

# Estate Administration

By Doris Bonora

[FMC Law](#)

2900 Manulife Place  
10180-101 Street  
Edmonton, Alberta  
T5J 3V5

Phone: (780) 423-7188

Fax: (780) 423-7276

[doris.bonora@fmc-law.com](mailto:doris.bonora@fmc-law.com)

[dorisbonora.com](http://dorisbonora.com)

## Steps to Take

1. **Locate the original will.** If there is no will then an application will need to be made to the court to appoint an administrator
2. **Determine the Executor/** Personal Representative
3. **Plan the funeral** – the Executor is in charge.
  - a. Are there any known instructions
  - b. Is there a pre-planned funeral
  - c. Is there a prepaid funeral?
  - d. Some traps to avoid at the funeral home
    - i. do not need to purchase their urns.
    - ii. check out the prices with other funeral homes
    - iii. the monument at the cemetery is not a proper estate expense
  - e. funeral can be paid by presenting the funeral bill at the bank
  - f. there is a CPP death benefit to assist with payment of the funeral

4. **Cancel any identifying information** (drivers license, passport, Social Insurance Card, Alberta Health Care Card) and financial cards (credit cards, bank cards)
  
5. **Notify the banks** and other financial institutions of the death to prevent fraud.
  
6. **How to pay debts?** Before the grant of probate, take bills to the bank and ask them to pay them directly. After the grant of probate the executor can pay the bills because then the executor will have the right to access money in the bank
  
7. **Grant of Probate**
  - a. **What is it?** Confirm the will and the appointment of the executor and give notice to those who may have claims
  
  - b. **Do you always need to apply for a grant of probate?** You must apply if the deceased had assets that have a value of more than \$10,000 solely in their name or land solely in their name
  
  - c. **How long does it take?** About 2-3 months
  
  - d. **How do you obtain a grant of probate?** You must make an application to the court
  
  - e. **What does the grant of probate allow you to do?** The grant of probate allows the executor to have access to all the assets. The executor can pay bills, can distribute assets and can sell assets
  
8. **Who gets a copy of the will?**

Anyone who is a residual beneficiary. What if someone wants to see the will who is not a beneficiary? There is no obligation to produce the will but it is always best to have open communication.

**9. What taxes have to be paid?**

- a. The executor must file a tax return for any previous year not filed ( If the person died on Feb 28, 2011, he would have to file a tax return for 2010 just as he would have done if he had lived)
- b. The executor must file a tax return for that portion of year of death that the person lived (If the person died on Feb 28, 2011, then there would need to be a tax return filed for Jan 1, 2011 to Feb 28, 2011)
- c. The executor must file a tax return for any income earned in the estate after the date of death. If the estate carries on for a number of years, then the executor must file a tax return for every year that the estate is in existence.

**10. What is a clearance certificate?**

An Executor is responsible to make sure that the taxes are paid and thus before the executor distributes all of the money he can request a clearance certificate which seals the deceased's tax file and protects the executor from any more tax liability.

**11. Are there assets that are not governed by the will?**

Yes, any assets in which there is a named beneficiary such as RRSP, RRIF, Tax Free Savings Accounts, pensions and Life Insurance.

Any joint assets are also transferred to the surviving joint owner but there can be challenges to joint assets owned between parent and child and other joint ownership that is not between spouses.

**12. Can a will be challenged?**

It is difficult to challenge a will in Alberta at the present time. In 2012, new legislation may make it easier to challenge a will if there is evidence of a contrary intention.

If the person had capacity and was not unduly influenced then we believe that the person had testamentary capacity to make a will.

A person must support his or her dependent children and his or her spouse. If a deceased person did not provide sufficient funds for his or her spouse or dependent children, they can challenge the will to obtain sufficient proceeds to be supported. A dependent child is a child who is under the age of 18 or over the age of 18 but mentally or physically disabled and the disability makes them unable to earn a livelihood.

**13. What are the costs of a grant of probate?**

The court charges between \$25 -\$400 for estates. The range depends on the value of the estate but will not exceed \$400.

Legal fees are negotiable and should be negotiated. There is a tariff in which lawyers can charge \$2250 plus 1% of the estate. This can be too high for simple estates and thus an executor should compare rates before agreeing to a fee.

**14. Can the executor charge a fee?**

Yes, the executor is entitled to a fee of between 1-6% of the value of the estate depending on complexity and the amount of the work done by the executor. The executor will work with the lawyer to determine the appropriate fee. The fee is proposed to the beneficiaries to see if they agree. If they do not agree then the executor takes his case to court to have the court set the fee.

*Doris Bonora is a partner with the law firm of [Fraser Milner Casgrain LLP](#). The above is written for information only and should not be treated as legal advice. Doris Bonora can be reached at [doris.bonora@fmc-law.com](mailto:doris.bonora@fmc-law.com) or (780) 423- 7188.*

*Doris Bonora*

*[FMC Law](#)*

*2900 Manulife Place*

*10180-101 Street*

*Edmonton, Alberta*

*T5J 3V5*

*Phone: (780) 423-7188*

*Fax: (780) 423-7276*

*[doris.bonora@fmc-law.com](mailto:doris.bonora@fmc-law.com)*

*[dorisbonora.com](http://dorisbonora.com)*