



**Community Legal
Information**

Empowerment Through Knowledge

Wills & Estates: Administrator's Role



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Wills and Estates: Administrator's Role

An administrator is a person appointed by the court to deal with the estate of someone who has died:

- without a will;
- with a will that is not valid;
- with a will, but without an executor;
- with a will, but the named executor has renounced (decided not to act) and no alternate is named;
- with a will but the named executor has died and no alternate is named;
- with a will but the named executor is unable to act due to incapacity and no alternate is named.



In these situations, a surviving spouse or other family member applies to the court to be appointed as administrator.

The family members who can be appointed as administrator are:

- a) spouse; or
- b) next of kin; or
- c) spouse and next of kin together.

If more than one person applies, they may be able to administer jointly. If one of the eligible persons does not want to be administrator, he or she can renounce and nominate one of the other eligible persons.



If several people of equal relationship to the deceased apply and cannot reach agreement, the court will decide what to do.

A trust company may be named as administrator, either alone or jointly with another person. The Public Trustee (a public official) may also be named as administrator if no one comes forward to fill this role, or if the Public Trustee was involved before the person's death.

An administrator is considered the personal representative of the deceased and takes on a role similar to an executor. He or she receives Letters of Administration from the court. These are similar to Letters Probate and authorize the administrator to act. The administrator then follows a process similar to what an executor would do. Eventually, he or she distributes the estate according to the will, if there is one, or according to the *Probate Act* if there is no will.

Administrators are usually required to post a bond with the court, with two or more sureties (someone who agrees to be liable for someone else's debt or performance), until the estate is settled. This provides a guarantee that the assets of the estate are safe. This may be done through an insurance company, with the cost of the bond paid by the administrator, who will be paid back out of the estate when everything is settled. Be sure to keep all receipts.

Checklist for Administrators

You can hire a lawyer to do most of the work or you can do some of the work yourself, using a lawyer's services when necessary. It is important to seek a lawyer's advice to be sure you are doing things correctly.



The court forms related to administration of an estate can be viewed at www.courts.pe.ca/forms. All forms dealing with probate and administration start with number 65 and are 65A, 65B, 65C, and so on. If you need assistance finding the forms, contact us or call Island Information Service on the first floor of the Jones Building, 11 Kent Street in Charlottetown (902-368-4000 or 1-800-236-5196).

The Rules of Court dealing with wills and estates also start with number 65. The *Act* covering this area of law is called the *Probate Act*. This *Act* is online at www.princeedwardisland.ca/en/legislation/all/all/p or you can get a copy at Island Information Service.

Checklist of the steps to take:

1. Either you, or your lawyer, fill out the necessary forms to apply to become administrator of the estate. If there are other people more closely related to the deceased person, these people can file a renunciation with the court stating they do not wish to be the administrator and nominating someone else to act.
2. When you apply to be administrator, you will have to file an inventory of the estate. You will also have to fill out a form, called an affidavit, about the accuracy of the inventory, and swear it to be true as far as you know.

This is done in front of a lawyer or a Commissioner of Oaths at the courthouse. If you discover new information after this time, you have 3 months from the time of discovery in which to file this new information. You may need to meet with the deceased's lawyer, accountant, insurance agent, or financial advisor to get help with the inventory.

3. Get copies of the death certificate. There are 2 types of death certificates – the funeral director's and the death certificate issued by the province. You will need to provide death certificates to many of the companies and individuals you will be dealing with – most will accept the funeral director's certificate and you can get multiple copies of this from the funeral home. If you need a provincial death certificate, you can get this by phoning the Department of Vital Statistics (902-838-0880 or 1-877-320-1253). There is a fee for provincial death certificates.
4. You will have to file a bond and swear an oath with the Registrar at the court protecting the assets of the estate. A bond can be a personal guarantee (called a surety) made by the administrator and two others called sureties or guarantors. The amount of the surety can be up to twice the value of the estate, but is usually the value of, or 1 ¼ times the value, of the estate. Or you can buy an insurance bond, available from most insurance companies - in this case the value is usually equal to the value of the estate. The premiums for the bond are paid by the administrator until the estate is closed, and then the administrator is reimbursed by the estate. You must provide proof that the estate has been closed in order to be released from the bond.
5. When Letters of Administration have been granted, the Registrar of the Estates Section will put a notice to creditors in the Royal Gazette of PEI, a

government publication for special notices. Creditors have six months to come forward with bills or claims on the estate. The phone number for the government department that publishes The Royal Gazette is 902-368-5190. If bills come in as a result of this notice, check to see that they are valid, pay them, and get releases or receipts from the creditors.

6. Notify insurance agents of the death and make sure the assets of the estate are properly insured.
7. Because of de-mutualization of many life insurance companies in the last few years, many people who owned whole life policies now own shares in the life insurance companies. If this is the case, you will have to have the shares transferred out of the name of the deceased. You should contact a lawyer for help with this.
8. After you pay the administration fees, Letters of Administration will be issued by the court. The amount of the fee varies with the size of the estate - an example is \$100 for estates valued between \$10,001 and \$25,000, with an extra \$22.50 fee for the ad in the Royal Gazette. You will need several copies of the Letters of Administration to present to organizations and financial institutions as you deal with the estate. There is a small fee for multiple copies. These Letters are your written authorization to handle the estate. Remember to get a receipt for this and all other expenses.
9. Assemble the Assets of the Estate:
 - Open a bank account for the estate of the deceased, transfer all funds to this account, and close all other accounts.
 - Arrange to collect any income owing to the deceased and deposit it.

