessed document that appoints someone else (your Agent) to look after your personal matters (non-financial only).

A **bond** is an insurance policy that protects the estate from mismanagement or theft by the Personal Representative.

You do not have to agree to be a Personal Representative if you do not want the job.

Assets are what you own. Assets can include things such as money, land, investments and personal possessions like jewelry and furniture.

Debts are what you owe. These can also be called liabilities and may include credit card balances, loans, mortgages and taxes.

Personal Representative Responsibilities

The Personal Representative's responsibilities are listed in Alberta's *Estate Administration Act*. They include:

- locating all of the Testator's **assets**;
- paying the funeral costs (from the Testator's assets);
- applying to the court for a grant of probate, if one is needed;
- paying the Testator's **debts** and taxes (also from the Testator's assets); and
- distributing the remaining money and property (if any) according to the instructions in the Will.

For more information on getting a grant of probate, see CPLEA's booklet called '**Guide to Getting a Grant of Probate or Administration in Alberta**'.

A Personal Representative is accountable to the beneficiaries of the estate and must keep them informed.

The Personal Representative can get help from lawyers, accountants and other professionals. The estate usually pays the reasonable fees for hiring these professionals. However, the Personal Representative is ultimately legally responsible for carrying out the directions in the Will.

If you are a professional (such as a lawyer or accountant) and use your professional skill as a Personal Representative, you must act with the degree of skill expected of you as a professional.

Being a Personal Representative can be a big undertaking that requires a lot of time, energy and careful attention to detail.

Being a Personal Representative can be a straightforward task if the Testator's estate is small and simple. (For example, where the Testator only owns a car, a house, some personal belongings and a bank account.)

On the other hand, the job of a Personal Representative can become more complicated if:

- there are many beneficiaries and they are hard to find;
- 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);
- the Will is challenged in court;
- the Testator's family does not get along.

The amount of work will also depend on whether you are the only Personal Representative or if you are acting with someone else.

WHAT IF THE WILL INCLUDES A TRUST?

A trust is a way of holding property. An individual or a trust company (the **trustee**) holds and manages the property for another person or persons (the **beneficiaries**). Sometimes a Will creates a trust to hold money for a beneficiary who is a minor or a dependent, for a certain amount of time.

All trusts have a trustee. For simple estates, the trustee might be the Personal Representative. The Testator can name other persons to be the trustees though. Sometimes the trustee is a registered trust company or the Public Trustee.

If you are the trustee, you are responsible for investing the trust's assets and filing annual trust tax returns. You are also responsible for making payments from the trust to the trust's beneficiaries as directed by the Will.

Personal Representatives must follow the rules in Alberta's *Trustee Act*. The relationship between the Personal Representative and the beneficiaries is a fiduciary relationship. This means that the Personal Representative must always act in the best interest of the beneficiaries when managing estate property.

A **trust** is both a relationship and a way of holding property. An individual or a company, called the trustee, holds and manages the property for the benefit of another person or persons, called the beneficiaries.

A **trustee** of a trust is the person who is responsible for holding and managing the property in a trust for the benefit of the beneficiaries.

A **beneficiary** of a trust is a person (individual or organization) who receives a benefit from a trust.

Personal Representative Duties

Alberta's *Estate Administration Act* governs how a Personal Representative must act.

The Act states that a Personal Representative has four core tasks:

Identify the estate assets and debts:

- list contents of any safety deposit boxes
- list all property owned by the Testator (including real estate, bank accounts, belongings, etc.)
- list all debts owed by the Testator (including mortgages, loans, credit cards, unpaid bills, etc.)
- apply for pensions, **death benefits** and life insurance policies payable to the estate

Administer and manage the estate:

- communicate with the beneficiaries
- contact insurance companies about the Testator's death
- manage, protect and secure the estate property (including consolidating accounts, maintaining insurance policies, maintaining any land or real estate, safely storing belongings, etc.)
- apply for a grant of probate
- keep records, including preparing financial statements

Pay the debts of the estate:

- file and pay income tax
- arrange for payment of outstanding expenses, including mortgages, loans, credit cards, etc.

Distribute and account for the administration of the estate:

- find and notify all beneficiaries listed in the Will
- inform any joint tenancy beneficiaries
- inform any beneficiaries outside of the Will (such as life insurance beneficiaries)
- manage any trusts
- distribute the estate property according to the instructions in the Will

For a complete list of core tasks, see the Schedule to Alberta's *Estate Administration Act*. Print and electronic copies of the Act can be accessed at alberta.ca/alberta-kings-printer.aspx

WHAT ARE DEATH BENEFITS?

