

H1: Experienced Probate Lawyers and Estate Administration Lawyers

When a person dies in Ontario, their property and assets must be gathered so they can then be distributed under the terms of the deceased's will. The experienced probate lawyers and estate administration lawyers at Massey LLP provide these services to help you with these tasks that need attention in the weeks and months following the death, when trustees and beneficiaries may still be overcome with grief:

- If there is a will, checking it to see who has been appointed as executor/estate trustee
- If no executor is named in the will, determining who could be appointed estate trustee (executor)
- Advising estate trustees (executors) on their duties and responsibilities
- Calling in (or gathering) all the assets
- Paying the debts of the estate and dealing with the deceased's creditors
- Paying taxes to [Canada Revenue Agency](#) (CRA)
- Distributing the balance of the estate to the beneficiaries
- Preparing and distributing estate accounts, guardianship accounts, and attorney accounts

Estate administration and probate are complex and have a lexicon of their own. Click on [Estate Administration Terminology](#) <jump link> compiled by our probate lawyers and estate administration lawyers, to learn more about the process in Ontario.

If the deceased died without a valid will (the legal term is intestate), the estate will be distributed under the statutory rules of intestacy set out in Ontario's [Succession Law Reform Act](#) (SLRA). These rules set out a strict hierarchy of who gets what, starting with the closest living relatives. Please be aware that there is very little flexibility in the Act. There is no provision for common-law spouses to receive anything under these rules.

Our experienced probate lawyers and estate administration lawyers have helped hundreds of clients who have been grieving their loved ones while trying to fulfill their roles as executors and estate trustees. It is probably the first time they are going through the probate process and the estate administration process. We can lessen your burden; get the help you need by calling or emailing us today.

H2: Services of our probate lawyers and estate administration lawyers

Our probate lawyers and estate administration lawyers can help you with all aspects of estate administration and trust administration, including:

- Interpretation of wills and trusts
- Assisting with the set-up and administration of testamentary trusts
- Advising individual and institutional executors and trustees on their fiduciary duties and risks

- Filing documents with the courts and Land Titles Office
- Conducting wills notices and title searches
- Advertising for creditors
- Applying for grant applications for probate, administration, ancillary and resealing, including notifying beneficiaries and heirs
- Assisting with post-grant procedures, including transmitting/transferring/liquidating estate assets (real property, mineral rights, bank accounts, registered and non-registered investments, private and public securities, as well as bonds)
- Assisting with assets and property in other provinces, the U.S., and other jurisdictions
- Post-mortem tax planning and implementation
- Informal and formal (for court) passing of accounts

Our experienced probate lawyers and estate administration lawyers can assist you with any of these steps. Get the help you need by [calling](#) or [emailing](#) us today.

Similarly, if your estate plan includes a trust fund—either an *inter vivos* trust or a testamentary trust—our trust administration lawyers can ensure that the discrete steps and prescribed processes set down by the Canada Revenue Agency (CRA) are met and followed.

If you need an *inter vivos* trust or a testamentary trust set up, click on our [Estates, Trusts & Succession Planning page <link>](#).

H2: Ontario probate basics: our probate lawyers explain the process

Our probate lawyers demystify the Ontario probate process below. It can be daunting—and it is a multi-step application process, heavy on legal paperwork.

What is probate?

Probate is “proving” the will in court. The probate process confirms that 1) the will is valid and 2) an estate trustee (also called an executor) has been appointed. Most estates need probate if there are assets that will need to be distributed. Probate is commensurate with the number of assets and their value; the more assets named in the will and the more valuable they are, probate will be more likely, advise our probate lawyers.

Probate is the process by which a court validates a will. Some assets (large investment accounts, publicly traded shares, some real estate) require probate and others do not. Our probate lawyers advise that as soon as one asset requires probate, you must pay the estate administration tax (commonly called probate tax) on all of it. But the tax is only required if you need the will validated.

