



TAYLOR
MACLELLAN
COCHRANE
LAWYERS

MAKING SERVICE A MATTER OF PRACTICE SINCE 1835



ESTATE PERSONAL REPRESENTATIVES (EXECUTORS/ADMINISTRATORS)

The material in this booklet is a compilation of "in house" materials developed by Taylor MacLellan Cochrane and two brochures published by The Public Legal Education Society of Nova Scotia – reprinted with consent. Copyright 1997



PERSONAL REPRESENTATIVE

It is an honour to be named as an executor or appointed as an administrator of an estate but it is also a responsibility.

In this capacity, known as a personal representative, you have two key duties:

First, you must ensure that the deceased's wishes are carried out exactly as stated in the Will.

Second, you are responsible for meeting all the legal and financial requirements of settling an estate and managing the assets until they are distributed or placed in a trust.

If you are required to carry on as trustee, you will be responsible for all aspects of operating a trust. This includes managing the assets, banking, record keeping and distributing the income and capital to the beneficiaries.

This guide is not meant to be

exhaustive. Part I is a checklist of the duties and responsibilities of a personal representative. Some duties may already have been completed and some may not be applicable. Your solicitor will assist you with many of these tasks. Ask his or her advice at your first meeting. For more detailed information refer to Part II of this guide, Practical Information.

PART I - CHECKLIST

Preliminary Steps

- Locate and review Will to determine whether there are any special funeral directions.
- Assist in making funeral arrangements, if necessary.
- Obtain Funeral Director's Statement of Death or apply for a provincial death certificate.
- Obtain addresses for all beneficiaries.

- Determine immediate cash requirements of beneficiaries.
- List contents of safe deposit box. (See Part II)
- If deceased lived in a rental property, terminate lease or arrange to sublet.
- Determine entitlement to and apply for Canada Pension Plan Death Benefits, Survivor's Benefits and Orphan's Benefits.
- Notify Health and Welfare to cancel Old Age Security and Canada Pension Plan cheques.
- Notify previous employer and determine any salary, director's fee, survivor pension benefits or insurance proceeds.
- Cancel driver's license, magazine and newspaper subscriptions, cable television, club membership and telephone, and request refunds if applicable.
- Cancel health insurance cover-

- age.
- Confirm outstanding balances and cancel credit cards.
- Arrange for safe custody of valuables.
- Request Canada Post to reroute deceased's mail.
- Ascertain assets and liabilities by writing to financial institutions, insurance companies, brokers, employers, and RRSP-RIF trustees.
- If a business is involved, ensure its continuance and proper management.
- Obtain prior years' tax returns. Prepare and file any T1 returns for previous years.
- Locate and obtain title documents for real property mortgages, share certificates, bonds, debentures and GIC's.
- Review adequacy of fire, liability and automobile insurance coverage and alter, if necessary. Obtain a vacancy permit, if necessary. Advise agent of date of death. (See Part II)
- Arrange for review of the investment portfolio.
- Notify dividend and bond disbursing agents to change address of record.
- Arrange valuation of real estate, securities, personal property and automobiles, if necessary.
- Close safe deposit box and take possession of contents.

- Prepare a preliminary list of assets and liabilities including any mortgages, leases and other encumbrances.
- Consult with a solicitor regarding probate procedures and all other preliminary administrative matters.

Administration and Distribution

- Apply for Grant of Probate or Administration by completing the proper application form and pay opening fee/tax to Registrar of Probate.
- Locate one of the witnesses to the Will and obtain Affidavit of Execution of Will or Codicil(s).
- Obtain sufficient certified or notarial copies of the Grant to transfer assets.
- Send proper notice to all beneficiaries within 30 days of the date of the Grant by registered mail.
- Prepare Affidavit of Service of Notice of Grant and file with Court within 60 days of the date of service.
- Present Grant to Estate's bank and open an Estate bank account.
- Close deceased's bank accounts and transfer funds to Estate bank account. If joint accounts with right of survivorship, provide financial institution with death certificate and request transfer to surviving joint tenant following discussion with your lawyer. (See Part II)
- Arrange for publication of Advertisement for Creditors in Royal

Gazette for required six-month period prior to distribution of assets.