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

Examples of death benefits are:

- Canada Pension Plan (CPP) death benefit, survivor's pension and children's benefits (federal government);
- Allowance for the Survivor (federal government benefit for low-income spouse or partner of the Testator);
- Public pension plans (e.g. government employees or former employees);
- Private company or union pension plans (e.g. employees of certain companies or unions);
- Workers' Compensation Board (WCB) (if the death was work-related);
- Victims of Crime Financial Benefit Program (if the death was due to a violent crime);
- Last Post Fund (funeral benefits for eligible veterans);
- Benefits that might be available from social groups or clubs the Testator belonged to (e.g. the Freemasons).

If you find any indication that the estate can claim a death benefit, you must inquire with the appropriate organization.

NOTE: If the Testator received income or benefits from one or more of these organizations before they died, the estate may not be able to keep money if cheques keep coming. For example, if the Testator was receiving Canada Pension Plan or Old Age Security payments, you cannot cash cheques dated for the month after the month in which the person died. You must return these cheques. However, you can apply for the Canada Pension Plan death benefit after the Testator dies. The Testator's spouse or partner may also qualify for the Old Age Security Allowance for the Survivor.

For more information about death benefits:

CPP benefits: canada.ca/en/services/benefits/publicpensions/cpp.html

Allowance for the Survivor: <http://bit.ly/2UETq6d>

WCB: wcb.ab.ca/claims/benefits-during-your-claim/fatality-and-survivor-benefits.html

Victims of Crime Financial Benefit Program: alberta.ca/help-for-victims-of-crime.aspx

Last Post Fund: lastpostfund.ca/

How a Will Works

A Will is a legal statement of how a person (the Testator) wants their property to be dealt with after their death.

There are three different kinds of Wills:

1. A **formal Will** is signed by the Testator and two witnesses, all in the presence of each other.
2. Handwritten Wills, called **holograph Wills**, are legal in Alberta but not in all provinces or territories in Canada. In Alberta, holograph Wills must be in the Testator's own writing, must be signed by the Testator, and are not witnessed. These types of Wills can be prepared in an emergency, but it is important that they clearly state what the Testator's intentions are.
3. Wills made by a Testator while on active service with the Canadian Forces (naval, land or air force) are called **military Wills**. Military Wills are signed by the Testator but are not witnessed.

A Will made outside of Alberta can still be valid if it meets the legal requirements in Alberta. The court can also validate a Will that does not conform to all of the legal requirements.

A Will made in Alberta can deal with property outside of Alberta. The Personal Representative may have to apply to the court in the province where the property is located for a grant of probate to deal with that property.

Typically, a Will has several sections:

1. cancelling (revoking) any previous Wills;
2. appointing a Personal Representative and alternates;
3. naming beneficiaries of **specific gifts**;
4. naming beneficiaries of the **residue** of the Testator's estate;
5. naming a guardian or creating trusts for minor children (if applicable); and
6. any other details that the Testator might wish.

Once the Testator dies, the Personal Representative has the authority to deal with the estate set out in the Will right away. The Personal Representative may need to apply to the court for a grant of probate to deal with certain property in the estate. For example, the Personal Representative cannot sell the Testator's house without a grant of probate.

GIFTS

There are two types of gifts:

1. **Specific gifts** are property that the Will says are to be given to a named person. For example, a Will might state that the deceased's art collection go to a specific niece.
2. **Residuary gifts** are the rest of the assets in the estate after the specific gifts have been given. For example, a Will might say that the residue of the estate shall be divided equally among the deceased's grandchildren. If the residue of the Will is worth \$100,000 and there are five grandchildren, then each grandchild gets \$20,000. A person who receives a residuary gift is a **residuary beneficiary**.

A **codicil** is a document you make after you make your Will that changes some of the things in your Will.

An **Attorney** is a person who is named to act on behalf of the Donor in a Power of Attorney or an Enduring Power of Attorney.

