



PUBLIC LEGAL INFORMATION
Association of NL



EXECUTOR'S GUIDE

Newfoundland and Labrador



Public Legal Information Association of Newfoundland and Labrador (PLIAN) is a non-profit organization, dedicated to increasing access to justice by educating the public about the law. The within publication was funded through the Law Foundation of Ontario's "Access to Justice Fund." PLIAN greatly appreciates everyone's contributions to this project.

The Executor's Guide provides readers with general information regarding the role, duties and responsibilities of an executor. This information is not an official source of law and it does not constitute legal advice. Laws are in constant flux and only practicing lawyers can provide legal advice.

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Executive Director (Acting)
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Evaluation: Feedback Form

This guide is **not** a complete statement of the law. It is **not** a substitute for legal advice. Valid in **Newfoundland and Labrador** courts only.

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INTRODUCTION

The purpose of this guide is to help people understand the duties and responsibilities of an executor. Ideally, a person knows that s/he will be named as an executor before the death of the deceased; however, this is not always the case. Many people do not know where to turn for help or information. This publication will help educate executors about their role, duties and responsibilities. An executor may consider seeking professional advice from a lawyer and/or an accountant or may wish to talk to someone s/he knows who has already acted as an executor. Another option may be to hire a private trust company as the executor's agent.

A will is a legal document that gives one control over what will happen to one's estate after s/he dies. A person who makes a will is called a testator. The testator's estate is the sum total of that person's assets, including bank accounts, investments, personal property, real estate etc. An executor is the person or trust company appointed in a will to control and protect the estate's assets, pay off any debts and distribute property as directed by the will.

This publication is a resource for individuals who have been named as executors. Acting as an executor can often be a daunting task because of the high level of commitment required. The role of an executor may be challenging and time consuming.

ACCEPTING THE ROLE OF EXECUTOR

It is important to note that you are not obligated to act as an executor when asked or named under a will.

You have the right to refuse the role. This normally involves submitting a form called a Renunciation to the Probate Court, which states that you give up the right to act as executor. If you do accept the role, however, and you later change your mind, the only way you can be relieved of your legal responsibility is through a Court order. These are some of the issues you may wish to consider when deciding whether to accept the role of an executor.

GLOSSARY OF TERMS

Below is a glossary with a list of definitions for legal terms you may encounter when acting as Executor.

Affidavit: A written statement or declaration of facts that is sworn or affirmed to be true.

Assets: What you own. Assets can include items such as money, land, investments, and personal possessions such as jewellery and furniture.

Beneficiary: A person or organization that you leave something to in your will.

Debts: What you owe. Also called *liabilities*. At death, these may include credit card balances, loans and mortgages, etc.

Estate: All of the property and belongings you own at your death. The estate can include items such as monies, personal property, business interests, receivables, etc. The estate does not normally include property you own with someone else in joint tenancy. The estate does not include insurance policies or other things you own that specifically name someone as your beneficiary.

Executor: An executor is the person or trust company appointed in a will to control and protect the estate's assets, pay off any debts and distribute property as directed by the will. Please note that throughout this publication, the term “executor” is used in a gender-neutral manner.

Grant of Probate: A document issued by the Supreme Court certifying that a will has been accepted by the Court as the last will and testament of the deceased and has been registered with the Court. The grant of probate also grants the executor the authority to administer and distribute the estate according to the instructions in the will.

Holographic Will: A will that is entirely handwritten by the testator and signed by him/her.

Passing of Accounts: The passing of accounts is essentially an estate audit. The executor is required to account for his/her administration and distribution of the estate.

Probate: A legal procedure that confirms that the will can be acted on and authorizes the executor to act. The procedure includes submitting special forms and the original will to the Probate Court of the Supreme Court of Newfoundland and Labrador.

Testator: The deceased person who has prepared a will.

Trust: A trust as stipulated in the will is set up after the deceased's death and is an arrangement by which the testator's estate property and assets are transferred to the beneficiary (ies).

