

# Duties of an Estate Administrator

## Estate Administration Self-Help Guide



## Public Guardian and Trustee of Yukon

## Information Resources - Whitehorse, Yukon

### **Office of the Public Guardian and Trustee**

867-667-5366; toll free (in Yukon) 1-800-661-0408, ext. 5366

Email: [publicguardianandtrustee@gov.yk.ca](mailto:publicguardianandtrustee@gov.yk.ca)

Web site: [www.publicguardianandtrustee.gov.yk.ca](http://www.publicguardianandtrustee.gov.yk.ca)

Location: Third Floor Andrew A. Philipsen Law Centre, 2134 – 2nd Avenue

### **Yukon Public Law Library**

867-667-3086; toll free (in Yukon) 1-800-661-0408, ext. 3086

Email: [yukon.law.library@gov.yk.ca](mailto:yukon.law.library@gov.yk.ca)

Web site: [www.justice.gov.yk.ca/prog/cs/library.html](http://www.justice.gov.yk.ca/prog/cs/library.html)

Location: Ground Floor Law Courts, 2134 – 2nd Avenue

### **Registry of the Supreme Court of Yukon**

867-667-5937; toll free (in Yukon) 1-800-661-0408, ext. 5937

Email: [courtservices@gov.yk.ca](mailto:courtservices@gov.yk.ca)

Web site - [www.yukoncourts.ca/courts/supreme.html](http://www.yukoncourts.ca/courts/supreme.html)

Location: Ground Floor Law Courts, 2134 – 2nd Avenue

## Non-Government

### **Yukon Public Legal Education Association (YPLEA)**

867-668-5297; toll free (in Yukon) 1-866-667-4305

Email: [ypleayt@gmail.com](mailto:ypleayt@gmail.com)

Web site: [www.yplea.com](http://www.yplea.com)

Location: Suite 102, 2131 Second Avenue

### **Law Society of Yukon (Lawyer Referral Service)**

867-668-4231

Email: [info@lawsocietyyukon.com](mailto:info@lawsocietyyukon.com)

Web site- [www.lawsocietyyukon.com](http://www.lawsocietyyukon.com)

Location: Suite 202-302 Steele Street (T.C. Richards Building)

Lawyer Referral Service - half-hour consultation with a lawyer - \$30 plus GST

### **Lawyers**

To contact a lawyer's office, look in the phone directory under "Lawyers" in the Yellow Pages or under names of local law firms

## IMPORTANT!

This guide has been produced by the Office of the Public Guardian and Trustee in the Yukon Department of Justice. It is intended to be used as a guide only and is not considered a comprehensive legal resource.

The information provided does not replace a lawyer's advice and cannot teach you everything you need to know. Even if you decide to proceed without a lawyer, you should consult a lawyer for interpretation of the law that applies to your case and for other legal advice.

The information provided in this guide is believed to be correct as of its date of publication. Please refer to the **List of Key Words Estate Administration Resource Guide** for definitions of any unfamiliar terms that are highlighted in this guide.

## DUTIES OF AN ESTATE ADMINISTRATOR

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### When is an estate administrator required?

When a deceased person dies without a will, or without a valid will, they are **intestate**. Without a valid will, a deceased person has left no instructions naming an **executor** or **executrix** and no instruction as to who is to inherit the deceased's property. When this occurs in Yukon, sections 78 to 95 of the *Estate Administration Act* direct who will inherit the intestate's property by order of priority and section 6 provides direction to determine who may apply to be named the **administrator** or **administratrix** of the estate.

The information in this guide applies to cases where there is no disagreement about the appointment of the person who applies to be the administrator. If the application is contested, or if you intend to oppose the application, you should seek legal advice and refer to the Supreme Court rules and forms for the process used in such cases.

### What is an estate administrator/administratrix?

The term administrator or administratrix is applied to the person who is appointed by the Supreme Court of Yukon to carry out the administration of the intestate's estate. These terms may also refer to a person who is administering an estate of a deceased person who had a will but did not name an executor, or the person named as executor was unable or unwilling to act as the executor.

### Who may be an administrator?

Section 6 of the *Estate Administration Act* sets out, by order of priority, the persons who may apply for the appointment of administrator:

- the widow or widower of the deceased person;
- one or more of the **next of kin**; or
- the widow or widower of the deceased person jointly with one or more of the next of kin.