Things a Personal Representative Should Know

If you agree to be someone's Personal Representative, you should ask the following questions to help you understand what you will have to do:

- What are the Testator's wishes about their funeral or memorial service? Does the Testator wish to be buried or cremated? Has the Testator already made funeral arrangements? Where are the details about these arrangements?
- Where is the original Will kept? Are there any **codicils**? How can you access these documents?
- What property does the Testator own? Where is it located (addresses of real estate, banks for accounts, etc.)? What debt does the Testator have? Make note of any property that is owned in joint tenancy or where a beneficiary has already been designated (such as insurance policies) since this property will not form part of the estate.
- Does the Testator have a Power of Attorney or Enduring Power of Attorney? If so, who are the **Attorneys** named in it (and their contact info)?
- Who are the beneficiaries of the Testator's estate, and how can you contact them?
- Will you be paid for acting as the Personal Representative? Many Personal Representatives reject a fee. The estate pays any reasonable expenses you incur in carrying out your duties. The Will can set out a maximum fee the Personal Representative can be paid. If the Will does not say anything about payment, a Personal Representative can apply to the court for "fair and reasonable compensation" when they prepare the accounts for the beneficiaries to approve.

You can also ask the Testator to:

- keep an up-to-date, detailed record of all their assets and debts and let you know where this list can be found;
- talk to family members and other beneficiaries about their plans for their estate so that future problems can be prevented;
- keep you informed of any changes or updates to the Will or codicils.

The Testator may not want to share all of this information with you in advance. However the Testator should know that you will need this information to carry out your role once they die.

CHANGING YOUR MIND

If you change your mind about being the Personal Representative:

- before the Testator dies, you should let the Testator know as soon as possible so that they can change their Will;
- after the Testator dies but before you start acting, you can renounce (give up) the role by submitting a form to the court;
- after the Testator dies and you start acting, you must apply to the court for permission to resign.

The beneficiaries of a person who dies intestate (without a Will) are set out in Alberta's *Wills and Succession Act*.

For more information, see CPLEA's handout called
'Beneficiaries: When someone dies without a Will in Alberta'

When Problems Arise

Original Will Cannot Be Found

If you cannot find the Testator's original Will, no one can start dealing with the Testator's affairs. A **grant of administration** will be necessary to:

- appoint an **Administrator**;
- confirm the estate can be distributed to the people who inherit the estate of an **intestate** person.

More Than One Will

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

As the Personal Representative, you must make reasonable efforts to make sure you are working with the correct Will. It is your job to carry out the Testator's wishes.

Sometimes there may be a dispute over which Will is the official one. A court may have to decide.

Will Made Outside Alberta

A Will made outside of Alberta may be valid in Alberta if:

- it meets the legal requirements in Alberta; or
- the court validates the Will.

Disagreements With Another Personal Representative

If there are two or more Personal Representatives, the *Estate Administration Act* says you have to act unanimously unless the Will or the court says otherwise. If you have serious issues with the other Personal Representative, you should get advice from a lawyer. You may have to resolve the dispute 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 improperly takes funds from the estate, you have to make up the loss and then you can sue the other Personal Representative to get your money back.

A **grant of administration** is a court order that appoints an Administrator of an intestate estate and confirms that the estate can be distributed to the people who inherit the estate on intestacy.

An **Administrator** is a person given authority by the court in a grant of administration to manage and administer the estate of an intestate.

An **intestate** is a person who dies without a Will.

Beneficiaries Are Fighting

If the beneficiaries do not agree with the Personal Representative, the Personal Representative should ask an estate lawyer for advice about how to proceed.

The Personal Representative has the legal authority to deal with the estate but keeping the peace may help avoid problems later. Maybe there is a creative solution to the problem that follows the instructions in the Will and keeps everyone happy.

Keeping the beneficiaries informed of your actions can also help to build trust and confidence in you and your role.

Sometimes, disputes have to be resolved in court. The Personal Representative can apply to the Court of King's Bench of Alberta for advice and direction at any time.

Not Enough Money In The Estate to Pay Debts

If there are more debts than assets, the estate is called an **insolvent estate**. Your role as Personal Representative is to use the assets in the estate to pay off the debts. This means that beneficiaries of the estate may not get anything.

Most debts must be paid proportionately and without any preference or priority but mortgages and payment of funeral and estate administration expenses get paid first. The *Estate Administration Act* sets out a system for paying off debts (called 'marshalling').

If the estate is insolvent, the Personal Representative should get advice from an estate lawyer so that they do not become personally liable for the debts.