HELPFUL TIP: Our probate lawyers advise that it is very common when clients have assets that don’t require probate (such as a private corporation) to set up two wills, a primary will for those assets that require probate and a secondary will for those assets that do not require probate. This saves probate taxes.

How does an estate trustee apply for probate?

There are two parallel processes for probate, depending on the estate's value:

- \$150,000 or less, you can apply for probate using the [simplified small estate court process](#)
- More than \$150,000, you must apply for probate using the [regular court process](#)

You do not need a probate lawyer to file for a probate application, however, they understand how to draft the probate application according to Ontario's civil procedure rules. Incomplete information, wrong information, or the application improperly drafted will cause unnecessary delays.

If probate is granted, you will be issued a [Certificate of Appointment as Estate Trustee](#) with a will.

It's worthwhile checking to see that no one else has started a probate application or been granted a certificate of appointment as estate trustee.

How does next-of-kin apply for probate if there is no will?

The process is like applying for probate with a will, but you will need to fill out the application, tell the beneficiaries, post a bond to the court, obtain the certificate of appointment, and complete the estate information return.

In addition, a probate lawyer will advise you that only residents of Ontario can apply to be an estate trustee of a person who died without a will. Further, there are rules that dictate the order in which people can apply. This is usually a spouse, common-law partner, or child.

What assets are subject to probate in Ontario?

- Most real estate in Ontario
- —Shares in non-publicly traded corporations do not require probate and we can set up secondary wills to avoid probate and paying the estate administration tax
- Bank accounts (includes foreign banks), including all investment accounts
- Shares of publicly held corporations, bonds, trust units, options, mutual funds, TFSAs, RRSPs, RRIFs
- Vehicles including cars, trucks, boats, motorcycles, and trailers situated in or outside Ontario - these usually do not need probate
- Goods or materials

What documents are needed to apply for probate?

You will need:

- 1) The original hardcopy will
- 2) The [death certificate \(issued by the funeral home, or the Registrar-General\)](#), and
- 3) The correct [court forms for probate](#) (there are quite a few). Please note that sworn and affidavits are necessary as well.

The forms for applying for probate with a will, without a will, and for small estates are all different. This is where a probate lawyer can help by completing relevant forms correctly, with no delay in estate administration.

Where does an estate trustee file a probate application?

All probate applications must be filed with the applicable Superior Court of Justice in Ontario based on where the deceased was ordinarily resident. Here is a [listing of Superior Court of Justice locations](#) across the province. It is tricky because the applicable courthouses are located in the county seat, and we must take into account the boundaries of municipalities.

It is best to file a probate application near the court in the jurisdiction where the deceased lived at death. If the deceased was not living in Ontario at the time of death but had property in Ontario, then the court where the property is located.

How long does probate take?

It typically takes six to eight weeks for probate to be granted and a certificate of appointment of estate trustee to be issued. Some rural and northern courthouses can be even faster. At some Toronto courthouses, due to the backlog, the process can take up to five months, advises our probate lawyer.

H2: Duties of an executor/estate trustee in estate administration

The duties and responsibilities of an estate trustee (also called an executor) can be divided into three groups: immediate matters, intermediate matters, and final matters. It is not unusual for an estate administration to take a year or more to complete. Here are highlights of the duties and responsibilities, say our estate administration lawyers, but note that this is not an exhaustive list:

Immediate Matters

- Determine whether the deceased left a will and locate it.
- Make funeral arrangements and pay for funeral.
- Retain an estate administration lawyer.
- Open an estate bank account.
- Notify beneficiaries that they shall inherit from the estate.
- List estate assets and safeguard them until they are distributed or sold.

Interim Matters

- Instruct estate administration lawyer to apply for a certificate of estate trustee (probate).
- Prepare an inventory of assets including real estate, money in the deceased's bank accounts, life insurance, interest in an estate or trust, and investments.