Will: A legal document that explains what a person wants done with the things s/he owns upon death.

TASKS

This guide will walk you through the process of acting as an executor in Newfoundland and Labrador. Your duties will include some or all of the tasks listed below. This is not necessarily an exhaustive list. The following items are not applicable to all estates. In some cases, you will carry out many of the following tasks simultaneously.

First Steps

- **Decide if you are willing and able to act as the executor.** Take time before beginning the process to consider if you are willing and able to act as the executor of the estate. Prior to dealing with any of the assets of the estate, you have the option of refusing the appointment. Acting as an executor can be a time consuming task. Once you begin the process of dealing with the estate, you are legally bound to complete the job; if you change your mind after you begin the process, you will have to apply to the court to be relieved of your duties.
- **Access the will.** One of the first things to do as an executor is to locate the original copy of the will. If the will is not in the deceased's home, it may be in a safety deposit box or at the office of the lawyer who drafted it.

Funeral Arrangements

It is normally the duty of the executor to make funeral and burial/cremation arrangements. However, in some cases the deceased has already made pre-arrangements for this.

- **Consider the wishes of the deceased.** While the decision is that of the executor, it is a good idea to honour any instructions from the deceased. If you have not received specific instructions from the deceased regarding funeral and burial or cremation arrangements, you may find it helpful to review the will for any instructions. However, many people choose not to include funeral instructions in their wills and may opt to advise their executor and loved ones of their funeral instructions in another way.
- **Consider the wishes of the deceased's loved ones.** It is also a good idea to consult with the deceased's family and friends and consider their wishes when making the funeral arrangements.
- **Costs:** In some cases, the deceased may have already made and possibly paid for arrangements. In most cases, funeral expenses are reimbursed by the estate.

Record Keeping is Important!

- **Keep records.** It is a good idea to start keeping detailed records of your activities as executor as soon as you begin dealing with the estate. You will need to provide an accounting of the estate to the beneficiaries before you close the estate. Keeping records of your activities from the outset will make this easier.
- **List the names and addresses of beneficiaries.** This list will be required when submitting an application for probate. It will also be helpful when notifying beneficiaries of their entitlements and of the progress of the estate.

Address Immediate Needs

The process of executing an estate can be lengthy and there may be certain immediate needs that you, as the executor, will need to address in the interim.

- **Address the immediate financial needs of dependants.** If the deceased had any dependent children, or if the deceased's spouse was financially dependent, you may need to access money from the estate to provide for the immediate care of these individuals.
- **Address any guardianship disputes regarding dependent children.** It may be necessary to arrange for the guardianship of minor children according to the instructions in the will. If there is any dispute over the guardianship of children, you may want to consult a lawyer promptly.
- **Address the care of any pets.** If the deceased had pets, you must ensure that the pets are being cared for, or arrange for the re-homing of the pets. The will may have instructions or the family may know the deceased's preferences for re-homing the pets.
- **Protect the testator's assets.** Your role includes protecting the testator's assets. For example, you may need to arrange for the care of any vacant property and for the safe custody of personal valuables and important documents. You may also need to arrange for storage and insurance on assets that require it.

Consider Getting Professional Help

Consider hiring an estate lawyer. Hiring an estate lawyer can be extremely valuable. As an executor, this may be the first or only time you deal with an estate. An estate lawyer has dealt with these matters many times before and can guide you through the process and provide valuable legal advice if conflicts arise. If you hire a lawyer to assist you, reasonable legal fees can be paid by the estate. If the estate is large and/or complex, hiring a lawyer and an accountant can prove extremely helpful.

Obtain the Death Certificate

In order to complete your duties as an executor, you will need to obtain a document, verifying that death has occurred. At the time of death, the attending physician or Medical Examiner will issue a Registration of Death (often referred to as the Death Certificate). This document will be given to the Funeral Home for completion and registration at the Provincial Department of Vital Statistics.

