HUMMINGBIRD
NOTARIES

VANCOUVER
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A GUIDE FOR EXECUTORS

Your role under a Will in British Columbia

You have been named as Executor in someone's Will. This is a position of trust. This guide explains what an Executor does, the main steps in administering an estate, and the duties the law places on you. Under the *Wills, Estates and Succession Act* (WESA), an Executor is called a "personal representative".

1 | BEFORE YOU ACT

- Being named does not oblige you to act. If you do not wish to act, you may renounce, but you should decide before you start dealing with the estate's assets. Once you begin acting, it becomes much harder to step away.
- If more than one Executor is named, you will usually need to act together and agree on decisions, unless the Will says otherwise.
- You will need to give your time to the estate, keep careful records, and treat all beneficiaries fairly, even if you are also a beneficiary or a family member.

2 | FIRST STEPS AFTER THE DEATH

- Obtain several copies of the death certificate and locate the original Will. Check whether it was stored with a notary, a lawyer or a financial institution.
- Follow any funeral wishes in the Will, and arrange the funeral or memorial in consultation with the family. Reasonable funeral costs are paid from the estate.
- Secure the deceased's home, vehicles and valuables. Check that insurance on the home and vehicles stays in place, and redirect mail.
- Notify banks, pension plans, Service Canada (CPP and OAS), the Canada Revenue Agency and other institutions of the death. Do not close accounts or move money until you have the authority to do so.
- Gather information about all assets and debts: bank and investment statements, real estate, insurance policies, RRSPs, RRIFs, TFSAs, pensions, vehicles, digital accounts and loans.

3 | PROBATE

Probate is the court process that confirms the Will is valid and gives you legal authority (a "grant of probate") to deal with the estate. Many institutions will not release assets, and the Land Title Office will not transfer real estate, without one. The main steps are:

- Search for the most recent Will through the BC Vital Statistics Wills Registry.
- Give notice of your intention to apply for probate to the beneficiaries and others entitled to notice, and wait at least 21 days before filing.
- File the probate application in the Supreme Court of British Columbia, with an affidavit listing the assets and debts that pass through the estate.
- Pay probate fees, based on the value of the estate in BC. Currently there is no fee on the first $25,000, $6 per $1,000 from $25,000 to $50,000, and $14 per $1,000 above $50,000 (about 1.4%), plus a $200 court filing fee for estates over $25,000.

Assets held jointly with a right of survivorship, and plans or policies with a named beneficiary, usually pass directly to the survivor or beneficiary and do not form part of the probate estate. Ask us if you are unsure.

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4 | ADMINISTERING THE ESTATE

- Open an estate bank account in the name of the estate. Keep estate money separate from your own at all times.
- Collect the assets, and decide with care whether to sell or keep them. Real estate may need to be insured, maintained and, if required, sold.
- Pay the deceased's valid debts, final bills and estate expenses. You may advertise for creditors in the BC Gazette to help protect yourself against unknown claims.
- File the deceased's final income tax return, and any estate trust returns. Obtain a clearance certificate from the Canada Revenue Agency before the final distribution, so that you are not personally responsible for unpaid taxes.
- Keep a full written record of everything received and paid out. Beneficiaries are entitled to an accounting.

5 | DISTRIBUTING THE ESTATE

- Do not distribute the estate within 210 days after the grant of probate without the consent of the beneficiaries or a court order (WESA s. 155). A spouse or child may bring a wills variation claim within 180 days of the grant (WESA s. 61).
- Pay specific gifts first, then distribute the rest of the estate (the residue) as the Will directs. Hold any share for a beneficiary under age 19, or under the age set in the Will, in trust as the Will provides.
- Obtain a signed release from each beneficiary when they receive their share.

6 | YOUR DUTIES AND COMPENSATION

- Act honestly, in good faith and in the best interests of the estate and all beneficiaries. Do not favour one beneficiary over another, and do not benefit personally beyond what the Will allows.
- Act with reasonable care and diligence, and with reasonable speed. You may hire professionals (a notary, lawyer, accountant) and pay their reasonable fees from the estate.
- Unless the Will says otherwise, you may claim reasonable compensation for your work, up to 5% of the gross value of the estate under the *Trustee Act*, plus reimbursement of reasonable expenses. Compensation is taxable income to you.
- You can be held personally responsible for losses caused by mistakes, delay or distributing too early. When in doubt, ask for advice first.

QUESTIONS

If you have questions about your role, please contact Tanvi Ahuja, Notary Public, Hummingbird Notaries, at 604.760.1037 or ask@hummingbirdnotaries.com. Our office is The Perch, 60-323 Jervis Street, Vancouver.

This guide provides general information about British Columbia law to help you understand your role. It is not legal advice for your particular situation, and the law may change. Please contact us, or an estate lawyer, before taking any step you are unsure about.

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