- Advertise for creditors and prepare an inventory of debts.
- Arrange for valuation of assets where necessary, for example, a business or a valuable collection of art, automobiles, rare coins, etc.
- Prepare and file the final tax returns [“terminal” tax returns] for the year of death. Tax returns for any missed prior years will need to be filed as well.
- Make reasonable inquiries for next-of-kin, if needed.
- Consider any claims or potential claims against the estate and obtain legal advice from an estate administration lawyer.

Final Matters

- Re-register assets in estate’s name, if applicable.
- Obtain a clearance certificate from the CRA to indicate that taxes owing on the estate have been paid.
- Settle and pay all legitimate claims made against the estate.
- File a T-3 income tax return.
- Arrange rollover of RRSPs/RRIFs to spouse or dependent child/ren.
- Distribute bequests in the will to their rightful beneficiaries.
- Apply for any benefits payable on death, including CPP/QPP death benefits, life insurance proceeds, and death benefits from pension plans or annuities.
- Prepare and maintain estate accounts for approval by the beneficiaries or examination by the court (passing of accounts).

H2: Problems with Ontario probate, estate administration

Our clients often ask, “What tends to go wrong when administering an estate? What are some problems, big or small, you have encountered?” Our probate lawyers and estate administration lawyers have made a list, in no particular order, based on their many years of experience:

- The original, valid, hardcopy will cannot be located. If this is your situation, the Law Society of Ontario (LSO) has a useful article to help with [Locating a will](#).
- There is a will, but it is not valid because it was executed improperly.
- A beneficiary, or other person with a claim against the estate, produces another will that is valid.
- There is a will, but no estate trustee (executor) is named.
- One or more beneficiaries allege that the will was written by the testator with “undue influence”—a serious allegation, observe our estate administration lawyers. This is a serious allegation that needs [Estate Litigation](#) <link>.
- One or more beneficiaries allege that the estate trustee is taking too long to wind up the estate and is not communicating with them.

- One or more beneficiaries allege that the estate trustee is using estate funds improperly—grounds for an “unjust enrichment” claim. An accurate passing of accounts will be critical. You may wish to have the estate trustee removed and replaced. This is a serious allegation that needs [Estate Litigation](#) <link>.
- The will was improperly drafted, or improperly executed, breaching the duty of care owed by the lawyer who drafted the original will to the testator/client, and opening the door to a solicitor's negligence claim.
- There is no will and the deceased left a large, complex estate. Every year, the media report on celebrities and public figures who die without a will, note our estate administration lawyers.
- After subtracting liabilities from assets of an estate, the testator was actually bankrupt.
- The estate trustee (executor) has died, become incapable due to illness or accident, or wishes to resign as estate trustee due to the burdensome nature of estate administration.
- A person, for example, a former spouse or common-law partner, has come forward with a financial support claim against the estate.
- A relative or caregiver of the deceased has launched a *quantum meruit* claim, for past services rendered to the deceased that remain unpaid—a serious claim, note our estate administration lawyers. This is a serious allegation that needs [Estate Litigation](#) <link>.
- Bequests to beneficiaries have been paid prior to settling income tax owing on the estate via obtaining a clearance certificate from Canada Revenue Agency (CRA), presenting a tax liability to the estate.

Depending on the situation and your specific circumstances, our probate lawyers and estate administration lawyers can be of great assistance to help you sort out problems big and small. [Call](#) or [email](#) us today.

Where there are serious allegations of improper behaviour in the estate administration process, from either the estate trustees or beneficiaries, you may need to take the next step: [Estate Litigation](#) <link>.

H2: Our estate probate lawyers and estate administration lawyers are ready to help

The probate process and the estate administration process can be lengthy, comprised of many steps, and can become burdensome. For these reasons, estate trustees (or executors) seek the help of probate lawyers and experienced estate administration lawyers. Give us a [call](#) or [email](#) us today; we are well-positioned to assist you.

