



ACTING AS AN ESTATE ADMINISTRATOR OR EXECUTOR

Before you take on the role, you should consider...

Acting as an executor or administrator of an estate is an important obligation. You are usually asked to act as an executor or administrator because you are trusted by someone who has passed away and their family. Acting as an executor or administrator is usually fairly straightforward; however, it does require that you be aware of and follow through on certain obligations.

Difference between an Executor and an Administrator

Both an **executor** and an **administrator** are appointed to administer the estate of someone who has passed away. The main difference between them is how they are appointed.

Executor: appointed to administer an estate by a **will** that was drafted and executed by the deceased before the person passes away.

Administrator: appointed to administer an estate by the Yukon Supreme Court after someone passes away, usually because someone died without a will and so did not appoint an executor. It can also occur when the executor appointed in the will is not available to, or decides not to, act as the executor.

No Obligation to Act as Executor

You are not obligated to accept an appointment if you are named as an executor in someone's will. No one can be forced to be an executor. You can refuse, or **renounce**, the appointment if you do not want to administer the estate.

While an executor who wants to renounce their appointment isn't required to provide an explanation, some common reasons include: lack of time, a conflict of interest (e.g. the executor has a claim against the estate) or a bad relationship with **beneficiaries**.

Whatever the reason an executor has for renouncing, it must occur **before** probate has been granted and should occur before the executor has started to administer (or, **intermeddle** with) the estate and its assets. Examples of **intermeddling** include paying off debts or cancelling an insurance policy. Paying funeral expenses is not usually considered **intermeddling**. If you have already **intermeddled** with an estate, you may not be able to renounce the appointment. If you decide not to act as an executor, the estate can still be administered. If an alternate executor is named in the will, they will have the right to act as the executor if you renounce. If there is no alternate, or the alternate also renounces, a family member or friend of the deceased can apply to be the administrator of the estate. In limited circumstances, the Public Guardian & Trustee may apply to administer the estate.

Requirement to Obtain Probate

If you are named as an executor in a will, you may need to apply for **probate**. **Probate** is an approval process where the Yukon Supreme Court validates the will and confirms the executor. Upon application and approval, the Yukon Supreme Court issues a document called a **Grant of Probate** confirming that the executor is properly appointed to administer the estate.

Examples why you may need probate include: if the deceased owned any land registered in the Land Title Office, or held bank accounts with significant amounts of money. This is because the Land Title Office and banks may not allow you to handle the deceased's assets until you show them a **Grant of Probate**. There can be other benefits to getting a **Grant of Probate**, such as starting the limitation period for certain claims that can be made against an estate.

Definitions

Beneficiary: A person who receives a benefit or gift in a will, or a person for whose benefit a trust is created.

Estate: The right, title, or interest a person has in any property.

Intestate: A person who dies without a will.

Letters of Administration: A document issued by the Yukon Supreme Court naming an administrator of the estate.

Probate of Will: Formal proof before the proper officer or court that the filed will is the last will of the testator and confirms the named executor(s).

Will: A legal document, prepared by a person in compliance with formal requirements, that takes effect on their death, and that states what they want to happen to their property on death.

Obligations of Executors and Administrators

The obligations and duties of executors or administrators vary depending on the complexity of the estate. The basic obligations in most cases are to secure the estate assets, pay out all **liabilities** (debts) from those assets, then **distribute** (give) the remaining funds to the **beneficiaries** of the estate.

Depending on the complexity of the estate, some of the obligations can include the following:

Preliminary steps

- Meet with family and communicate with beneficiaries.
- Arrange funeral.

Protect estate assets

- Ensure insurance is placed on estate assets.
- Arrange for protection of any vacant real estate.
- Redirect mail, cancel subscriptions, etc.

Determine assets and liabilities

- Determine if banks hold accounts safety deposit boxes.
- Complete claims for CPP death benefit, life insurance and any benefits arising under pensions.

- Determine liabilities of deceased, such as funeral expenses, mortgages, credit cards and utilities.

Administer estate

- Arrange for sale of real estate and personal property, if required.
- Pay out deceased's debts.
- File income tax returns and obtain tax clearance from Revenue Canada.

Distribute estate

- Prepare and submit an accounting of the administration of the estate to the beneficiaries.
- Distribute estate to beneficiaries.

Estate Liabilities and Debts

If you act as an executor or administrator of an estate, one of your obligations is to pay the deceased's debts and other liabilities out of the deceased's assets. You are not responsible for paying the deceased's debts out of your own funds, even if the estate does not have enough assets to cover all debts.

An estate is **insolvent** if it does not have enough assets to pay for all its liabilities. When administering an **insolvent** estate, an executor or administrator must be aware of the proper order in which they pay creditors. A failure to pay the debts in the right order can result in the executor or administrator being personally liable to creditors for any unpaid debt.

Subject to the rights of any secured creditors, the two items that have first priority of payment are:

- reasonable funeral and testamentary expenses paid by the executor or administrator; and
- the costs of administration, including:
 - expenses and fees of the executor or administrator; and
 - legal costs.

Distribution of Estate

Once the estate's debts and liabilities, including taxes, are paid you may proceed with distributing the estate to the beneficiaries. Before doing so, it is good practice to provide the beneficiaries with a statement showing how you have administered the estate. This accounting shows the deceased's assets at the date of death, what has been paid out of the assets during the administration of the estate, and what remains for distribution.

There are two main **deadlines** to be aware of when distributing an estate:

- On intestacy: if the deceased died without a will, you **cannot** distribute the estate until one year after the date of death (unless you obtain a court order that says otherwise).
- With a will: after one year from the date of death (called the **executor's year**) the beneficiaries of an estate have a legal entitlement to demand distribution. Interest may also start to accrue. This rule, however, will often not apply if there are difficulties or complexities that prevent the estate from being administered within one year.