- Settle all claims and debts and obtain receipts.
- Complete Inventory and file with Probate Court within three months of the date of the Grant. (See Part II)
- Invest surplus cash in accordance with terms of Will.
- Review Will and determine the division of Estate assets. Consult with beneficiaries regarding form of distribution (distribution in cash or in kind) where appropriate.
- Initiate re-registration and transfer of securities, or arrange for sale of securities if converting to cash.
- Prepare cheques for payment of debts, legacies and interim distributions and obtain receipts in the form required by the Court.
- Deliver personal effects to beneficiaries and obtain receipts in the form required by the Court.
- Deliver securities to beneficiaries, if distribution in kind, and obtain receipts in the form required by the Court.
- Deliver legacies to beneficiaries and obtain receipts.
- Arrange rollover or transfer of RRSP/RIF proceeds.
- Prepare and file necessary Estate tax returns for foreign assets, if any.
- Prepare and file terminal T1 Tax Return (to date of death) and

other returns with the Canada Revenue Agency and request Clearance Certificate.

- If Will provides for outright distribution, obtain receipt and/or release for distribution and transfer assets or funds to beneficiaries. Retain sufficient funds as a reserve for income taxes and any outstanding accounts.
- If Will provides for trust, set up testamentary trusts and arrange for ongoing review of the investments and ongoing compliance with the terms of the trust, i.e. payment of income or capital as stipulated.
- Prepare and file T3 Trust Information Return and request Clearance Certificate.

Application to Pass Accounts With a Hearing/Without a Hearing

- Determine method of Passing of Accounts: With a Hearing, Without a Hearing, or by Affidavit, Accounting Not Required, Consent and Release. (See Part II)

With a Hearing/Without a Hearing

- Prepare Accounts including Personal Representative's Commission Statement.
- Set a date with Registrar for passing of Accounts not less than 45 days in advance of the schedule closing date.
- Prepare Application (Form 39 With a Hearing, or Form 40 Without a Hearing) Notice of Objection (Form 42) and file together with

Accounts with Court.

- Not less than 30 days before the date set to pass accounts, serve application on each interested party, copy of Accounts, and Notice of Objection (form 42) by personal service or registered mail.
- Not less than 10 days before a date set to pass Accounts, file Affidavit of Personal Representative (form 43) with Court.

Accounting Not Required

- Prepare and file Affidavit (Form 37), Consents (Form 38), and Releases (Form 36 or 36A) with the Court.
- Write to beneficiaries with final report on all aspects of the administration.

PART II - PRACTICAL INFORMATION

Acting as the personal representative for a deceased friend or relative can be a very complex job or it can be quite clear-cut, depending upon the situation. For example, if the deceased left only a car, some personal belongings and a bank account, your job may be much easier than if he or she had owned a business and held several investments.

Regardless of the size of the Estate, however, there are a number of steps you must follow, and a number of questions you will probably have about practical details. What follows is a more detailed discussion of some of the items on the checklist.

Obtaining Death Certificate

One of your first steps will be to obtain a number of copies of a Funeral Directors Certificate of Death and/or Death Certificate. The Funeral Director will provide you with as many copies as you need, usually free of charge and most institutions and government departments will accept them. Sometimes, however, you may be required to present a Death Certificate from the Province. Your solicitor will be able to order copies for you. Or, they can be obtained by writing to the **DEPUTY REGISTRAR GENERAL'S OFFICE, BOX 157, HALIFAX, B3J 2M9** or in person, from **1690 HOLLIS STREET (JOSEPH HOWE BLDG), HALIFAX, 424-6843**. Give the deceased person's name and state that you are the executor. The certificate will be mailed to you in two to four weeks. If the person died in another province or country, write to the office of vital statistics in that province or country.

Fire, Liability And Automobile Insurance

You must advise the deceased person's insurance agents about the death to determine whether fire insurance is adequate and to request that the policy be endorsed to make loss payable to the Estate. If a residence is not being occupied, obtain a vacancy permit. If the Estate owned a vehicle, it is advisable that no one drives the vehicle until proper arrangements have been made with the agent. Use of the vehicle by someone other than the insured, could result in the liability insurance not being

valid unless approval and consent has been given in writing by the insurance company through its agent.

Probating The Will

As the Personal Representative it is your responsibility to have the Will probated, (in other words, to establish that the Will is legally valid and that you are entitled to act as executor). You must apply to your local Probate Court for "Grant of Probate\Grant of Administration" (written permission to handle the Estate of the deceased). In most cases, once you have filed the documents with the Registrar of Probate and paid a probate fee, the Grant will be issued to you. This will:

- certify your right to administer the Estate
- certify that the Will has been proved and registered
- recognize you as the only person authorized to administer the Estate.