NOTE: This next section can become a separate page, under “Resources”

H2: Estate administration terminology, explained

Below our probate lawyers and estate administration lawyers explain key terms and roles in plain English:

Estate: Your assets and liabilities at the time of death. If an estate has more liabilities than assets, it is in fact, insolvent or bankrupt.

Estate Administration Tax: Ontario’s Estate Administration Tax (also known as probate tax or probate fees) is about 1.5 per cent of the value of the estate. The tax is a fee payable to the government.

Here is a more detailed breakdown: \$5 for each \$1,000, or part thereof, of the first \$50,000 of the value of the estate. \$15 for each \$1,000, or part thereof, of the value of the estate exceeding \$50,000.

To calculate the Estate Administration Tax on an estate, use the [Ministry of the Attorney General’s calculator](#).

Learn more about Ontario’s [Estate Administration Tax \[probate fee\]](#).

Estate trustee: An estate trustee is the person who is responsible for dealing with the administration of an estate. There may be one or more estate trustees named in a will. Estate trustees are responsible for carrying out the wishes of the deceased person as set out in the terms of the will and administering an estate according to Ontario law.

Estate trustees (also called executors) who are named in a will apply to the court for a [certificate of appointment as estate trustee](#) with a will. In the past, this process was called “Letters Probate.”

When the court is satisfied that the will is valid, it will issue a signed certificate that confirms the authority of the estate trustee to administer the will according to Ontario law.

Importantly, an estate trustee is a fiduciary, note our probate lawyers and estate administration lawyers. An estate trustee must always act in the best interests of the estate’s beneficiaries. The estate trustee is fully accountable to the court, including complying with a court audit and supervision.

Our estate administration lawyers report that many estate trustees find the process of estate administration time-consuming and burdensome. It is not unusual for estate trustees to not complete their duties. Reasons for this can include death, illness, a severe accident, or resignation. In this

eventuality, the court will appoint a new trustee, with a new certificate of appointment of succeeding estate trustee, following very strict guidelines.

The old terms: Executor is appointed in a will, and the court issued letters of probate. The new term in Ontario only is estate trustee with a will and the court issues a certificate of appointment of estate trustee with a will.

When there is no will, a person applies, and letters of administration are issued. Now, they are referred to as estate trustee without a will and the court issues a certificate of appointment of estate trustee without a will.

In Ontario, an estate trustee is entitled to compensation which is about 5 per cent of the estate's value but is subject to court approval or negotiation with the beneficiaries. Trustee compensation is 2.5 per cent of capital receipts and disbursements, and 2.5 per cent of all revenue receipts and disbursements above the expenses incurred to properly administer the estate.

Executor: An executor is the other term used by probate lawyers and estate administration lawyers for estate trustee.

Holograph will: A holograph will is one entirely in the testator's own handwriting and signed by the testator. This is done to ensure that the holograph will represents the true final wishes of the testator. Importantly, the holograph will must contain provisions that dispose of the testator's property. After death, a disinterested party must provide an affidavit attesting to the handwriting.

A typed-out will signed by the testator is not a valid holograph will; it will not hold up in court. In Ontario, digitally signed wills are not permitted.

When a testator is unaware of the rules for a holograph will, it usually means two things: 1) the testator's estate will not get distributed as s/he intended and 2) his or her estate will be distributed as prescribed by Ontario's rigid SLRA.

Intestate: To die without having made a will. When the deceased person did not have a will, an estate trustee will be appointed by the court to administer the estate.

Our estate administration lawyers advise that only residents of Ontario can apply to be an estate trustee of an Ontario resident who died without a will. In addition, the rules stipulate who can apply to become an estate trustee when a person has died without a will. The order is: spouse, common-law partner, or child.

If the court agrees that person will be appointed an estate administrator rather than an estate trustee. An estate administrator does not wield the same powers as an estate trustee—a big difference. Estate administrators have no powers until court appointments are made.

Lastly, if you die without a will, your estate will be distributed according to the very strict rules of

Ontario's [Succession Law Reform Act](#).

