Manulife

Tax, Retirement & Estate Planning Services

Checklist of Executor's Duties

This guide provides general information about the role of the executor, fees, and a checklist of assets that typically an executor would deal with when administering an estate.

This checklist is not to be relied upon as legal advice. Clients should seek the advice of their own legal or tax professional when doing an estate plan.

Note: Some information contained in this checklist may not apply to Quebec.

Role of an executor

An executor is a person appointed under a Will to administer the estate and follows the instructions under the Will to distribute the estate.

Executor's fees

Executor's compensation is based on provisions set out in provincial trustee legislation which generally is what is "fair and reasonable".
(see page 11 discussion on fee determination)

Picking an executor

You should choose an executor who will be sensitive to the needs of your family, be able to do the job and know when and where to get advice. You should try to choose people who will not have a conflict between their job as executor and their personal interest in your estate, such as a beneficiary or possible purchaser of an asset. Advisors contemplating such a role should be aware of the conflict of interest that arises when taking on this role.

Your choice of executor will depend on many factors. It greatly depends upon the complexity of your estate, what assets are in your estate, the length of time it takes to distribute assets out of your estate and whether there are tax or legal issues that need to be addressed. While naming a family member is always an option this should be discussed with the family member in advance so that they are aware of the fact that they have been appointed to do the work. Consideration of having a commercial trustee as executor may make sense depending upon the situation and the estate.

Executor's insurance

A will may provide for the executor to obtain executor insurance or an executor may wish to obtain coverage on their own. Generally, executor insurance covers damages arising from the executor's error, omission or negligent act in the performance of, or failure to perform their duties. Policies generally do not cover income or probate tax liability. To determine what is covered an executor should review the coverage and exclusion provisions of the policy.

Checklist of Executor's Duties

This checklist is based on distribution with a valid Will. The checklist starts with the preliminary steps an executor/trustee should take to the point when final distribution is made.

Preliminary Information

Name of Executor: ____________________ Deceased's Spouse: ____________________

Co-executor: ____________________ Date of Death: ____________________

Deceased: ____________________ SIN for Deceased: ____________________

Address of Deceased: ____________________

Executor insurance purchased? ☐ Yes ☐ No

Citizenship of Deceased e.g. Canadian and/or U.S (include Social Security Number): ____________________

☐ Preliminary steps:

Completion Date ____________________

- ☐ Locate and review Will (determine if there are primary and secondary wills - may also be referred to as a "corporate will")
- ☐ Funeral arrangements (already paid?)
- ☐ Special arrangements
- ☐ Determine cash requirements for family
- ☐ Obtain funeral director's statement of death or apply for provincial death certificate Determine complexity of will

☐ Compile tax information: **(Caution: Estate tax and filings and receipt of a final clearance certificate is a lengthy process.):**

Completion Date ____________________

- ☐ Copies of last six years returns
- ☐ Tax installments, medical, charitable receipts, etc.
- ☐ Prepare and file any T1 returns for previous years within six months of the date of death
- ☐ Be aware of the tax rates applicable for the estate to minimize tax owing (Graduated Rate Estate) and seek advice from accountant as soon as possible

☐ Determine complexity of will:

Completion Date ____________________

- ☐ Is expertise required beyond scope of executor?
- ☐ Is executor aware of conflicts?
- ☐ Should Will be validated by court?

☐ Contact beneficiaries (and estate lawyer):

Completion Date ____________________

- ☐ Set up meeting with family members (lawyer may attend)
- ☐ Gather preliminary information from family for meeting
- ☐ Meet and note information gathered

☐ Gather estate information (and speak with estate lawyer)

Completion Date ______________

- ☐ Collect relevant papers and information
- ☐ Advise beneficiaries – of realities of estate administration timing e.g. tax issues, litigation etc.
- ☐ Determine families' financial needs
- ☐ Document meeting