In most cases, you will not actually go to a formal Court. A court appearance will be necessary only if a beneficiary or other interested party asks for more formal proof of the Will. This may happen if someone wants to contest the Will or to question whether the deceased was of sound mind when he or she made the Will.

Safe Deposit Box

If the deceased rented a safe deposit box at the bank, many documents and articles you will need may be kept there - jewel-

lery, bonds, property deeds, and often the original copy of the Will itself. Before gaining access to the safe deposit box, you will have to show the bank a copy of the Death Certificate and prove that you are indeed, the Legal Representative of the deceased. Banks are often more willing to open safe deposit boxes to members of the immediate family. So, if you are not a member of the deceased's immediate family, you may want to bring a member of the family to the bank with you. Or, you can show the bank the Grant of Probate or a copy of the Will showing you as executor.

Joint Bank Accounts

If the deceased shared a bank account with someone else – most often a husband or wife – that person is legally entitled to the money and it does not enter into the Estate unless it is proven that contrary intent exists. The bank or financial institution will require proof of death. In some instances, it may be beneficial to hold a joint account open for a month or so until all cheques clear. You should discuss this with your lawyer.

Obtain Funds From An RRSP

The deceased may have named a beneficiary for his or her registered retirement savings plan at the time that the plan was set up. If so, the bank or trust company will simply transfer the RRSP or pay it out to the named beneficiary; it will not become part of the Estate.

If the beneficiary is a person other than a spouse, there will be a tax

liability created and you would be advised to contact your accountant or lawyer. Be particularly careful if there is no qualifying beneficiary as the entire amount of an RRSP or RRIF may be taxable income to the deceased at the time of his or her death.

Life Insurance Policies

If a beneficiary was not named in the policy, it will become part of the Estate. Contact the deceased person's insurance agent or insurance company through its branch or head office. They will provide you with a claim form to be returned to them along with a copy of the Death Certificate. They will also require a notarized copy of the Will or Grant of Probate, proving that you are the executor.

In some cases, there will be a delay before you can collect the insurance money. For example, if the deceased had taken the policy out only recently, the insurance company may ask for a doctor's written statement in order to determine if full disclosure of the applicant's medical condition was made when the policy was issued. In the case of accidental deaths (which often pays higher benefits), the company may request a copy of a coroner's report.

Canada Pension Plan Benefits

The Canada Pension Plan provides death benefits and Survivor's benefits - the only condition being that the deceased must have paid into the Canada Pension Plan for at least three years after his or her 18th birthday. These benefits are

not paid automatically; you must make application and it's important to do so as soon as possible.

The death benefits are paid to the deceased person's Estate. As Personal Representative, you can apply for them by completing the appropriate application form (available from the Funeral Director) and by providing the deceased person's social insurance number, birth or baptism certificate and proof of death. If the deceased received OAS and/or CPP the birth or baptism certificate is not required. The widow, widower or domestic partner of the deceased can apply for survivors' benefits by providing the above, as well as a marriage certificate or proof of common-law relationship. A parent or guardian applying for survivors' benefits on behalf of a child must provide proof of the child's age. To find out more about these benefits and where to apply, contact:

Human Resources Development Canada – Income Security Programs,

P.O. Box 1687, Postal Station M.
Halifax, NS B3J 3J4
or by calling 1-800-277-9914.

Preparation Of Inventory

One of the duties of the Personal Representative is preparation of the Inventory (Form 29) which must be filed with the Court within three months of the date of the Grant. If assets are received after the inventory is filed or an error is discovered, prepare and file a Supplemental Inventory within 30 days of possession/knowledge.

The contents of the inventory must include all assets in the name of the deceased at the date of death and be valued at the date of death including:

REAL PROPERTY (LAND)

- includes real property and must show encumbrances as they affect the property.

PERSONAL PROPERTY

- Cash on hand
- Bank Accounts
- Life Insurance payable to Estate
- Bonds/Debentures (include GIC and Treasury Bills)
- Stock and Shares (include mutual funds regardless of asset base. If many, separate schedules may be more appropriate.
- Annuities/Pensions/RRSP/RRIF payable at date of death i.e. OAS, CPP and CPP Death Benefit
- Business interest (include shares of private company, partnership interests, etc.)
- Household goods, personal effects
- Miscellaneous, i.e. Motor Vehicles, Jewellery
- Do not include real property outside Nova Scotia or real property held in joint tenancy or insurance, RRSP's, RRIF's, pensions, superannuation or annuities payable to a named beneficiary.