Personal Representative Makes A Mistake

Remember that no one is perfect. You are legally responsible for the Testator's estate, and you must carry out your role with care, diligence and skill.

You are accountable to the beneficiaries of the estate. The Will records the Testator's wishes. If you do not follow the Will when administering the estate, the beneficiaries can take legal action against you, and you may be personally liable.

When the Testator Dies

You should start a filing system to keep track of everything that comes up, including important documents and the decisions you make.

1. Locate the Will and any codicils. Read them as soon as possible.

Most people keep their original Will in a safety deposit box. To look in the safety deposit box, contact the bank and take the safety deposit box key, the death certificate (or the Funeral Directors Statement of Death) and your ID. If you cannot find the key, the lock can be drilled open for a fee.

Keep the original Will and codicils (if any) in a safe spot. Do not give it to anyone. You can get **notarized copies**, if needed. If you apply for a grant of probate, you will file the original Will (and codicils) with the court.

2. Register the death, arrange for cremation or burial, and get a 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. You will usually complete this form at the funeral home. The funeral home sends the completed form to Alberta's Vital Statistics office. Make sure that the information on this form is correct and complete. The government uses this information to produce the official death certificate.

The funeral home will provide a Funeral Directors Statement of Death as proof of death before the government issues the death certificate.

A **notarized copy** is a document that has been certified by a notary as a true copy of the original.

In Alberta, a notary is a person given powers by the *Notaries and Commissioners Act* to certify documents.

For more information on registering a death in Alberta, visit:

alberta.ca/register-death.aspx

The Personal Representative is legally responsible for dealing with the Testator's body. The Will might say what the Testator wanted to happen or the Testator might have told you. You may also have to ask family and friends if they know the Testator's wishes. For example, did the Testator want to be buried or cremated? Had the Testator made funeral arrangements already or purchased a burial plot? If no one knows, you have the legal authority to decide.

3. Make a list of the Testator's assets and debts. Determine if there are immediate ongoing financial obligations.

If the Testator did not leave a list with this information, you will have to search through the Testator's documents to figure out what assets and debts they had. Documents might be in a filing cabinet or on the Testator's computer.

Once you have all the information you need about the estate, you should consider putting it into a formal written list. If you apply for a grant of probate, you can use this list to create an Inventory of property and debts (Form NC 7 of the Surrogate forms). Even if you do not apply for probate, this list will be useful. You might consider organizing the list as follows:

- **Real property:** the Testator's home, land and other real estate.
- **Personal property:** the Testator's belongings, including cash, bank accounts, pensions and other benefits, investments, vehicles, valuable belongings, etc.
- **Debts:** any money the Testator owes, including unpaid bills, mortgages, loans, claims against the estate, taxes, etc. Include the date by which the debt must be paid.
- **Beneficiaries:** the people you will be distributing the estate to and the gifts they are to receive.

You can make a separate list of assets that the Testator owned in joint tenancy or that are to go to a specific beneficiary outside of the Will (e.g. insurance policies or investment accounts with designated beneficiaries). But remember, these assets do not form part of the estate.

TASKS

Specific tasks might include:

- ✓ Consider the immediate financial needs of the surviving spouse, adult interdependent partner and dependents and whether you need a court order to deal with those needs.
- ✓ Determine eligibility and apply for Canada Pension Plan death benefits.
- ✓ Contact current and previous employers to see if there are any survivor pension benefits or insurance proceeds.
- ✓ Review tax returns from past years and file any outstanding tax (T1) returns.
- ✓ Get copies of title for property, mortgages, share certificates, investments, etc.
- ✓ Get appraisals (estimates) of all real estate, securities, vehicles and any valuable personal property.
- ✓ Review insurance policies to see if coverage is still adequate, such as home insurance, content insurance and vehicle insurance. Make changes as necessary.
- ✓ Advertise for possible creditors in local newspapers to make sure all of the Testator's legitimate debts have been paid.
- ✓ Get evidence of any family financial obligations the Testator has, such as to the surviving spouse or adult interdependent partner or dependents. Figure out if the Testator has any other obligations, such as spousal support or child support.
- ✓ Make a list of the Testator's assets and debts. Organize the list by type and value.
- ✓ Talk to an estate lawyer about probate requirements, notices to beneficiaries and other administrative concerns.

