

Closing an Estate

Estate Administration Self-Help Guide



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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

Web site: 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

Web site: 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

Web site - 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

Web site: www.yplea.com

Location: Suite 102, 2131 Second Avenue

Law Society of Yukon (Lawyer Referral Service)

867-668-4231

Email: info@lawsocietyyukon.com

Web site- 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.

CLOSING AN ESTATE

Once you have received the Grant of Probate or the Letters of Administration from the Supreme Court you will be able to carry through with the remainder of your duties.

The following list identifies some of the duties that the executor or administrator can now carry out to close the estate:

- if an estate bank account has not been opened (this will depend on the rules of the financial institution), the executor or administrator should now open an account in the name of the estate where they have sole signing authority (or dual signing authority if more than one executor or administrator is appointed);
- deposit all estate monetary assets (including bank accounts in the name of the deceased, cash and cheques payable to the estate) in the estate account;
- pay outstanding debts of the estate;
- sell any assets not specifically designated to a beneficiary and deposit any money from the sale in the estate account;
- transfer title of all real property at the Land Titles Office to the estate;
- complete and file all income tax returns. An income tax return must be filed for the deceased for the year of death and any previous years in which returns were not filed. A tax return must also be filed for each following year when there are still assets in the estate. After all returns have been filed, request a **clearance certificate** for the estate from the Canada Revenue Agency so that money can be distributed to beneficiaries;
- prepare an accounting of the estate for the beneficiaries or, if there is a dispute about the estate accounts, arrange for the court to review the accounting in a process known as the **passing of accounts**;
- obtain the necessary releases from beneficiaries before starting to distribute the estate; and
- distribute the **net value** of the estate according to the terms of the will or the priority of distribution set out in the *Estate Administration Act*.

How long will the estate administration take?

The time frame in which these duties can be carried out varies with each estate. There are two very important limitation periods which the executor or administrator must be aware of and follow for their protection as well as that of the best interests of the estate and the beneficiaries.

The *Dependents' Relief Act* and *Estate Administration Act* directs that a person or common law spouse who may have a legal claim to the estate under this legislation has six months from the date of the Grant of Probate or Letters of Administration to file their claim against the estate in the Supreme Court of Yukon. This limitation period allows persons who qualify under the legislation to put together their claim for relief under the Act. If the executor or administrator ignores this time frame and distributes the estate before the limitation period has run out, the executor or administrator may be personally liable to the dependents. An executor or an administrator will want to obtain legal advice from a lawyer regarding any possible claims to the estate that could arise under Yukon law.

Section 71 of the *Estate Administration Act* directs the time of distribution of an intestate estate. The net value of the intestate estate must not be distributed until **one year** has elapsed from the date of death.

There are two specific exceptions to the one-year rule. The first exception allows funds to be released to a dependent of an intestate following an order of the court. If the intestate left a dependent who is wholly or partly dependent on the deceased and the court determines it appropriate, payment of the dependent's share may be made on the terms and conditions set by the court. The second exception gives the Public Guardian and Trustee administering an intestate's estate the discretionary power to decide whether to release the funds early if they determine that early distribution will not result in any harm or wrongdoing to creditors of the estate.

How long it will take to administer the estate depends on a variety of factors. These factors include:

- the complexity of the assets owned;
- the extent of the estate debt;
- business interests;
- disputes about the ownership of property;
- disputes about the value of property; and
- complications to do with the guardianship of minor children.

Some details such as completing income tax returns, and the fact that it can take months to receive a clearance certificate from the Canada Revenue Agency, are out of the control of the executor or administrator. Beneficiaries must be patient while waiting for the executor or administrator to conclude the estate. If there is real evidence of delay caused by the executor or administrator failing to carry out their duties, a beneficiary may choose to obtain independent legal advice to determine what may be the cause of the problem and to deal with it.

What if the estate cannot pay its debts?

Sometimes an estate owes more money than it has in assets. This will affect how the estate is administered. Part 11 of the *Estate Administration Act* deals with insolvent estates in the Yukon. The legislation directs that the estate debts will be ranked in order of priority and according to the legal rights of secured creditors.

Neither the executor nor the administrator is liable for the debts of the estate because of their appointment. A beneficiary named in the will is also not liable to pay the estate's debts. However, it is very important for an executor or administrator to follow the legislation and the distribution scheme set out in the law so that they avoid becoming liable for debts of the estate. Administering an insolvent estate can be complex and professional advice is recommended.

Estate accounting

It is recommended that executors and administrators keep careful records of the decisions they make and the out-of-pocket expenses they make while administering the estate. This is important information that determines how much they will be reimbursed for their expenses and may assist in determining the fee they could receive for their services.

Accounting for the estate also includes keeping records of all money received and deposited into the estate account. These funds can include payment of death benefits, insurance proceeds payable to the estate, employment earnings from work the deceased did before death, and any refunds received. An estate may also receive proceeds from the sale of assets like real property, vehicles, household furnishings and other items that have monetary value and are suitable for sale. The executor or administrator must keep an accurate record that shows all funds received into the estate account.

An accurate record must also be kept of payments made out of the estate funds to pay the debts of the estate. The executor or administrator will have to balance the estate account before money can be paid out of the estate. The beneficiaries are entitled to review these accounts. If the beneficiaries are not satisfied with the executor or administrator's accounting of the estate, they can request that the court start a formal process known as the passing of accounts. Any questions or disputes should be answered in this process.

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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