Paying Debts

You can sell assets of the Estate to pay the debts of the deceased. It is also up to you to meet any uncompleted obligations of the deceased, such as a contract to sell land. Money from the Estate must also be used to pay expenses for administering the Estate, such as funeral costs, probate fees and legal fees; Sometimes an Estate will not have enough assets to pay all the debts of the deceased. If this happens, you must see that the creditors are paid in the following order:

- Secured creditors
- Creditors owed money for medical expenses during the last illness of the deceased, burial expenses and the expenses incurred to settle the Estate
- Wages of clerks, household help and farm workers, and any rent owing from the period of one year before the death
- All other creditors in proportion to the amount of their claim



Notice To Creditors

After you have determined the debts owed to creditors, you must give notice to all unknown creditors that the Estate will be paying all lawful claims. You give notice by advertising for six months in the ROYAL GAZETTE (a government publication). Creditors have six months from the first date the notice is published to come forward and prove their claim against the Estate. Normally, you do not distribute the assets of the Estate until after six months have passed, although some executors do give advances to beneficiaries if they are sure that the assets are greater than the debts. **Be careful, though. If you don't wait, and the money that's left over is not enough to meet all the claims, you will be held personally liable for any unpaid bills.** After the six-month period has expired, creditors who show up to make a claim with the approval of the Court can still be paid out of any undistributed assets. But assets which have already been given to beneficiaries will be beyond their claim.

Clearance Certificates

As a requirement under the Income Tax Act, a personal representative should obtain a Clearance Certificate from CRA before distributing property. If a Personal Representative distributes property without a Clearance Certificate, the Personal Representative will be liable for any unpaid amounts. However, a Clearance Certificate is not required before each distribution, as long as sufficient funds are retained to pay any liability to CRA.

Distributing The Estate

Soon after Probate is granted, you may decide to give legacies (gifts of cash) and bequests (gifts of personal belongings) to the people named in the Will. You may also decide to distribute some of the remaining assets. When all debts and taxes owed by the Estate have been paid, and the advertising period has expired, you will distribute the rest of the Estate. You can sell the assets and give the cash to the beneficiaries or, you can distribute some or all of the assets as they are (a car, for example) if the Will says to do it this way or if all the residuary beneficiaries agree. If the deceased has left money in trust for a beneficiary (most often a child), you or the appointed trustee must keep the trust and you will be accountable to the beneficiary for the money held in trust. It is possible that after all the debts are paid, there will not be enough money left to make all the gifts that are outlined in the Will. If this happens, the gifts will have to be reduced accordingly. Specific gifts will be paid first before the residuary beneficiaries.

Transferring Property

You are responsible for distributing the property of the deceased to his or her beneficiaries, or selling the property and distributing the money, depending upon the terms of the Will. If a car must be sold, go to the Registry of Motor Vehicles and sign the back of the registration. To transfer cars and most other property registered in the name of the deceased, you will require a certified copy of the Grant of Probate confirming your right

to deal with the property. Before transfer agents will transfer stocks, bonds or securities registered in the name of the deceased, the Grant of Probate, a Declaration of Transmission and a Power of Attorney with the executor's signature guaranteed by a chartered bank will be required. If the Will makes a gift of real property (land or buildings), the Registrar of Probate will file the Grant of Probate (with Will attached) at the Registry of Deeds in the county where the property is located.

Under the new Probate Act, If the date of the Will is on or after October 1, 2001, or a person dies intestate on or after October 1, 2001, a Trustee's Deed will be required from the Personal Representative to convey the real property.

Jointly Held Real Property

This refers to co-ownership of real property (buildings and land). If the deceased owned a house as a "tenant in common" with another person, then his or her share of the house could be willed to a third party. If, on the other hand, the deceased owned property as a joint tenant with another person - the surviving joint tenant would take title to the whole property. Only if the other joint tenant predeceased the deceased would the land form part of the Estate and capable of being transferred under the Will.

If the deceased held property as a joint tenant, you would be advised to file a certified copy of the Death Certificate with the Registry of Deeds in the county where the property is located. The purpose of

this is to give notice that one of the joint tenants has died. Note, however, that if the deceased shared a home with his or her spouse, the provisions of the Matrimonial Property Act will apply no matter how the title to the house was held.

