

GORDON & MCLEOD LAW OFFICE

Estate Administration – Frequently Asked Questions

We understand how overwhelming it can be upon the passing of a loved one, and we are here to help. To do so, we have prepared a list of some of the most commonly asked questions we get asked by executors and beneficiaries of estates:

1. What is probate?

Probate is the process by which a Will is accepted by the Surrogate Court and found to be authentic. The **Executor** is the person formally appointed under the Will. The Executor then carries out the wishes as expressed in the Will, with the court overseeing the work of the Executor and the distribution of the estate. The deceased's property is identified and inventoried, the debts of the estate are paid and the remaining property is distributed to the estate beneficiaries.

2. Do I have to probate?

Probate isn't always required, especially for small, straightforward estates. If there are third parties involved, such as financial institutions or the Alberta Land Titles Office, you will have to contact them to find out whether they will allow you to forego probate and, if so, what they will require in order to release the funds or transfer the real property into the name(s) of the Executor so that they may carry out the administration of the estate in accordance with the will.

Generally, you have to probate a will in Alberta if:

- There is no surviving spouse as a joint tenant.
- The assets, notably real estate, are in the name of the deceased only.
- There is a substantial amount of money in bank accounts or other investments.
- There are questions about the validity of the will, or there is no will.
- The estate is the beneficiary of benefits from registered retirement plans.

3. What does it cost to obtain probate in Alberta?

Canada does not have estate or inheritance taxes (i.e., that are collected by the Canada Revenue Agency (CRA)). However, estate or probate fees are payable upon the death of a Canadian resident, and these fees are collected provincially.

Alberta residents are fortunate because the probate fees in Alberta are currently amongst the lowest in the country, and the maximum is capped at only \$525. Using an estate valued at \$300,000 as an example, the probate fees in Alberta would be \$525, unless the deceased owned assets outside of Alberta. In Ontario and B.C., the fees / tax on the same estate would be about \$4,000.

In addition to the fees payable to the Surrogate Court, there are fees payable to the law office that assists with the application for a Grant of Probate/Administration and the administration of the Estate. At Gordon & McLeod, we believe we provide you with the best value by basing our fees on

the complexity of your situation, rather than a black and white hourly fee or percentage of the estate.

4. Can an Executor probate a will themselves (without a lawyer)?

Probating a will yourself is possible in straightforward situations, as long as you educate yourself and draw on professional assistance when you need it.

When considering this question, you need to weigh the amount of time and possibly specialized knowledge required against legal costs. What potential complications might arise? Do you have the time to familiarize yourself with your obligations under the Estate Administration Act and the rules of the Surrogate Court? If you don't have the original copy of the will or if the will is unclear, the probate process may not go smoothly without legal guidance. If the will is going to be contested or if some of the beneficiaries are not happy with what has been left to them in the will, you could run into significant challenges.

A lawyer can provide peace of mind, reduce your risk of being held personally liable, and keep the process moving along if something unexpected occurs during the administration of the estate.

5. How long does it normally take to administer an Estate?

Unless the estate is very simple, it can take the executor considerable time to gather all the information required to submit the application for probate. Once the application is submitted, the length of time the courts take to issue a Grant of Probate depends on the judicial district of the deceased.

Generally speaking, courts in judicial districts with larger cities—like Calgary or Lethbridge —will take longer to issue a grant. The process can take anywhere from several weeks to several months, and the application may be rejected if the Surrogate Court requires additional information or if the information that was submitted is inaccurate or incomplete.

Once the grant is received, the executor completes the rest of the executor duties. It is difficult to predict how long that will take because, again, it depends on the complexity of the estate and the deceased's affairs.

In addition, the executor will need to wait for the Canada Revenue Agency to provide a Notice of Assessment for the deceased's final tax return and the issuance of a final Clearance Certificate (if required), and this process can take up to a year or longer. **As a result, the entire process from start to finish can take a year or more depending on the circumstances.**

6. Can an Executor charge a fee?

Executors are permitted to charge the estate reasonable executor fees for the time spent fulfilling their duties. However, there are no set fees for executor compensation - only the Suggested Fee Guidelines as published in 1995 by the Surrogate Rules Committee for guidance on the subject.