- Arrange to collect any insurance money owed to the estate of the deceased.
- Claim any government pensions or death benefits available to the estate.
- Claim any other money owed to the estate – this could include RRSPs, group life plans through private health insurance, or director’s fees for serving on Boards of corporations.
- Find out if the deceased was involved in any trusts at the time of death.
- Find out if the deceased owned real property (land or buildings).
- Find out if the deceased owned any stocks. If so, you will need the help of a lawyer to transfer them out of the name of the deceased.
- If the estate is large, invest money that is not immediately required – you are expected to use the money to the benefit of the beneficiaries while the estate is being settled.

Some of these duties are likely to require help from professionals like lawyers, accountants and appraisers. Their fees are paid from the estate.

Keep a careful and detailed record of all expenses, income and assets – you are responsible to the beneficiaries for all of the assets of the deceased person.

Remember to get receipts for everything.

10. All beneficiaries should be notified by registered mail as soon as possible after Letters of Administration have



been obtained. Explain that it may take some time before the estate is settled and they receive their inheritance.

11. Settle liabilities of the estate:

- Pay debts and settle liabilities from available cash or as soon as some of the assets can be turned into cash.
- If real property needs to be sold to pay off debts, consult with a lawyer for help with this.
- If there are not enough assets in the estate to pay all of the debts of the deceased, the debts must be paid in the following order:
 - a) mortgages and other secured debts;
 - b) funeral expenses up to \$2500.00;
 - c) expenses of administration, including an allowance for the administrator, and some legal fees;
 - d) medical and nursing home expenses, not exceeding the last one month's expenses;
 - e) all other debts on an equal footing.



- Prepare a Terminal Income Tax return, or T1, showing income up to the date of death. Pay any taxes owing by the deceased to Canada Revenue Agency and get a clearance certificate from them to the date of death. Mistakes in this area can take a long time to correct, so usually some money is held back in case of a mistake.
- If the deceased earned income in another country, you may have to file a foreign income tax return and check on that country's laws regarding inheritances. You may have to file papers and pay taxes on the inheritance.

A lawyer and an accountant can help with this.

- Prepare an Income Tax Trust return for income earned by the estate after the date of death.
- Pay off any private loans or mortgages that you know about and get receipts or releases. Check first to make sure that these are not life insured.
- Pay funeral expenses and all other debts owed by the deceased and get receipts or releases for all of them.

12. After all liabilities are paid, distribute the estate:

- a) In the case of someone who has died leaving a will, this is done according to the instructions in the will. Be sure to get written releases or receipts for everything that is distributed.

- b) In the case of someone who has died without leaving a will (called dying intestate), the estate is distributed according to the *Probate Act*. Some of the rules in this *Act* are:
- If the deceased is survived by a spouse and no children, the estate goes to the spouse.
 - If the deceased is survived by a spouse and one child, each receives one half of the estate.
 - If the deceased is survived by a spouse and more than one child, the spouse receives one-third and the remaining two-thirds is divided equally among the children.
 - If the deceased has no spouse or children, then the estate would go first to the parents, second to brothers and sisters, third to nieces and nephews, and so on.
 - If there are no surviving relatives, the estate may go to the government.

Be sure to get written releases or receipts for everything that is distributed. You will need the help of a lawyer to distribute any real property (land or buildings).

13. Prepare a final accounting of the estate describing everything that came into the estate and everything that went out - this includes payment of expenses of the deceased, expenses of the estate, distribution to beneficiaries, commission claimed by the administrator (which cannot exceed 5% of the value of the estate), etc. The statement should balance out, which means that what came in also goes out, with no balance left over or under. Include receipts and releases with this accounting.

14. Go to court to get permission to be released from the bond or surety. This can be done in two ways:

- a) Most administrators do this by getting written consent from all remaining beneficiaries. You should present your final accounting described in step 13 to the beneficiaries and ask them to sign final consents to release you from the bond. You may also need to complete an application to the court to be released from the bond.

- b) You may have to prepare a final passing of accounts to take to court. Though this method is seldom used, some circumstances may demand it. This method is generally used only if a business is involved, if infant children are involved, or if problems are anticipated. Complete an Inventory on Passing Accounts (Form 65AAA) and file it at the courthouse, along with a Petition To Pass Accounts (Form 65WW), an Affidavit Verifying Accounts (Form 65XX), and other affidavits. When all documents are in, the court will issue a notice called a Citation to Pass Accounts (Form 65KK), and set a court date for the final approval, or passing, of accounts. All those with an interest in the estate will receive this notice and it will be posted in a public place. Once the accounts have been passed, the court will issue a Decree on Passing Accounts (Form 65ZZ). This decree authorizes you to receive your commission and your release from sureties and the cancellation of the bond.

Keep all papers dealing with the estate, including the final accounting, for seven years after the finalization of the estate - there may be questions later from the beneficiaries or creditors of the estate that you will need to answer.



Community Legal Information

Community Legal Information is a charitable organization that receives funding from Justice Canada, the PEI Department of Justice and Public Safety, the Law Foundation of PEI and other sources. Community Legal Information provides Islanders with understandable and useful information about the law and the justice system in Prince Edward Island.

For more information, you can visit our website at www.legalinfopei.ca, email us at info@legalinfopei.ca, or telephone us at 902-892-0853 or 1-800-240-9798. You can also find us at: www.facebook.com/legalinfopei, twitter.com/legalinfopei and www.youtube.com/CLIAPEI.

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