A true copy of the Death Certificate can be obtained from either the attending physician or Medical Examiner. Funeral homes are not permitted to provide copies of the Death Certificate to the public. However, funeral homes can provide a Funeral Director's Statement of Death (or Proof of Death). This is a document traditionally used and accepted as proof of an individual's death.

Certified copies of the Registration of Death (Death Certificate) can be obtained from Vital Statistics, if required. In order to complete the Registration of Death (Death Certificate), the funeral home will need certain information about the deceased; this may include the deceased's full name, birth place, date of birth, place of residence, name of the surviving spouse (if there is one) and parents' names and places of birth.

Notification

One of your duties as an executor will be to notify certain people and institutions of the deceased's death.

- **Notify beneficiaries of the death and of their entitlement under the will.** You may want to provide beneficiaries with a copy of the will and make an effort to keep them informed about the progress of the estate through probate.
- **Redirect mail.** Arrange for mail to be forwarded and cancel any magazine subscriptions.
- **Cancel services.** Notify service providers and cancel services such as cable or internet. If the deceased lived with someone else, you may want to arrange for the transfer of these services into that person's name. If the deceased owned a home, it may be necessary for the estate to maintain some services, such as electricity, until the home is sold.
- **Notify landlord (and/or tenants).** If the deceased rented a home or apartment, you may need to terminate the deceased's lease. If the deceased lived with others, arrange for the lease to be transferred into the name of another tenant/s.
- **Notify insurance company.** You will need to notify any companies with which the deceased carried insurance and cancel insurance if necessary. If the deceased owned a home you may need to make special arrangements to continue the home insurance until the property is sold.

- **Notify employer.** It may be necessary to arrange for any unpaid wages and benefits to be paid.
- **Notify credit card companies.** Close accounts and arrange for final bills to be sent. You can destroy or return the cards themselves.
- **Deal with identification.** Cancel and/or return any identification belonging to the deceased including his or her Social Insurance Card, Passport, Driver's License and health insurance. Obtain any associated refunds.

Assess the Value of the Estate

In order to have the estate probated, you will have to determine the approximate value of the estate.

- **Review the deceased's records.** Review the deceased's financial records and prepare a detailed statement of all assets and liabilities. These may include real estate, personal property and bank accounts, as well as any debts.
- **Obtain account statements.** In order to determine the value of the estate you will need to obtain statements for financial assets (such as bank accounts and RRSPs) and financial liabilities, such as loans and credit card balances.
- **Arrange for valuations of assets.** You may need to arrange for valuations of assets. Assets may include real property, such as a house or land, as well as personal property such as a vehicle or jewellery. Having an accurate value for the estate will be necessary when determining the fees associated with probating the estate. Valuating assets may also be required if the will bequeaths certain portions of the estate to individual beneficiaries.

Probate

Probate is the process by which the court verifies the validity of the will and grants the executor the authority to distribute the estate. In most cases, probate is required (eg. in order to sell any real property, to transfer stocks and bonds or to access large sums held by banks and trust companies). An executor may want to consider consulting with a lawyer to determine whether probate is necessary. Probate can also help protect the executor from potential liability, if another will is found at a later date.

- *Required Information*

In order to apply for a grant of probate, you will have to provide certain information including the deceased's name, marital status and occupation at the time of his or her death, and his or her age at the time of the execution (or signing) of the will. You will need to confirm certain details that will help ensure the will is valid and that you are the only person entitled to a grant of probate. You will need to provide a list of the names and addresses of any beneficiaries under the will as well as an approximate value of the estate. There are additional requirements. For further information on what is required, see the publication "Wills and Estates: Help! Where Do I Start?" which is available on the website of the Supreme Court of Newfoundland and Labrador.

- *Required Documents*

Along with the petition that is submitted as an application for a grant of probate, several documents will need to be attached to the application. The required documents include: (i) the will, (ii) an affidavit from the applicant (the executor), stating that all the facts are true to the best of your knowledge; (iii) an affidavit from a witness to the will, stating that s/he witnessed the will being signed and that the testator was of sound mind. In the case of an un-witnessed hand-written will, the required documents include: (i) an affidavit proving the execution of a holographic will, (ii) an inventory of the estate and (iii) an oath from the executor to faithfully administer the estate.