A friend may also apply for Letters of Administration.

The person who applies to be named the administrator must have the approval of everyone who has a greater or equal right to apply for the appointment. Those persons who approve of that person's application are asked to swear an affidavit advising the court that they agree with the application and are willing to give up their right to apply for Letters of Administration in favour of the applicant.

## How much does it cost to be an administrator?

The court can require the administrator to post a bond double the amount of the value of the estate. The purpose of a bond is to ensure the estate is properly administered. The court may not order a bond if all beneficiaries and creditors agree that it is not necessary.

## Will I get paid to be an administrator?

Just as an executor is entitled to be paid for legitimate out-of-pocket expenses, the administrator is also entitled to be reimbursed for out-of-pocket expenses. The estate will pay for all disbursements or costs associated with administering the estate. If the heirs disagree with the accuracy of estate expenses, they can ask the court to review an accounting of the estate expenses.

An administrator may receive a fee for their time, effort and service in administering the estate. All beneficiaries must agree on the fee to be paid. If they can't agree on a fee, the court can be asked to decide on the issue. There is no set fee payable, but as with an executor's fee, the factors that may decide the amount payable include:

- the size of the estate;
- the complexities of the estate;
- the time the administrator spends; and
- the overall responsibility the administrator assumes in administering the estate.

## What is involved in applying to become an administrator?

Supreme Court Rule 64 provides information about applying to be an administrator of an estate in cases that are not contentious. The Supreme Court requires that a number of documents be filed in court before Letters of Administration can be issued. The court registry can provide you with a package of the forms required to apply for **Letters of Administration**, or you can download them from the Supreme Court web site at [www.yukoncourts.ca/courts/supreme/ykrulesforms.html](http://www.yukoncourts.ca/courts/supreme/ykrulesforms.html) :

- **Requisition (Form 4)**: This document starts the file and requests that the applicant be issued Letters of Administration under Supreme Court Rule 64. (Please note that the registry has a specific version of Form 4 for use in such cases. It is not available on the courts web site.)
- **Affidavit of Administrator (Form 74)**: The applicant must swear an affidavit setting out the details of the estate for the court, including the identity of the deceased and any **beneficiaries**, the identity of any dependents of the deceased, and a statement by the applicant that he or she will administer the estate according to the law (see section 107 of the *Estate Administration Act*). The applicant must attach a copy of the Certificate of Death and the Statement of Assets, Liabilities and

Distribution as exhibits to this affidavit. If there is a will but no executor, the original will should also be attached as an exhibit to **Form 75, Affidavit of Administrator** (Will Annexed), instead of Form 74.

- **Affidavit of Notice of Application (Form 73) with Notice of Application for Probate or Administration (included):** Under section 108 of the *Estate Administration Act*, a notice must be sent to individuals who are considered “interested persons” to the estate. The notice should state that the administrator intends to apply for Letters of Administration. If there is a will, a copy of the original will must be attached to the notice for the information of the individuals who receive the notice. Included in the list of interested persons are the named beneficiaries, the spouse of the deceased, the common-law spouse of the deceased, the children of the deceased, and any minor or person under legal disability who is related to the deceased. The administrator must swear the Affidavit of Notice of Application, which identifies who received the notice, how it was sent and the date it was sent. The assistance of a lawyer may be required to properly carry out the requirements of this section of the *Act* and to draft the required documents.
- **Letters of Administration (Form 116):** This form must be completed, signed by the person applying to be the administrator and submitted to the Supreme Court of Yukon with the required documentation. After the administrator files the necessary documents at the court registry and pays the filing fee (if applicable), a Supreme Court judge will review all the documents filed and issue Letters of Administration if everything is in order.
- If the deceased was a member of a Yukon First Nation, the Supreme Court also requires that an affidavit be filed to inform the court of the membership status of the deceased and whether at the time of death the First Nation has passed any laws about inheritance, wills, intestacy and administration of estates relating to its citizens.

Please note that the Supreme Court does not issue the order granting Letters of Administration immediately upon filing of the required documents. The timing of the issuing of the order will depend on how and when the notice was served. The clerk will phone you when the judge approves your request or if further information is needed to make a decision.