NOTE: The court requires estimated values when you apply for a grant of probate. An official appraisal may not be necessary if the values are modest and if you are comfortable making estimates. The estate pays the cost of any appraisals.

4. Protect the assets.

As the Personal Representative, you are responsible for protecting the Testator's assets until you have distributed the estate to the beneficiaries.

TASKS

Specific tasks might include:

- ✓ Gain access to and make a list of the contents of the Testator's safety deposit boxes.
- ✓ Arrange for valuable items, such as jewellery or vehicles, to be stored safely.
- ✓ If the Testator had minor children, make sure the children are being cared for.
- ✓ If the Testator had pets, make sure the pets are being taken care of.
- ✓ Access the Testator's residence to make sure appliances are turned off, the mail is collected, the yard is maintained, etc.
- ✓ If the Testator rented a home, arrange with the landlord to terminate the lease (or arrange for a sublease, depending on the circumstances) and remove the Testator's property.
- ✓ Contact insurers, government departments, banks and other financial institutions and let them know the Testator has died.
- ✓ Cancel the Testator's driver's license, utilities, subscriptions, memberships, etc. Request refunds, where possible.
- ✓ Contact the Canada Revenue Agency and provide them with the deceased's date of death. Cancel government benefits, such as GST quarterly credits, child benefit payments, or Old Age Security or Canada Pension Plan payments.
- ✓ Cancel health insurance coverage.
- ✓ Gather information about outstanding credit card balances and cancel the cards.
- ✓ Contact Canada Post to forward the Testator's mail to you.
- ✓ Register change of address with all relevant parties.
- ✓ Open an estate bank account and arrange for all future income to go to this account. Deposit all cheques and pay all bills from the estate account. You can also use this account to provide for the Testator's dependents' immediate financial needs, if necessary.

5. Notify all of the 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 partner, child or separated spouse. There are specific forms you can use. Contact an estate lawyer for more information on giving notices.

If you are applying for a grant of probate, your notice to the beneficiaries must include more information. There are specific forms for these notices. You should carefully review the rules about notice in section 11 of the *Estate Administration Act* or contact an estate lawyer for advice.

If the Testator had minor children or if some of the beneficiaries are minors (under the age of 18 years), you must notify the Office of the Public Guardian and Trustee.

6. Determine if you need to apply for probate. If you do, start the application process.

Probate is not always necessary. It depends on the types of assets in the estate. You will need a grant of probate to deal with real estate and some (but not all) investments.

Even if a grant of probate is not required, it is a good idea to get a grant of probate if it is likely that someone will challenge the Will.

For more detailed information about whether you need to apply for probate and how to do so, see CPLEA's booklet called **'Guide to Getting a Grant of Probate or Administration in Alberta'**.

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

Under Alberta law, certain individuals can apply to court for financial relief if they do not think the Testator provided enough for them under the Will. For example, the *Wills and Succession Act* allows a spouse, adult interdependent partner or dependent child (including grandchild or great-grandchild) of the deceased to apply to court to change the terms of the Will.

The person must make a claim against the estate within six months after the court issues the grant of probate. You should wait six months after getting the grant of probate before you start distributing the estate. You can also try to get releases from these individuals confirming that they will not bring a claim against the estate. Remember that you are personally responsible if you distribute the estate to the wrong people.

If you retain a lawyer to help you carry out your role as Personal Representative, the estate will usually pay the legal fees.

8. Collect, deal with and sell the assets.

Once you have received a grant of probate (if getting one was necessary) and made sure there are no claims against the estate, you can start collecting and selling the assets. If the Will instructs that certain assets be given to specific people, then you cannot sell those assets!

The tasks below do not apply to assets (like jointly owned assets and life insurance that goes to a specific beneficiary) that are not part of the estate.

TASKS

Specific tasks might include:

- ✓ Close the Testator's accounts at all banks, credit unions and trust companies. Transfer all of the money into the estate bank account.
- ✓ Send in claims for death benefits or pension benefits.
- ✓ Collect any money payable to the Testator, including salary, unpaid benefits and insurance.
- ✓ If any of the Testator's loans were insured, complete the insurance forms.
- ✓ Transfer title on assets such as real estate, vehicles, bonds and other items with a registered title. The assets are transferred first to the Personal Representative. If the property is to be sold, the Personal Representative can do this. If not, then the title can be transferred on to the beneficiary. Alberta's Land Titles Office deals with transferring real estate. Registries deal with transferring vehicles.
- ✓ Keep detailed records of all income received and any expenses paid. Keep copies of all letters and forms you send.
- ✓ Get the contents of the safety deposit boxes and close the boxes.
- ✓ For property held in joint tenancy, request that the asset be transferred to the surviving owner.
- ✓ Invest any extra cash according to the terms of the Will or the *Trustee Act*, if circumstances permit.
- ✓ Sell or transfer securities (shares, etc.).
- ✓ Arrange for the transfer or rollover of RRSP or RRIF proceeds.

