

Alberta Probate Kit

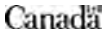
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Introduction

You have been named the executor of an estate and you are wondering what steps you need to take. Or, maybe someone close to you has passed away without a will and you are wondering what to do first. If so, you have come to the right place. This kit has been designed to help individuals deal with the estate of a family member or friend who has passed away, where the estate of the deceased person is in Alberta. It is designed for use by people who do not necessarily have any experience with wills, probate, or the courts, and offers step-by-step instructions.

This kit will help you apply for a Grant of Probate (if there is a will and you are the executor [or executrix if female] of the estate) or a Grant of Administration (if there is no will and you are the administrator of the estate). It will explain legal terms and tax terms; it will guide you through each document you need to prepare and explain in detail how to use those documents to get the results you want from the courts.

This kit will also help you deal with the assets of the estate after you have obtained the Grant of Probate or Grant of Administration from the court. You will find out what steps to take first after a loved one has passed away, how to deal with the paperwork, and how to get assets into the hands of the beneficiaries.

You should use this kit if one of the following scenarios applies to you:

- You are the executor or one of the executors named in the will of someone who has passed away.
- Someone else is the first-named executor in a will, but that person cannot or will not act as executor and you are the alternate executor named.
- The person who died left a will, but the person named as executor cannot or will not act as executor and there is no alternate executor named, leaving the deceased person with a will but no executor to look after the estate.
- Someone has passed away, but no will can be found anywhere and you want to apply to be the administrator of the estate.

The person whose will you want to probate or whose estate you want to administer should have resided in Alberta at the time of his or her death. You apply in Alberta even if the death occurred while the person was temporarily out of Alberta, such as while on vacation or while working overseas.

If your goal is to contest a will or make a claim against an estate, this is not the right kit for you. Neither is it the right kit if you need to reseal a Grant of Probate from another jurisdiction.

While the kit gives some assistance with special situations such as handwritten wills, be sure to read Chapter 2, section 5., which discusses consulting a lawyer when you are in over your head. It is probably a mistake to try to probate a will yourself in certain circumstances, such as when a dispute is brewing, so read that section before starting.

This kit contains many handy checklists. You will find the checklists most helpful if you read this book first, as it explains the terms used in the checklists and gives much more detail about the steps you must take.

Though you will find this kit is written in plain English, there are some legal terms that must be used.

To find the documents that you need to use, first decide which kind of application you want to make. The choices are:

- Application for probate: Do this if there is a valid will.
- Application for administration: Do this if there is no will.

- Application for administration with will annexed: Do this if there is a will but no executor (because the executor named is unable or refuses to act).

The documents are separated into basic documents that are needed for EVERY application and specialized documents that you will only use in certain situations. Complete the basic documents first, then read through the list of specialized documents to see which ones apply to you. Each specialized document contains instructions about when to use it.

You will note that each of the documents you use in this kit contains a number beginning with the letters “NC” at the top right-hand corner, such as “NC 8,” as well as a title, such as “Affidavit of witness to a will.” These numbers are assigned to the documents by the Surrogate Rules of Alberta and are used in this kit to ensure that your documents fulfill the legal requirements. They are also very handy for quickly checking that you have the right document. Do not remove these numbers.

The forms in this kit were made from precedent documents and set up in the way the courts have directed. Do not remove any words or parts of the documents unless you are instructed to do so.

If you are an executor or administrator and you have bought this book to help you with the job, you may be reimbursed for the purchase. Keep the receipt and include it as an out-of-pocket expense when you submit your final request for compensation, as set out in Chapter 19.

Note: Since the first printing, this book has been updated to include new laws, updated forms, and in some cases, entirely new forms including Chapter 21, if you are working on an estate where the named executor does not want to or cannot act, read this chapter.

1

Things to Do Following the Death of a Loved One



In this chapter, you will find a list of things that you, as an executor, should be looking after when a loved one has passed away. Though they are not part of the Application for Probate, they are matters that fall under your responsibility. Do not wait for the Grant of Probate to be issued before you turn your attention to these items; all of them are matters that need attention earlier than that.

Matters are not quite as simple if you are applying for a Grant of Administration rather than a Grant of Probate. An administrator, unlike an executor, does not have any legal right to handle the deceased's affairs until the court has issued a Grant of Administration. Once a Grant of Administration is issued, the administrator can act as executor even though he or she is called a different name.