- *Fees*

You will also need to pay the probate fees. The fee is a percentage of the value of the estate. For the most updated information regarding probate fees, please refer to the schedule of fees listed at <http://www.court.nl.ca/supreme/fees.html>. Methods of payment include cash, cheque, money order, debit, credit card or bank draft made payable to the "Supreme Court of Newfoundland and Labrador".

- *Disputes During Probate*

If disputes arise during the probate process, it is advisable to consult with a lawyer.

Please note that this is a basic overview of the probate process. For a more detailed publication on the topic of probate, visit PLIAN's website: <http://www.publiclegalinfo.com/publications/probatebooklet2011.pdf>

Deal with Assets and Debts

Before distributing the estate, you will need to locate all of the testator's assets and pay any outstanding debts.

- **Open an account.** You can open a bank account for the estate. Any funds collected from the deceased's bank accounts or from the sale of other assets can be put into this account. This account can also be used to pay debts or expenses related to the funeral or administering the estate.
- **Notify financial institutions.** Identify and locate all of the testator's bank accounts. Notify the financial institutions of the death and obtain up to date information on the accounts. You may also want to re-register the testator's accounts in the name of the estate.
- **Advertise for creditors.** If you believe the deceased may have had debts that you cannot find a record of, it may be necessary to advertise for creditors. You can place an advertisement in a local paper, asking any creditors to contact you and provide proof of the testator's debt to them.
- **Address joint accounts and joint ownership.** Unless specific arrangements were made, the ownership of joint accounts and jointly owned property will normally transfer to the co-owner of the account or property. You can arrange to have these accounts and property transferred to the surviving owner. It is advisable to consult with a lawyer when dealing with joint assets.
- **Address the matrimonial home.** If the deceased was married and owned his or her home and lived with his or her spouse, then, according to the *Family Law Act*, ownership of the matrimonial home transfers to the surviving spouse. There are exceptions to this principle; for example, one exception is when a domestic contract states that the house is to be dealt with in a different manner.
- **Apply for any amounts payable under insurance policies.** This may include life insurance policies or insurance policies on debts (i.e. mortgage, credit cards, etc.)
- **Access and list the contents of any safety deposit boxes.** If the boxes themselves are no longer needed, they can be closed.
- **Pay debts.** Pay all legitimate outstanding bills and loans and any income tax owing. Obtain receipts for all payments.
- **Pay costs associated with administering the estate.** Also, arrange to pay the costs associated with the funeral and administration of the estate, including lawyer's fees and the cost of probate. As executor, you are entitled to be paid a reasonable fee for your work. It is best to seek legal advice regarding what compensation you may be eligible to receive as an executor. Obtain receipts for all payments.

Income Tax and Government and Pension Benefits

As the executor, you will be responsible for ensuring that the deceased person's final tax returns are filed and that any government and pension benefits being paid to the deceased are stopped. There may also be death benefits that you are entitled to collect on behalf of the estate.

- **File income tax returns.** You will need to notify the Canada Revenue Agency of the deceased's death and file income tax return(s) for the year of the deceased's death and any of the preceding years for which a return was not filed. If there is an income tax refund it will be paid to the estate, or if there is any income tax owing, it will need to be paid from the estate. You may want to hire an accountant to help you with these matters.
- **Cancel benefits.** Contact the Canada Revenue Agency to cancel GST credits, child tax credit benefits, universal child care benefits, etc. Contact the Canada Pension Plan and Service Canada to cancel any benefits being paid (such as a guaranteed income supplement) and to apply for Canada Pension Plan death benefits. If the deceased worked outside of Canada, there may also be foreign pension plan benefits to be cancelled and foreign death benefits available.
- **Obtain a Tax Clearance Certificate.** You may want to obtain a tax clearance certificate, once all known outstanding taxes have been paid. This confirms that all taxes of the estate have been paid. This will help protect you from being billed, at a later date, for taxes that you did not know about.