The only ways that executor fees can be formally set is either from directives in the deceased's will or by consent of the beneficiaries of the estate. In the absence of either of these two conditions, the executor must provide a "passing of accounts". When a will establishes set fees, that is the maximum that can be paid to the executor(s) unless the beneficiaries agree to a higher amount, or the court orders so.

The court may consider a number of factors to establish the amount of the executor's compensation. These include the:

- Value of the estate
- Level of care and responsibility required
- Complexity and extent of the executor's work, time involved, problems encountered, and amount of revenue received and disbursements made
- Executor's skill, ability, and specialized knowledge.

In addition, executors are allowed to be reimbursed for any out-of-pocket expenses incurred, such as travel expenses, as long as they are considered reasonable. It is good practice for the executor to keep all receipts in the event of a dispute.

7. What other advisors are involved in the administration of an Estate?

Depending on the complexity of the estate and the provisions of the will, one or more estate income tax returns may be required in addition to the deceased's terminal income tax return. There may also be outstanding income tax returns from prior years that must be filed.

We recommend that executors meet early on with an **Accountant** to get assistance with the filing of the estate income tax returns, together with information regarding the specific circumstances of the deceased that might need to be taken into consideration (ie. estate taxes if the deceased held real property in the United States, non-resident beneficiaries, filing deadlines to avoid losing capital gains exemptions).

8. When can I begin making distributions under the Will?

Depending on the complexity of the estate and the provisions of the will, one or more estate income tax returns One of the primary responsibilities of the Executor is to ensure that all liabilities of the deceased are paid. This includes the liability for taxes. If an executor distributes all the funds from an estate and a subsequent income tax liability occurs, the executor could be personally liable for those taxes.

As a result, in most circumstances we recommend that the executor(s) wait until they have obtained a final Clearance Certificate from CRA prior to making final distributions under the Will. **A Clearance Certificate lets the executor distribute assets without the risk of being personally responsible for amounts the deceased or their estate might later be found owing to CRA.**

However, in some instances we may recommend that the executor obtain an opinion from the Accountant handling the tax filings for the estate as to a reasonable holdback amount for taxes (never less than \$10,000, but could be much higher depending on the specific circumstances of the

estate). Provided this amount is held back, the executor may decide to make an interim distribution under the Will (after obtaining the grant of probate) while we wait for the final Notice of Assessment and Clearance Certificate from CRA.

9. What happens if the deceased had debts at the date of death?

Executors are responsible for settling any debts and liabilities of an estate before distributing the estate, otherwise they may be personally liable for those debts.

The executor must undertake a thorough investigation of all of the deceased's records, and contact all known creditors to determine outstanding balances. While it is not mandatory, the executor may also choose to **advertise for creditors and claimants**, since he/she may otherwise become personally liable for those debts.

10. What happens if the deceased did not have a will?

In the event a person dies with assets in their name, but without a Will, the estate does not go through "**Probate**" but instead goes through a similar process called "**Administration**." The person appointed by the Court is called an **Administrator** (usually a family member), who serves in the same capacity as an Executor and is given documents from the Court called "**Letters of Administration**." The court oversees the administration and distribution of the estate.

In terms of distribution of the assets of the estate, the law assumes that the deceased individual would have wished for his or her estate to go family. Family is considered spouses and adult interdependent partners, together with the deceased's descendants. The Wills and Succession Act sets out exactly how assets will be distributed to the deceased's spouse and descendants if there is no will.

** NOTE: The information in this article is not intended to cover every detail of estate administration and grants of probate/administration in Alberta, but rather to serve as an overview of commonly asked questions. **It is not intended to be legal advice and should not be relied on for that purpose.**