## What does an administrator do?

The responsibilities that an administrator has to the estate and beneficiaries are very similar to those of an executor of a will. As an administrator does not have the assistance of a will to direct who will inherit the estate assets, Yukon law sets out how the estate assets must be distributed. The administrator’s duties include:

- the duty to pay the estate debts from the proceeds of the estate;
- the duty to distribute the remainder of the proceeds according to Yukon law; and
- the duty to account for the estate property, what was received and how it was distributed.

When acting as an administrator, the first steps you will take are very similar to those of an executor. An administrator should keep a list of all actions taken and decisions made on behalf of the estate and document all expenses incurred with original receipts.

## Who will inherit the estate?

The intestate's estate will be distributed according to the rules set out in sections 78 through 95 of the Estate Administration Act. The distribution of the net value of the estate (value after payment of liabilities including income tax, debts, funeral expenses and administration expenses) is determined according to the following rules:

- if the intestate had a spouse but no children, the spouse receives the net value of the estate;
- if the intestate died leaving a spouse and children, the estate will be distributed as follows:
  - if the net value is not greater than \$75,000, the net value of the estate is distributed to the spouse, or
  - if the net value is greater than \$75,000, the spouse is entitled to \$75,000 and whatever remains (net value - \$75,000 = remainder) is divided as follows:
    - if one child, 1/2 of the remainder to the spouse and 1/2 of the remainder to the child, or
    - if more than one child, 1/3 of the remainder to the spouse and the children share 2/3 of the remainder, per stirpes;
- if there is no spouse or children, the intestate's mother and father receive equal shares of the net value, or if only one survives the deceased the net value is distributed to the surviving parent;
- if there is no spouse, children, father or mother, all of the intestate's brothers and sisters receive in equal shares the net value of the estate;
- if no spouse, children, father, mother, brothers or sisters survive the deceased, all of the intestate's nephews and nieces receive the net value in equal shares; and
- if none of the above rules apply, the net value of the intestate estate must be distributed equally among the **next of kin** of equal degree of **consanguinity** to the estate.

## Will I need professional advice?

As an administrator, you can benefit from the advice and assistance of a lawyer and an accountant, as you may have to deal with many of the same issues that an executor must face in the administration of an estate. Due to the complexities that can arise when there is no will, the advice and assistance of a lawyer can be very helpful in ensuring the law is followed.

If there is a potential for legal action to be brought against the estate, the advice of professionals is in the best interest of the administrator and beneficiaries.

## Where should I start?

Please refer to the checklist at the end of this guide for information on tasks you may have to do to settle an estate. You should also refer to the fact sheet **Estate Administration: Will (Testate) or No Will (Intestate)** for some more specific details about what to do next.

## Estate debts

Along with determining the assets of the estate, an administrator must also calculate the deceased's debts. The administrator will be responsible for paying those outstanding debts, and also for paying the funeral expenses from estate funds. An administrator cannot pay any outstanding debts until the court issues Letters of Administration.

Where there is an **insolvent estate**, it is very important for an administrator to examine and verify all the deceased's debts. It is also important that the debts are paid before distributing any of the estate to the beneficiaries. For further information about dealing with insolvent estates, please refer to the guide **Closing an Estate**.

## Dealing with interested persons

An administrator is considered the legal representative of the estate. The administrator is the person who will discuss with third parties about matters relating to the deceased's personal affairs and, in some cases, business affairs. An administrator is expected to act in the best interest of the beneficiaries when handling the estate assets, so keeping the beneficiaries informed is an important function of the administrator.

Sometimes an administrator has to deal with difficult situations, such as when the distribution of the estate does not adequately provide for the financial needs of a dependent adult. In such cases the administrator may need to speak to a lawyer to obtain advice on how to proceed. A dependent may have a legal claim to the estate and may also require legal advice and representation.

## Dealing with creditors

An administrator may also have to deal with creditors of the estate, so it is important to know everything about the estate's assets and debts before paying any outstanding debts of the deceased. It is not uncommon for an administrator to feel pressured to pay any outstanding debts immediately, but the appropriate time to pay these debts depends on the complexities of the estate. It is wise to remember to use your best judgment when determining how to proceed with the estate.

## Closing an estate

Closing an estate may require completing a series of financial and other transactions. Please refer to the guide **Closing an Estate** for further details about closing an estate.

## Is there a fee for administering an estate?

If the estate is worth more than \$25,000, the Supreme Court charges a filing fee of \$140 to obtain Letters of Administration. There may be a fee charged for an estate that is estimated to have a value of not greater than \$25,000. There is also a fee for certified true copies of documents. If the administrator retains a lawyer to prepare the documents and provide legal advice, this is a separate cost for the estate.