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

Pay all the outstanding debts and expenses, such as:

- Reasonable funeral expenses;
- Probate fees and legal bills;
- Municipal and income taxes;
- Any other claims as of the date of death.

PASSING ACCOUNTS

You must prepare financial statements of assets, debts, income and expenses of the estate. You must give these statements to the beneficiaries. This is called “giving an accounting”. You must give an accounting of the administration of the estate every two years after the Testator's death (unless the court orders a longer or shorter period between accountings). For more information on preparing statements or who gets an accounting, contact a lawyer. Some accountants can help with preparing these statements too.

FILING TAXES

- You must file tax returns for previous years that the deceased did not file. Not all taxpayers are up-to-date with their tax returns.
- You must file a **final return** for the person to report income from January of the year of death up to the date of death. If the deceased died sometime between January 1st and October 31st, the final return is due by April 30th of the following year. If the deceased died between November 1st and December 31st, the final return is due within six months after the date of death.
- There are **three optional returns** you can file for the year that the deceased died: return for rights or things, return for a partner or proprietor, and return for income from a graduated rate estate. For more information, see the CRA's website or speak to an accountant.
- The estate is a taxpayer under the law. You must file a **T3 Trust Income Tax and Information Return** for every year the estate exists to report income the estate earned after the date of death. The estate exists until all of the debts have been paid and assets have been distributed.
- If the person had assets or income in another country, you may need to file a foreign income tax return as well.

- After you file all the necessary tax returns and pay the income tax assessed, you must apply for a **Clearance Certificate**. The Canada Revenue Agency issues this certificate 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 you distribute the estate property without a Clearance Certificate, you may be personally liable for the estate's unpaid taxes, plus interest.

10. Distribute to the beneficiaries.

You should not distribute the estate until:

- six months after the court has issued the grant of probate. Some dependants can make a claim against the estate within this period. If everyone who has a possible claim against the estate signs a release saying they will not challenge the Will, then you can distribute the estate sooner. Before accepting this sort of release you should get advice from a lawyer;
- all of the debts and taxes are paid;
- you obtain a Clearance Certificate.

If you distribute the estate too soon, you could be personally liable for any claims against the estate.

WHEN IS THE PERSONAL REPRESENTATIVE DONE?

There is no set time when your responsibilities end unless the court formally discharges you. It usually takes a year or more to complete the work of a Personal Representative for a straightforward estate. You may remain responsible for looking after the estate indefinitely if assets or debts turn up years later or if trusts have been created. Even if you have already distributed the estate, you are legally responsible for dealing with any assets or debts that come up later.

Review the Canada Revenue Agency booklet "**Preparing Returns for Deceased Persons.**" Visit www.canada.ca/en/revenue-agency.html and find it using the search bar.

For more information or to get forms, contact the **Canada Revenue Agency**:
1-800-959-8281
www.canada.ca/en/revenue-agency.html

There are specific forms of releases in the Surrogate Forms. The forms can be purchased from the King's Printer Bookstore in Edmonton.

TASKS

Specific tasks might include:

- ✓ Distribute specific gifts, including gifts of cash, according to the instructions in the Will. Sometimes the Testator will attach a separate list to the Will that says who should get what items. This list is not legally binding, but you should follow the Testator's wishes if all of the beneficiaries listed in the Will approve.
 - Review the Will regarding specific gifts.
 - Note any restrictions or time periods on giving the gifts.
 - Prepare cheques from the estate account.
 - Provide beneficiaries with gifts and get receipts from them.
 - If the Will creates a trust, arrange for the trust and organize an ongoing review of investments.
- ✓ Prepare a final statement of assets, debts, income, expenses and distribution. The beneficiaries must approve these statements before you distribute the estate. This process is called "passing of accounts".
 - Calculate compensation for the Personal Representative (if any).
 - Prepare releases for the beneficiaries to sign saying that they will not make a claim against the estate.
 - Write to the beneficiaries and ask their approval of the accounts.
 - Confirm that all releases have been received once the beneficiaries have approved the accounts.
- ✓ If money or property remains after you have distributed the specific gifts and after you have been paid (if applicable), divide the residue of the estate (the rest of the estate) as instructed by the Will. If the Will does not say who gets the residue, you must distribute the remaining property as if there was no Will.
- ✓ If accounts need to be audited by the court (if the grant of probate requires this or if a beneficiary challenges your actions), prepare an application and all necessary notices. File the documents and book a court date.
- ✓ After all cheques have cleared, close the estate bank account. You should make this request in writing to the bank.
- ✓ Write a detailed report about every step you took in administering the estate. Send this report to the beneficiaries.

There will be extra tasks if some of the beneficiaries are minors or if the Will creates trusts.

Glossary

adult interdependent partner

A person with whom you are in an adult interdependent relationship.

adult interdependent relationship

A term unique to Alberta for relationships outside of marriage and governed by Alberta's *Adult Interdependent Relationships Act*.

It is a "relationship of interdependence" between two people who:

- have lived together for three years or more; or
- live together and have a child together, by birth or adoption; or
- have signed an adult interdependent partner agreement.

A "relationship of interdependence" exists where two people:

- share one another's lives; and
- are emotionally committed to one another; and
- function as an economic and domestic unit.

estate

All of the property you own at your death. Property that you own as joint tenants with other people or that you have designated a beneficiary for do not form part of your estate.

grant of probate

A court order that confirms the Will is valid and confirms the appointment of the Personal Representative named in the Will.

Personal Representative

The person named in a Will who is responsible for managing the testator's estate and for carrying out the instructions in the Will.

spouse

A person to whom one is legally married.

Testator

A person who makes a Will.

Will

A legal statement of how a person wants their property to be dealt with after their death.

Resources

Legislation

Alberta King's Printer

For free electronic and print copies of Acts or Regulations.
www.alberta.ca/alberta-kings-printer.aspx

Government and Court Services

Government of Alberta

www.alberta.ca

Alberta Courts

www.albertacourts.ca

Court and Justice Services

Resolution and court support services across Alberta.
1.855.738.4747
www.alberta.ca/court-and-justice-services.aspx

Office of the Public Guardian and Trustee

Services and support for vulnerable Albertans and their families.
Toll-free: 310.0000 then 780.422.1868
www.alberta.ca/office-public-guardian-trustee.aspx

Legal Services

Law Society of Alberta Lawyer Referral Service

Provides names of three lawyers. Each lawyer to provide half-hour consultation free of charge.

Toll-free: 1.800.661.1095

www.lawsociety.ab.ca/public/lawyer-referral

Legal Aid Alberta

Toll-free: 1.866.845.3425

www.legalaid.ab.ca

Edmonton Community Legal Centre (ECLC)

Legal clinic in Edmonton. Call for hours and eligibility.

780.702.1725

www.eclc.ca

Calgary Legal Guidance (CLG)

Legal clinic in Calgary. Call for hours and eligibility.

403.234.9266

<http://clg.ab.ca>

Community Legal Clinic – Central Alberta

Legal clinics in Central Alberta. Call for hours and eligibility.

Central Alberta: 403.314.9129

Fort McMurray: 587.674.2282

Lloydminster: 587.789.0727

Medicine Hat: 403.712.1021

www.communitylegalclinic.net

Grande Prairie Legal Guidance

Legal clinic in Grande Prairie. Call for hours and eligibility.

780.882.0036

www.gplg.ca

Lethbridge Legal Guidance

Legal clinic in Lethbridge. Call for hours and eligibility.

403.380.6338

www.lethbridgelegalguidance.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/publications or **you may order pre-printed publications to be sent to you by visiting www.cplea.ca/store**

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

- Guide to Getting a Grant of Probate or Administration in Alberta
- Making a Will
- Making a Personal Directive
- Making an Enduring Power of Attorney
- Being an Agent
- Being an Attorney Under an Enduring Power of Attorney
- General Powers of Attorney
- *Adult Guardianship and Trusteeship Act*

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Email info@cplea.ca
Web www.cplea.ca



You should **NOT** rely on this booklet for legal advice.
It provides general information on **Alberta law only**. 2020