Distribute the Estate

As the executor, you must ensure that the estate is distributed according to the will; provided that the distribution of the estate in the will is not successfully challenged in court.

- **Consider liabilities.** Before you distribute the estate, ensure that you have paid any outstanding debts or expenses or that you retain enough money to cover these costs.
- **Distribute the estate.** Distribute the estate as instructed in the will. Arrange for the sale of assets or the transfer of assets to the beneficiaries. Assets to be transferred may include real or personal property. Pay money bequests and distribute gifts according to the will. Be sure to obtain receipts for all cash and gifts distributed. If, after paying debts, there are insufficient funds in the estate to make all the gifts or if large assets, such as a house, have had to be sold to pay debts such that this asset cannot be gifted as originally set out in the will, it will be your duty to follow the instructions in the will as closely as possible. If this is the case, you may want to consult a lawyer to determine how best to proceed.
- **Establish trusts.** Establish any trusts that are required according to the will. This may include bequests to minor children or to those who are not capable of managing their own affairs.

Passing of Accounts

The passing of accounts is essentially an estate audit and it is generally the executor's last task. The executor is required to account for his/her administration and distribution of the Estate.

- **Prepare and distribute a final report to the rightful beneficiaries.** Include an accounting of the estate, the costs associated with closing the estate, as well as your expenses and compensation, if any. You may want to have each adult beneficiary approve the final report and sign a release form that is required by the Supreme Court of Newfoundland and Labrador.
- **Apply for the passing of accounts.** To apply to the court for the passing of accounts, you must submit an inventory and the final report for review by the court. A judge may dispense with the requirement for accounting if s/he regards it as unnecessary. In this case, the judge will decide the amount of remuneration to be paid to the executor. You can also request that, in lieu of a passing of accounts, a judge make an order that you, the executor, have fully and satisfactorily accounted for the estate. To request such an order you must file releases from all adults and the guardians of any minors with an interest in the estate.
- **Close all estate accounts.** Once the estate is settled, advise the bank to close all accounts held by the estate.

Conclusion

We hope that this guide was of assistance to you, during the process of acting as executor of an estate. You will find more useful resources in the Appendices, including contact numbers, publications and websites on this topic. We also hope that you will complete the enclosed evaluation form and send it back to us. Your feedback, suggestions and ideas are valuable to us and they will help improve this guide.

APPENDIX A

Court Forms, Resources & Publications

The following links to forms, publications and website resources may be of assistance to you.

COURT FORMS

Death Certificate Application Form

http://www.gs.goc.nl.ca/birth/death_certificate/application_for_marriage_or_death_certificate.pdf

- Physical copies of the 'Death Certificate Application Form' may be obtained from a Government Services Office

Renunciation of Probate Form (to give up your role as executor)

<http://www.court.nl.ca/supreme/general/forms/common/renunciation.pdf>

- Physical copies of the 'Renunciation of Probate Form' may be obtained from the Supreme Court (Family Division)

Oath of Executor (Form 56.33B)

http://www.court.nl.ca/supreme/general/forms/probate/oath_of_executor.pdf

- Physical copies of the 'Oath of Executor Form' may be obtained from the Supreme Court (Family Division)

PUBLICATIONS

Wills and Estates: Help! Where Do I Start?

<http://www.publiclegalinfo.com/publications/probatebooklet2011.pdf>

Seniors and the Law

<http://www.publiclegalinfo.com/publications/seniorsandthelaw2011.pdf>

PROBATE

The Judicature Act

<http://assembly.nl.ca/Legislation/sr/statutes/j04.htm>

The Probate, Administration and Guardianship Rules

<http://assembly.nl.ca/Legislation/sr/regulations/RulesSC/Rc86ru56.htm>

WEBSITES

Probate Court information (Supreme Court of Newfoundland and Labrador)

<http://www.court.nl.ca/supreme/general/faqs.html#pradfaq>

Schedule of Fees (Probate Court)

<http://www.court.nl.ca/supreme/fees.html>

Wills, Estates and Guardianship

<http://www.court.nl.ca/supreme/general/wills.html>

APPENDIX B

Contact List

Below is a list of contacts that may be helpful to you. Please note, however, that this list is not meant to be exhaustive.