1. Make Funeral Arrangements

It is the executor's job to make funeral, burial, or cremation arrangements, even when the executor is not the next of kin of the deceased. Most executors try to work with the family's wishes, but if the family is not agreed on what to do, the executor must make a decision. Check the will to see whether any arrangements have been pre-made or prepaid, and whether the deceased expressed any wishes. If the will does not say anything about it, the decision is up to the executor.

If you are not an executor but are applying to become an administrator, you do not have the same right as the executor in deciding what to do about the deceased's remains. The family members (next of kin) will make the decisions about burial, cremation, and other issues relating to the holding of a service. If you are the next of kin, you can go ahead and make arrangements without waiting for the Grant of Administration.

The bill for the funeral may be paid from the deceased's bank account, assuming there are sufficient funds. You can go to the bank and give the funeral bills (funeral home, flowers, obituary, lunch, etc.) to the banking officer and the bill will be paid directly to the funeral home. This is something that either an executor or an administrator can do.

When approaching a bank to pay the funeral bill, you will likely find it a smoother process if you can show a Certificate of Death or a Funeral Director's Statement of Death. If there is a will appointing you executor, that will make it easier as well. If there is no will and you are applying to be an administrator, the bank may decide to refuse your request. If that happens, the funeral home may have no choice but to wait until the Grant of Administration is granted to you and you gain access to estate funds.

2. Banking Issues

You will have to go to the deceased's home early on to check for bills that are outstanding. Gather up phone, Internet, heat, water, cellphone, and any other bills you can find. Also look around for paperwork that will tell you about any mortgages or loans that are ongoing.

These bills may also be paid from the deceased's account as long as they are clearly bills of the deceased and as long as there are funds available. As mentioned in the previous section, this process is easier if you have a death certificate or Funeral Director's Statement of Death as well as a will that appoints you as executor.

At this point, do not worry about bills that are not urgent. You will be able to handle the bills more easily once you have your Grant of Probate or Grant of Administration. For now, you just want to make sure that no harm will come to the estate assets. For example, you do not want the heat to be turned off in a house in sub-zero weather, as that could cause damage to the house.

You may wish to open an executor's bank account at this time. It does not need to be at the same bank where the deceased held accounts; it can be at any bank. You may wish to get a bit more information before you do this. See section 10 of this chapter for more on executors' bank accounts.

3. Secure the House and Notify the Insurer

If the deceased lived alone in a house or condominium, make sure that nobody can enter. Change the locks if family members or neighbours have a key. You are responsible for every item in the home so make sure nothing goes missing.

Call the insurance company that provides homeowner's insurance to the deceased and let them know that the house is vacant. If you don't do this and there is damage due to a fire or burst pipes, for example, the coverage may be denied. This could leave you legally responsible for the loss.

Take valuables in the home into custody. There could be cash lying around, credit cards, identification cards, or jewelry. There could also be larger valuable items such as antiques or artwork. Everything must be kept in a secure location under your control, such as a safety deposit box.

If the deceased lived in a rented apartment, tell the landlord about the death immediately. Ask that the locks be changed if possible. Secure all valuables as described above. Remember that you must pay the rent on the apartment until you can arrange for everything in it to be sold or distributed and for the apartment to be cleaned. This may take several weeks.

4. Check the Safety Deposit Box

You will hopefully be able to find out where the deceased person banked by looking through the papers you find in his or her home. Once you know which branches of which banks you are dealing with, go to the branches and ask to see any safety deposit box the deceased might have rented. Be prepared to show the following:

- a notarized copy of the will showing that you are named as the executor;
- a Certificate of Death or Funeral Director's Statement of Death confirming the death of the deceased; and
- your personal identification.

As you are unlikely to gain access to the safety deposit box without a will that proves you have a legal right to make the enquiry, only an executor will be able to do this before getting the grant. An administrator will have to wait until a Grant of Administration has been issued.

Once you gain entry to the safety deposit box, make a detailed list of the items in the box. You do not have to remove them right now, but it

is important that you know what is there. Some of the items might have to be listed on your Application for Probate.

5. Find the Original Will

To apply for a Grant of Probate, you must have the original signed will, not a photocopy. Any family member, lawyer, or banker who has the original must turn it over to you once you have proof of the death of the deceased, as it is your legal right and obligation to carry out the wishes in the will. Read Chapter 4 to find out whether the will is valid.