☐ Establish an estate account

Completion Date ______________

- ☐ Note all particulars about banking
- ☐ Freeze accounts
- ☐ Determine if there is a safety deposit box
- ☐ Determine if accounts are joint
  (Note: was there an intention to hold the account jointly with rights of survivorship or in a resulting trust for the estate?)
- ☐ List contents of safety deposit box
- ☐ Obtain bank requirements to deal with accounts
- ☐ Determine if funds available to pay funeral expenses
- ☐ Determine location of passwords for electronic banking transactions

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☐ Locate important documents

Completion Date ______________

- ☐ Locate and obtain title documents for real property, mortgages, share certificates, bonds, debentures and guaranteed certificates

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☐ Communicate notices to relevant parties

Completion Date ______________

- ☐ Determine if any difficulty in identifying charitable organization etc.
- ☐ Notify charities of charitable bequests (and regulators where required)
- ☐ Notify legatees/devisees of benefits to be received under the Will
- ☐ Notify residual beneficiaries and provide a copy of the Will

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☐ Set up a diary of time limitations

Completion Date ______________

- ☐ Expiry of dependant relief claims
- ☐ In Ontario and PEI – Family Law Act claims by spouse election to be made within 6 months
- ☐ Final date to file T1 return

☐ Immediate action

Completion Date ______________

1) Business interest and investments

- ☐ Where operating business, if deceased sole or controlling shareholder take control of operations and ensure operations can continue or obtain manager
- ☐ Arrange for a review of investment portfolio
- ☐ Make appropriate decisions regarding investments to yield favourable outcome

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2) Real estate **Completion Date** ______________

- ☐ Review adequacy of property insurance coverage and note exemptions (e.g. flood because home is on flood plain) and alter if necessary
- ☐ If deceased lived in rental premises alone, terminate lease or arrange sublet
- ☐ If premises vacant, arrange for protection and supervision of real estate
- ☐ If leased premises, with tenants, give notice if necessary for termination

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3) Personal property **Completion Date** ______________

- ☐ Arrange for appropriate insurance on vehicles and personal effects etc., e.g. theft coverage

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4) Inventory **Completion Date** ______________

- ☐ Take from home and business an inventory and custody of the following:
  - ☐ Cash on hand
  - ☐ Securities
  - ☐ Jewellery and other valuables and determine if valuations have been done for insurance purposes (e.g. jewelry)
  - ☐ Real estate deed and mortgage documents
  - ☐ Other documents of potential value

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5) Protect assets **Completion Date** ______________

- ☐ Secure assets to a place of safekeeping or secure vacant property

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6) Mortgages - receivable **Completion Date** ______________

- ☐ Notify payor
- ☐ Collect on mortgage
- ☐ Determine if mortgage insurance available

7) Rental properties **Completion Date** ____________

☐ Write tenants to redirect rent for rental properties

☐ Determine if insurance and property taxes are in good order

8) Brokerage Accounts **Completion Date** ____________

☐ Advise of death

☐ Cancel open orders

☐ Request statements to be forwarded

☐ Obtain list of assets held with original cost information

9) Digital Accounts and Social Media **Completion Date** ____________

☐ Determine if the testator left a memo as to digital accounts and access
If yes:

  ☐ Use password to access, and deal with digital accounts according to Will instructions if addressed in Will

If no:

  ☐ Check with administrator if password protected and password unknown and determine access

☐ Take inventory of digital accounts

☐ Close any digital accounts where account is of no further use and no liability exits

☐ Determine whether personal information should be protected to preserve the privacy of the deceased eg: photos

10) Digital Assets **Completion Date** ____________

☐ Determine if the testator left a memo as to digital assets and access

☐ Gain access to digital assets and do back up where appropriate

☐ Determine if there truly is an asset

  ☐ Determine what access rights can be passed on and how and determine the value if ascertainable

  ☐ Determine what if any value exists for digital asset

☐ Determine any liabilities relating to digital accounts

☐ Create an inventory of the digital assets

11) Pets **Completion Date** ____________

☐ Determine if Will provides for care of pet

☐ Determine caregiver, if none make arrangements with local Humane Society/Shelter or rescue organization