# ADMINISTRATOR CHECK LIST

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The following steps are often taken after a death occurs. The purpose of this list is to draw attention to some of the details you will need to address. It is not intended to be thorough and complete. You are encouraged to obtain advice from a lawyer before you file any documents in court.

## Immediate Duties

- Locate the will if there is one (check safety deposit box, law firms, personal effects)
  - Determine whether there are any special funeral directions
  - Notify relatives, friends, others of death
  - Speak to family if deceased did not leave instructions for either cremation or burial
- Make funeral arrangements
  - Arrange for copies of Certificate of Death from Vital Statistics (there will be a fee attached)
- Review the deceased's financial affairs
- Arrange appointment with Coroner (to obtain personal effects and information on death if applicable)

## Protect the Estate

- Ensure safe custody of personal valuables
- Locate, identify and inventory assets
- Secure and protect important documents such as: property titles, mortgages, insurance policies, banking and investment documents (may include share certificates, bonds, debentures, guaranteed income certificates), personal income tax returns, pension plan information, Social Insurance Number

NOTE: where a beneficiary of insurance, pensions, etc. has been named, these items are not considered estate assets. Speak to a lawyer about such matters.

- Contact utility services to ensure services continue in order to protect the value of property
- Confirm identity and current addresses of beneficiaries including common-law spouse, children or separated spouse
- Redirect mail at post office (register change of address)
- Notify Land Titles Office of death if titled property (real estate) is involved
- Notify Public Guardian and Trustee of any minor children or dependent adults

## Cancellations/Changes

You will need copies of the funeral director's statement of death or the Certificate of Death to notify these offices, arrange for bill payment from the estate, cancel the account or change the name of the account holder:

- Credit bureau - to assist in determining outstanding debts
- Credit cards - bank, department stores and others



NOTE: outstanding balances on credit cards, bank credit lines, loans and mortgages may be covered by insurance. Before you pay any outstanding amount, check to see if it is life insured.

- Cable/satellite TV
- Driver's licence
- Electric/utilities
- Health insurance coverage - provincial, territorial, extended health packages
- Internet/email
- Life insurance
- Memberships - associations, clubs
- Rental/lease agreements
- Subscriptions - newspapers, magazines
- Telephone
- Vehicle registration

## Value the Estate

- Contact the following to determine assets and liabilities and to find out if a certified true copy or original Certificate of Death is required:
  - Financial institutions - banks, credit unions
  - Brokers - stock brokers, mortgage brokers
  - Investment advisors and companies holding investments
  - Insurance companies
  - Business partners
  - Employer
  - RRSP/RRIF trustees
- Advertise for creditors

## Other Notifications

### **Government offices/programs – see also Service Canada web site for assistance**

- Canada Pension Plan – to apply for death/survivors' allowances and benefits
- Canada Revenue Agency – preparation of tax returns and Certificate of Clearance
- Child Tax Credit – if children are involved
- Citizenship and Immigration Canada - to cancel Canadian citizenship card
- First Nation – entitlements or claims under Self-Government Agreement
- INAC/DIAND
- Old Age Security Pension
- Social Insurance Number
- Passport Canada – to cancel Canadian passport

- Pensions - employee, military

### **Other**

- Associations, unions, societies
- Church/synagogue/temple
- Clubs
- Contractors
- Dentist, doctor, chiropractor, other health practitioners
- Hospital – to obtain personal effects, information
- Lawyer
- Library
- Pensions (other) – may be non-government employer or from another country
- Pets
- Schools/colleges/universities/institutes

### **Court Documents**

- Obtain forms from the Supreme Court of Yukon to apply for Letters of Administration
- Complete all forms required for filing in court
  - Requisition (Form 4)
  - Affidavit of Administrator (Form 74 or 75 depending on whether there is a will)
  - Affidavit of Notice of Application (Form 73)
  - Notice of Application for Probate or Administration (attached to Form 73)
  - Letters of Administration (Form 116)
- Arrange to meet with a notary to swear completed court documents
- File notarized documents with the court

# NOTES

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For more information, or to obtain copies of these publications, please contact:

Government of Yukon, Department of Justice

Public Guardian and Trustee

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[www.justice.gov.yk.ca](http://www.justice.gov.yk.ca)