

Estates Checklist

When someone passes away that person's assets become their 'estate'.

General

Whenever someone passes away, it is advisable for the next of kin to seek legal counsel. In many cases, our advice is that you need no legal work done. The most common cases where no legal counsel is necessary are for parties that have less than \$20,000 in assets, for whom the institution where the majority of assets are held releases the money to the beneficiaries without 'probate'; and in cases where the first party of a spousal situation passes away (as many spouses own all of their assets jointly, the deceased's assets flow to the survivor). In these cases, simply delivering the death certificate to the various holders of the assets is usually sufficient. (Except the Land Registry Office, which will require a formal 'survivorship application' – we can help you with this, though it is not necessary to do this immediately upon death.)

In most cases where the assets are substantial, the holder of the assets will usually require 'probate'.

Appointment of Estate Trustee ('Probate')

Should a court appointment be necessary, the process is called 'obtaining a certificate of appointment of estate trustee with a will (or without a will)'. This is usually referred to as probate. Probate involves taking the will – or if you have no will, affidavit material – in front of a judge, to approve the documentation. Once the judge has approved it, the will, in effect, becomes a court order and binds any assets.

If probate is necessary, we need to provide the court with a breakdown of the assets of the estate, and their value. We also need a list of the beneficiaries, their circumstances and addresses. The application for probate – from the beginning of the initial interview to obtaining the court order – usually takes from few a months to a half a year. It is very much dependent on how quickly the probate court is operating. There is no 'fast-tracking' for families that want to dispose of properties quickly. Please note that we are not able to complete a sale until probate has been obtained. Please talk to us about this as there may be some other procedures available.

Once probate has been obtained, the assets need to be gathered up, accounts/debts need to be paid, and the Estate taxes settled. Once we have a clear idea of the exact accounting of the estate, it is customary to send out notices with the accounting to all the beneficiaries of the estate – with releases for the beneficiaries to approve all of the work done. Once the releases have been received, the funds will be distributed.

It is not unusual for CCRA to audit files after a client's death. This can occur years after the death. As a result, where potential taxes are involved, it is customary to obtain a clearance certificate. This can take up to a year after the final income taxes have been filed and assessed. For larger estates, it is customary to hold back money for the final taxes.

This description is a very superficial of overview of estate practicing. Every estate is a little bit different. We would be pleased to discuss your particular circumstances. We can bill based on a flat rate for a given service, an hourly rate, or as a percentage based on the value of the estate. We would be pleased to discuss the work and choice of billing at the initial interview.

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