☐ Determine if there is pet insurance and what will be done with it

☐ Contact third parties:

Completion Date ______________

- ☐ Contact and inform Canada Pension, or Quebec Pension Death Benefits, Survivor's Benefits, Veteran's Affairs, and where appropriate make claims for death benefits for dependants eg. CPP
- ☐ Notify Service Canada to cancel entitlements under Income Security Programs
- ☐ Cancel health insurance coverage
- ☐ Cancel social insurance card
- ☐ Cancel driver's license, magazine and newspaper subscriptions, cable television, internet, club membership, home phone, cell phone and request rebate on a pro rata basis if applicable
- ☐ Notify utilities for final reading and billing
- ☐ Request Canada Post to re-route mail
- ☐ Confirm outstanding balances and cancel credit cards – determine if insurance exists to cover balances
- ☐ Contact present and previous employer re: benefits
- ☐ Contact executors/trustees of other estate where deceased may have entitlement or where deceased is named as executor of other estate
- ☐ Contact lawyer/accountant – used for personal/business
- ☐ Contact investment/insurance advisor
- ☐ Contact insurance companies
- ☐ Check with insurance broker re: insurance coverage on property
- ☐ Where deceased receives pension from foreign jurisdiction (e.g. Social Security from the U.S.), notify foreign jurisdiction, cancel entitlement, make claim for death benefit, if applicable
- ☐ Dispose of any unused medication with assistance of pharmacist
- ☐ Contact any social media administrators to remove deceased content and where applicable close out social media accounts

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☐ Foreign assets

Completion Date ______________

- ☐ Determine if a valid Will exists in foreign jurisdiction and conforms to jurisdiction
- ☐ If there is no valid Will then determine applicable legislation
- ☐ Hire an agent if appropriate to deal with matters in foreign jurisdiction

☐ Collect information on assets and liabilities:

Completion Date ____________

- ☐ Review and collect information of liabilities of estate e.g. rental agreements
- ☐ Determine if any assets are missing
- ☐ Contact investment advisor/insurance advisor or financial planner for all information
- ☐ Contact banks if not already done to ascertain balances, investments etc.
- ☐ Determine if there are matters to be litigated on behalf of estate or to what extent if any there will be liability for law suits involving the deceased and/or the estate
- ☐ Determine all liabilities outstanding at death, and interest accruing on outstanding debt after the date of death – determine what should be paid to save interest
- ☐ Determine personal guarantees made by deceased on loans
- ☐ Collect any outstanding cheques

☐ Valuation

Completion Date ____________

- ☐ Arrange for valuations of real estate, securities, personal property, automobiles

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☐ Beneficiary designations

Completion Date ____________

- ☐ Determine where last designation made (i.e. Will, policy application forming contract, other instrument)
- ☐ Confirm institution recognizes last designation filed
- ☐ File any and all documents necessary to assist or to make claims for or on behalf of beneficiaries
- ☐ Put carrier on notice if proceeds will be contested by beneficiaries or have estate lawyer write letter putting on notice

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☐ RRSP/RRIF

Completion Date ____________

- ☐ Request confirmation of benefits payable
- ☐ Confirm institution recognizes last designation filed
- ☐ Determine requirements to receive monies
- ☐ Determine if RRSP/RRIF can be rolled to a spouse tax-free - consult accountant

☐ Insurance

Completion Date ____________

- ☐ Request confirmation of benefits payable
- ☐ Name of person entitled to receive benefits or confirm estate
- ☐ Determine whether there are outstanding liabilities against policy
- ☐ General inquiry as to whether other policies exist – request requirements necessary to have proceeds paid to beneficiary or estate
- ☐ Arrange for payment of proceeds – to pay for certain debts immediately e.g. funeral expense
- ☐ Determine if policy was security for a child, spousal or dependant support obligation, and make arrangements to satisfy outstanding obligation with proceeds