Accounting By Personal Representative Passing Of Accounts

Under the Probate Act, the Personal Representative is required to give an accounting of the administration of the Estate to the Probate Court within 18 months from the date of the Grant. (If an extension is required, application may be made to the Registrar). Under certain conditions, an accounting is not required. These conditions are that the deceased died testate (with a Will), that all unpaid beneficiaries are adult and are competent and that all of the unpaid beneficiaries and any surety have agreed in writing that an accounting is not required. The Court will not issue an Order under this provision releasing the Personal Representative from his or her duties.

With a Hearing/Without a Hearing

To pass the accounts, the Personal Representative (or the solicitor for the Estate upon direction from the Personal Representative) may contact the Probate Office by telephone to obtain a date. The date obtained must be not less than 45 days from the date of receipt of the Application by the Probate Court. Once a date is confirmed verbally, the Personal Representative must file the Application.

If the Personal Representative believes there are no outstanding issues to be resolved, (without a hearing) Form 40 is completed and filed with the Court. Should the Personal Representative want the passing of Accounts to be by way of a hearing, Form 39 is completed and filed with the Court. Along with the appropriate form, the Personal Representative is to file the Accounts, all signed Releases (Form 36 and 36A) and the proposed Order (Form 41). If the Application has been set down without a hearing and issues arise, a hearing will take place on the date set.

Upon the Application and supporting documentation being filed at the Probate Court, the Personal Representative must serve each person who has an interest in the Estate (i.e. residuary beneficiary, unpaid non-residuary beneficiary, life tenant, surety, trustee, guardian) with a copy of the Application, a copy of the Accounts and a blank Notice of Objection (Form 42) at least 30 days prior to the date set for the passing of Accounts. Those persons who have signed a Release (Form 36) do not have to be served with these documents. The Personal Representative then files an Affidavit (Form 43) with the Court not less than 10 days before the date set for the passing of the Accounts. In the event an interested person who has been served intends to object, the person must file a Notice of Objection (Form 42) with the Probate Court and serve a copy on the Personal Representative not less than 10 days before the date set for the passing of Accounts. If the initial Application has been set down without a hear-

ing, and a Notice of Objection is served on the Registrar and/or the Personal Representative, the passing of Accounts will automatically be dealt with by way of a hearing. If a Notice of Objection is not filed with the Court, then all persons are deemed to have consented to the administration of the Estate as contained in the Accounts and may only make representations at the hearing with the permission of the Court.

Preparation Of Accounts

As indicated above, Accounts must be prepared and presented to the Registrar of Probate together with the Application for Passing of the Accounts. All original supporting documentation must be filed with the Accounts including bank statement, vouchers, receipts and releases for all debts paid and expenditures and distributions made during the accounting period for the Estate. The format for preparation of Accounts must contain the following:

- Statement of all property at beginning of accounting period (refer to Inventory)
- Statement of adjustments (plus/negative)
- Statement of all disbursements
 - date of payment
 - name of recipient
 - nature and purpose
 - amount or value
- Statement of all distributions

- Statement of all property remaining and proposed distribution of the property
- Statement of commission sought
- Summary Statement

Once the Accounts are passed either with a hearing or without a hearing an "Order Passing the Accounts" in Form 41 is issued by the Registrar of Probate. This Order confirms/verifies the accounting and releases the Personal Representative from his or her duties as administrator.

Hiring Professional Help

In the course of your duties as Personal Representative, it would be advisable to retain the services of an accountant to prepare all required income tax returns and to request clearance from CRA. It would also be prudent to retain a lawyer to make application for probate, guide you through the administration process, recommend the best option to close the estate to ensure you are released from any liability that may arise in the future and for advice along the way. You may want to retain the services of a real estate agent/broker to facilitate the sale of the property on a timely

basis and the services of a lawyer to represent the estate on the sale to the buyer. If the property has not been migrated into the Nova Scotia Land Registration System (LRA), a lawyer must be retained to complete the migration process.

All these professionals are entitled to a reasonable fee for their services.

Personal Representatives' Commission

Your fee may be set out in the Will. You can accept either this amount or any amount up to 5 per cent of the value of the assets of the Estate – subject to the Court's approval. (Some executors, decide not to accept a fee as a favour to the beneficiaries.) If a controversy arises, the fee will be set by the Registrar of Probate. If more than one executor is appointed, the fee is split, but not always equally. If you are the main beneficiary of the estate, in addition to being the Personal Representative, it would not be to your advantage to take a fee. An executor's fee is taxable under the Income Tax Act and you would do better to inherit the money from the Estate.