Office of the Public Guardian and Trustee (OPGT): The OPGT protects the interests of potential heirs when an Ontario resident dies and no eligible person is available to administer the estate.

If there are professional services required to administer the estate, like tax returns, real estate maintenance, legal, investigative, or genealogical research, the associated fees are paid out of the estate as expenses. [this is true for any estate, not just those handled by OPGT]

In addition, when the OPGT is appointed estate trustee, fees are charged to the estate according to regulation under the [Public Guardian and Trustee Act](#).

Power of attorney (POA): A power of attorney is a legal document in which you appoint a person [the attorney] to make decisions for you while you are alive in case you are unable to make decisions for yourself should you become mentally incapable, are in hospital (for example, in a coma). It is prudent to create your powers of attorney when you make your will.

Our estate administration lawyers also advise that sometimes, a power of attorney can be used if you are not able to tend to important matters personally because you are thousands of kilometres away.

There are two types of powers of attorney (POAs): power of attorney for property [for real estate, investment accounts, bank accounts, physical possessions, etc.] and power of attorney for personal care, which authorises the attorney to make health and welfare decisions along with safety, housing, clothing, and hygiene. Both types of powers of attorney end upon the death of the testator.

Probate: Probate is the court process that gives the executor the authority to act as the estate trustee. Probate is a court process that gives formal approval for 1) the will as the last valid will of the deceased and 2) appoints the person who will act as the estate trustee (or executor) of the estate.

There are separate probate forms, depending on the estimated value of the estate: a simplified process for estates valued at less than \$150,000, and one for estates valued at more than \$150,000.

Our [probate lawyers](#) and [estate administration lawyers](#) advise that financial institutions are not obliged to waive probate under any circumstances. If they waive probate, they will require the beneficiaries to sign waivers of indemnity, holding the bank not responsible for any future claims against the estate. If a financial institution does not waive probate, the only way forward is to obtain a probate grant in speedy fashion.

Probate is not always required but is dependent on the quantity of assets that will be distributed to beneficiaries as well as the value of those assets, advise our probate lawyers.

Testator: The person who makes and executes a last will and testament. After the will is properly executed, the person is said to have died “testate,” leaving a testament in place.

Valid will: To be formally valid, our estate administration lawyers advise that a will must be executed according to the law, meaning a will must be signed by the person making it (the testator) and two witnesses who do not benefit from the will in any way. In other words, they cannot be beneficiaries named in the will.

In an age that is increasingly electronic, a valid will recognized by the courts must be the original hardcopy, with “wet signatures” [in ink] of the testator and the two witnesses. For this reason, once a valid will is executed, meaning signed by the testator and the two witnesses, it becomes a very valuable document indeed. However, wills and powers of attorney can be executed with the testator and witnesses together by video conference but, in that case, each person must still sign the document on paper and are later brought together with special affidavits.

Our estate administration lawyers recommend that it should be kept in a safe place to protect it from fire, theft, being misplaced, accidentally thrown out, and so on. Many people choose to keep their original will with the lawyer who drafted and executed their will. Most charge an annual storage fee for the safekeeping of wills.

HELPFUL TIP: Never place the will and POA documents in a safety deposit box as these original documents are usually required to gain access to the safety deposit box. Where a trust company is appointed as executor/attorney, they may be willing to store these documents for you. The estate administration lawyers at Massey LLP will store these documents for you, as part of our fee. We don’t charge an extra or annual storage fee.

Will: Even though Ontario residents are not required by law to have a will, our estate administration lawyers advise clients that it is in their best interests to make a will if one or more of the conditions below apply:

1. You own property (real estate, investment accounts, bank accounts, art, valuable collections, etc.).
2. You have children who are under the age of 18 children.
3. You have children with special needs who will continue to need lifelong financial support.
4. You are looking after dependents, such as aging parents, who depend on you for care and financial support.

Not having a will causes those winding up your estate after you die with a range of estate administration problems, court and administrative delays, and additional legal costs.