The original will is going to be given to the court in the Application for Probate, so make copies of the will as soon as you get it. As you progress through your duties as executor, you will notice that many people at banks, registries, and other places will ask you for a notarized copy of the will, so it is best if you get several copies notarized.

6. Get Copies of the Death Certificate

There are two types of certificates available to you, and they fill similar but not identical roles. You can choose one or both. Most executors and administrators will request one original death certificate and several original Funeral Director's Statements of Death. A Certificate of Death is issued by the Province of Alberta through a registry agent. They currently cost \$20 per certificate. If you place an order, you will get only one original certificate unless you specify otherwise. It is usually not available immediately as it can only be produced once the province receives and processes information from the funeral director, coroner, or the hospital where the deceased died.

A Funeral Director's Statement of Death is issued by the funeral home that processed the deceased. Most funeral homes will provide the executor with at least three or four copies of the Funeral Director's Statement of Death and the cost is included in the cost of the funeral. You do not have to make a special request for this document, as it is part of the legal responsibility of the funeral director to document each funeral or cremation.

For most purposes having to do with gathering in the assets of an estate, you can decide whether you want to use a Death Certificate or a Funeral Director's Statement of Death as proof of death. Because Death Certificates are more expensive, executors will often choose to save costs and use a Funeral Director's Statement of Death instead. In the majority of situations, this will be adequate. There are a few places that will insist upon the government-issued death certificate, the most notable of which is the Land Titles Office.

When you are dealing with banks, investment houses, insurance companies, and most other places, you have the option of providing a notarized copy of the document rather than parting with one of your scarce originals. The most cost-efficient system is to get a Funeral Director's Statement of Death, make several photocopies, and have them notarized.

7. Have the Deceased's Mail Redirected to You

Go to a Canada Post location and fill in the form that instructs them to forward all of the deceased's mail to you. Keep the receipt for reimbursement from the deceased's estate later.

8. Place an Obituary in the Newspaper

An obituary is not required by law, but it is customary. Normally it is placed in the paper in time to allow friends and associates to attend the funeral service. Keep the receipt for reimbursement from the estate later.

9. Notify Various Parties of the Death of the Deceased and Cancel Coverage

There are numerous people and places that you must notify of the death of the deceased. Most executors find that it is easier to go in person where possible. Very few places will accept this information by telephone. Depending on the circumstances of the deceased's life, you will likely have to notify the following:

- Alberta Health Care
- Blue Cross
- Life insurance company
- Home insurance company
- Vehicle insurance company
- Motor vehicles registry
- Employer
- Employer health plan
- Landlord
- Canada Revenue Agency
- Old Age Security
- Canada Pension Plan

- Veterans' Affairs
- Private pensions from employers or previous employers
- Assured Income for the Severely Handicapped (AISH) program
- Banks and credit card companies
- Investment advisors
- Newspapers and magazine subscriptions
- Doctor's office
- Telephone company
- Cellphone company
- Internet company
- Cable TV company
- Utilities provider

A sample letter for letting interested non-family parties know that the deceased has died is included in Sample 1 and on the download kit. The letter contains various paragraphs for you to choose from (for example, if you wish to request that coverage of some kind be discontinued). You will notice that some letters require a notarized copy of the will and a notarized copy of either the death certificate or the Funeral Director's Statement of Death. You should also expect to provide these copies when you give notice in person. Do not release the original will to anyone other than the court; nobody else needs the original even though they may ask you for it.

10. Open an Executor's Bank Account

You should open a new bank account in your name in trust for the estate. For example:

John Smith, in trust for the Estate of Joan Smith

or

The Estate of Joan Smith (with you as the authorized signatory)

You can do this either where you bank or where the deceased banked. Into this account you will deposit any cheques you receive that are payable to the deceased or to his or her estate. For example, you may have a cheque come in for a refund of a prepaid subscription to a newspaper. When you get the CPP death benefit, you will deposit that. You will also

Sample 1
Letter Advising of Death and Cancelling Coverage

Your name

Your address

Date

Name
Address

Dear _____:

Re: The Estate of _____, Deceased
Account Number: _____

I am the executor of the estate of _____, who passed away on _____, I am writing to you to let you know of his/her passing. I am enclosing a notarial copy of the Funeral Director's Statement of Death for your records.