☐ Inventory

Completion Date ____________

Prepare an inventory of assets and liabilities to include the following:

- ☐ List by class and full details of assets
- ☐ List assets by value and full particulars, including certificate numbers, registration particulars etc.
- ☐ List maturity dates
- ☐ Interest rate
- ☐ Calculate accrued interest where applicable
- ☐ Provide information regarding foreign assets but do not list for probate
- ☐ Payments received and frequency
- ☐ Full particulars of liabilities of estate
- ☐ Collect any outstanding cheques

☐ Application to court

Completion Date ____________

- ☐ Retain and meet with estate lawyer to complete application for proper certificate (documents required will vary from province to province)
- ☐ Make provisions for any fees that may be applicable
- ☐ Review documents and parties to be served and request originals and notarial copies of final orders

☐ Debts of estate

Completion Date ______________

- ☐ Work with estate lawyer to determine best medium to do a Notice to Creditors
- ☐ Once probate is granted, determine when ad for creditors can expire
- ☐ Provide ongoing reporting to beneficiaries
- ☐ Where applicable obtain releases – avoid delay of distribution
- ☐ Determine if any debts exists for outstanding dependant relief obligations where applicable ensure proceeds satisfy obligation

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☐ Administration and distribution

Completion Date ______________

☐ Differs on intestacy – see provincial legislation

1) Preliminary matters:

- ☐ When probate is granted, obtain sufficient notarial copies to transfer assets
- ☐ If ad for creditors has been done it must expire before distribution or accounting occurs (usually expiry happens for ad in 30 days)
- ☐ Ask estate lawyer to register certificate or probate on title for real estate if necessary
- ☐ Consider executor's insurance

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2) Time limitations

Completion Date ______________

- ☐ Determine whether there are any time periods remaining outstanding restricting distribution e.g. family law, dependant relief claims, court orders or judgments

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3) Review Will

Completion Date ______________

- ☐ Determine scheme of distribution of assets
- ☐ Consult with beneficiaries regarding in specie distribution (distribution in kind) where appropriate

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4) Realize assets

Completion Date ______________

- ☐ Bank accounts closed – transfer to estate account (if joint accounts – right of survivorship, provide financial Institution with death certificate and request transfer to surviving joint tenant) and determine whether asset of accounts go to survivor(s) or are to be held in a resulting trust for the benefit of other beneficiaries
- ☐ Invest surplus of cash in accordance with terms of Will
- ☐ Sell or transfer real estate according to Will

5) Stocks and bonds **Completion Date** ____________

- ☐ Arrange for re-registration
- ☐ Complete declarations of transmission and any other requirements necessary to transfer securities
- ☐ Sell to meet cash needs of estate
- ☐ Sale for distribution
- ☐ Transfer to beneficiaries pursuant to Will
- ☐ Deliver securities and obtain receipts if distribution in kind

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6) Prepare cheques/electronic transfers (where appropriate) **Completion Date** ____________

- ☐ Payment of debts
- ☐ Payment of legacies
- ☐ Payment of distribution

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7) Legatees **Completion Date** ____________

- ☐ Payment made
- ☐ Receipt obtained

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8) Personal effects **Completion Date** ____________

- ☐ Deliver personal effects
- ☐ Obtain receipts
- ☐ Sell – depends on provisions in Will – cash becomes part of the residue or remainder of the estate for distribution residuary for distribution

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9) Trusts **Completion Date** ____________

- ☐ Will provides for trusts, set up testamentary trusts and arrange for ongoing review of the investments and ongoing compliance within the rest of the terms of the trust e.g. payment of income
- ☐ Where there is a disabled beneficiary, determine if there is a Henson Trust created in the Will, if yes, determine whether that beneficiary is in receipt of provincial disability benefits and assist if requested to ensure benefits are preserved