PUBLIC LEGAL INFORMATION ASSOCIATION OF NL

Suite 227, Tara Place

31 Peet Street

St. John's, NL A1B 3W8

Tel: 709-722-2643

Toll-free: 1-888-660-7788

Fax: 709-722-0054

E-mail: info@publiclegalinfo.com

Lawyer Referral Service Hours: 9 a.m. – 12 noon, Monday to Friday

www.publiclegalinfo.com

PLIAN does not provide legal advice; however it does operate a Legal Information Line. The Legal Information Line provides general information about the law over the telephone. Callers are also referred to appropriate law-related agencies and community groups when necessary. The information provided over the telephone does not constitute legal advice. PLIAN also operates the Lawyer Referral Service for people who need to speak with a practicing lawyer. This Service enables members of the public to an initial consult with a lawyer for up to 30 minutes for a nominal fee. After the consultation, the fees to be charged are strictly between the lawyer and the client. The applicant is not obliged to retain the lawyer and the lawyer is not obliged to accept the applicant's case.

PROBATE COURT OFFICES

The Law Courts of Newfoundland and Labrador

Website: www.court.nl.ca

Supreme Court, Trial Division (General) - St. John's

309 Duckworth Street

P.O. Box 937

St. John's, NL

A1C 5M3

Phone: (709) 729-2569

Fax: (709) 729-6174

Supreme Court, Trial Division (General) - Corner Brook

Corner Brook Law Courts
82 Mount Bernard Avenue
P.O. Box 2006
Corner Brook, NL
A2H 6J8
Phone: (709) 637-2224
Fax: (709) 637-2569

Supreme Court, Trial Division (General) - Gander

Law Court Building, 98 Airport Boulevard
P.O. Box 2222
Gander, NL
A1V 2N9
Phone: (709) 256-1115
Fax : (709) 256-1120

Supreme Court, Trial Division (General) - Grand Bank

T. Alex Hickman Courthouse
P.O. Box 910
Grand Bank, NL
A0E 1W0
Phone: (709) 832-1720
Fax: (709) 832-2755

Supreme Court, Trial Division (General) - Grand Falls-Windsor

The Law Courts
55 Cromer Avenue
Grand Falls, NL
A2A 1W9
Phone: (709) 292-4260
Fax: (709) 292-4224

Supreme Court, Trial Division (General) - Happy Valley-Goose Bay

214 Hamilton River Road
P.O. Box 1139, Station B
Happy Valley-Goose Bay, NL
A0P 1E0
Phone: (709) 896-7892
Fax: (709) 896-9212

EVALUATION: FEEDBACK SURVEY FOR “EXECUTOR’S GUIDE”

Your feedback on this guide is important to us. It was developed to help individuals navigate the process of executing an estate in Newfoundland and Labrador. How did we do? Your opinion matters!

1. How did you find the format of the guide?

Easy to Use _____ Difficult to Use _____ Could be Improved _____

Comments: _____

2. How would you rate the information in this guide?

Clear _____ Somewhat Clear _____ Difficult to Understand _____

Comments: _____

3. Were you able to use the guide to help you through the process of filing for an uncontested divorce?

Yes _____ No _____

4. Did you ask anybody for help using the guide? Yes _____ No _____

5. If yes, who helped you?

6. We’d like to hear your ideas, opinions, comments and suggestions for improvement of this guide. Is there anything else you’d like to share?

Thank you very much for your feedback!

**Please forward your answers to us by e-mailing info@publiclegalinfo.com, or by mailing to
Suite 227, 31 Peet Street, St. John’s, NL, A1B 3W8**