(Choose one or more of the following paragraphs, as fits your needs:)

- Please amend your records.
- Please discontinue service immediately and send the final bill to me.
- Please discontinue service immediately. I understand there will be a refund. Please forward a cheque payable to The Estate of _____ to me.
- Please transfer the account into the name of _____.
- Please let me know what steps need to be taken to close the account, and provide me with any forms I will need.

Yours truly,

(Your name)

deposit any cash you find in the deceased's home. Whenever an asset (for example, the deceased's car) is sold, deposit the money into this account.

If the deceased was receiving Old Age Security benefits, Canada Pension Plan benefits, or any other public pension, the estate is entitled to keep the cheque that was issued for the month in which the deceased died. Any benefits that are for later months must be returned.

As the settlement of the estate progresses, you will have other monies to put into this account. You may have the proceeds of insurance policies, the sale of the deceased's home, or of an RRSP. Use this account to process and hold all funds that are intended for the estate.

You will also pay bills from the account. If, in the early stages of the estate, there are no estate funds available and you end up using your own money to pay bills, you are entitled to be reimbursed from this account for these payments before any beneficiaries receive their shares. Keep your receipts to back up your accounting of what you believe you spent. Later on, you will pay the beneficiaries their shares of the estate from this account.

It is absolutely essential that you keep this money separate from your own funds. Never mingle the deceased's money with anyone else's. Do not make this account joint with anyone other than a co-executor who is also actively working on the estate.

11. Apply for CPP Death Benefit

The Canada Pension Plan (CPP) pays a sum of money to the executor or administrator of the estate of a person who has passed away to be used to pay estate expenses, particularly the funeral bill. The benefit will not be paid out automatically, so you must apply for it on behalf of the estate. The form shown in Sample 2 is available online from servicecanada.gc.ca, from CPP offices, and from most funeral homes.

Anyone who has had CPP deductions taken off his or her paycheques is eligible to receive a death benefit. Currently, the maximum amount payable to an estate is \$2,500.

Depending on the deceased's circumstances, there may be other benefits, such as a survivor benefit or survivor allowance, that are available. Applying for these other benefits is not the executor's job, because they are paid to family members, not to the estate.

Sample 2 shows the first page of the CPP Death Benefit Application.

Sample 2 CPP Death Benefit Application Form



PROTECTED B (when completed)
Personal Information Bank ESDC PPU 146

Application for a Canada Pension Plan Death Benefit

It is very important that you:

- send in this form with supporting documents (see the information sheet for the documents we need); and
- use a pen and print as clearly as possible.

SECTION A - INFORMATION ABOUT THE DECEASED

1A. Social Insurance Number	1B. Date of Birth YYYY-MM-DD	1C. Country of Birth (If born in Canada, indicate province or territory)	FOR OFFICE USE ONLY AGE ESTABLISHED
2A. Sex <input type="radio"/> Male <input type="radio"/> Female	2B. Date of Death (See the information sheet for a list of acceptable proof of date of death documents) YYYY-MM-DD		DATE OF DEATH ESTABLISHED
3. Marital status at the time of death (See the information sheet for important information about marital status)			
<input type="radio"/> Single <input type="radio"/> Married <input type="radio"/> Separated <input type="radio"/> Common-law <input type="radio"/> Divorced <input type="radio"/> Surviving spouse or common-law partner			
4A. <input type="radio"/> Mr. <input type="radio"/> Mrs. Usual First Name and Initial Last Name <input type="radio"/> Ms. <input type="radio"/> Miss			
4B. Full name at birth, if different from 4A. First Name and Initial Last Name			
4C. Name on social insurance card, if different from 4A. First Name and Initial Last Name			
5. Home Address at the time of death (No., Street, Apt., R.R.) City, Town or Village			
Province or Territory		Country other than Canada	Postal Code
6A. If the address shown in number 5 is outside of Canada, indicate the province or territory in which the deceased last resided.			6B. In which year did the deceased leave Canada?
7. Did the deceased ever live or work in another country? <input type="radio"/> Yes <input type="radio"/> No			
If yes, indicate the names of the countries and insurance numbers. (If you need more space, use the space provided on page 4 of this application). Also, indicate whether a benefit has been requested:			
Country	Insurance Number	Has a benefit been requested?	
a) _____	_____	<input type="radio"/> Yes <input type="radio"/> No	
b) _____	_____	<input type="radio"/> Yes <input type="radio"/> No	
c) _____	_____	<input type="radio"/> Yes <input type="radio"/> No	

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