10) Tax planning **Completion Date** ____________

- ☐ Consider spousal trust
- ☐ Consider income splitting opportunities
- ☐ Consider unused expenses
- ☐ Estimate current year and closing capital gains and exemption Consider filing deadlines
- ☐ Consider separate returns
- ☐ RRSP/RRIF contribution to a surviving spouse
- ☐ Consider charitable gifts – include in T1

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11) Tax returns **Completion Date** ____________

- ☐ Prepare and file Terminal T1 Return and other returns with Canada Revenue Agency (CRA) and request clearance certificate (terminal period returns must be filed by April 30th of the year following the year of death, or by six months from the date of death whichever is later)
- ☐ Prepare and file T3 Trust Information Return (the T3 return must be filed within 90 days from the year end of the taxation year which the estate has chosen or its deemed year end)
- ☐ Determine if deceased is up to date with U.S. tax filing if applicable
- ☐ File U.S. return if applicable and all necessary forms for disclosure purposes
- ☐ Obtain Goods and Service Tax clearances if applicable.

Note: Distribution of estate should not occur without clearance certificate

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12) Final distribution **Completion Date** ____________

- ☐ If Will provides for outright distribution, obtain release for distribution
- ☐ Transfer assets or funds to beneficiaries
- ☐ Retain sufficient funds as a reserve for income taxes and any outstanding accounts

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13) Cancel insurance **Completion Date** ____________

- ☐ Cancel insurance on real estate when transferred or sold
- ☐ Cancel auto insurance when vehicle transferred or sold
- ☐ Cancel all other insurance when assets are transferred or sold

14) Fees **Completion Date** ____________

☐ Request solicitor’s fees

☐ Determine executor’s compensation – must be reasonable to be deductible for estate

☐ Establish a reserve for any additional fees, expenses

☐ Work with estate lawyer to write and report to beneficiaries

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15) Prepare accounts **Completion Date** ____________

☐ Prepare final statements of accounts for passing or approval by beneficiaries

☐ Determine executor’s compensation – must be reasonable to be deductible for estate

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16) Deeds **Completion Date** ____________

☐ Obtain transfer of cemetery deed if applicable

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17) Approval by beneficiaries **Completion Date** ____________

☐ If accounts approved – confirm approval or releases have been sent back

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18) If approval not provided by beneficiaries **Completion Date** ____________

☐ If accounts not approved must be audited by Court

☐ Ask estate solicitor to prepare application and all necessary notices and to arrange an appointment

☐ Final matters:

Completion Date ____________________

- ☐ Distribute any remaining funds or deliver assets
- ☐ Pay executor's fees/legal fees/accounting fees/misc. fees
- ☐ Maintain holdback/reserve pending receipt of necessary clearance certificates (do not issue final cheques until certificate received)
- ☐ Work with estate lawyer to write and report to beneficiaries
- ☐ Arrange for closing estate bank account after confirming all cheques and/or electronic transfers have cleared

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Determining fees:

A five-factor approach has been created to determine "fair and reasonable" compensation:

1. the size of the trust;
2. the care and responsibility involved;
3. the time occupied in performing the duties;
4. the skill and ability shown; and
5. the success resulting from the administration.

The five factors are employed to ensure that the use of percentages produces a fair and reasonable result. In British Columbia and Newfoundland statutory limits have been imposed. In the remaining provinces, statute or regulation has sanctioned neither the percentage approach nor actual guidelines.

Generally, in most provinces the percentage guidelines are as follows:

1. 2.5% charged on capital receipts;
2. 2.5% charged on capital disbursements;
3. 2.5% charged on revenue receipts;
4. 2.5% charged on revenue disbursements; and
5. if the estate is not immediately distributable, an annual care and management fee of 2/5 of 1% on the gross value of the estate. (This is only available where the estate or part of it is to be held in trust and not distributed to the beneficiaries within the year).

It is often thought that executor's compensation is 5% of the capital value of the estate however, this is not entirely true. This is because the percentage is based on what capital disbursements have been made which can fluctuate when capital is distributed out from time to time as required to keep the estate open until administration is finalized.

Notes

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