



# FOUNDATION

for Niagara & Hamilton area Christian Schools

## The Role of Your Executor

Your *will* is a legally binding expression of your wishes for the distribution of your property or estate upon your death. The responsibility of your Executor (male) or Executrix (female) – often also referred to as your Personal Representative or Trustee - is to administer your estate according to your wishes. Your personal representative controls all aspects of your estate's administration and extends from identifying and protecting your assets to distributing them to the appropriate beneficiaries. As well, your personal representative is legally accountable to the beneficiaries.

### Who should you choose?

There are many important things to consider when deciding who you should choose as your personal representative.

Your personal financial circumstances, as well as family dynamics, will influence your decision; nevertheless, your personal representative should be someone who:

- shares your faith, is trustworthy and will agree with your wishes
- has the capabilities and the time to perform the duties required (a professional should be considered – possibly to assist - in complex estate situations)
- is likely to outlive you (an alternate executor/executrix should also be named in your *will*)
- is geographically close to you so that duties may be performed without inconvenience or delay (important to remember as well that, upon your death, your estate assumes residency in the province where your executor lives – resulting in additional potential tax implications)
- is impartial - if you anticipate controversy, choose someone other than family
- is able to exercise discretion should he or she also be named as trustee of a testamentary trust (a trust established through a *will*)
- you have spoken with about taking on this responsibility – and is willing!

## “I’ve been named as Executor - what am I expected to do?”

- **Immediate issues:** There may be many things that require your immediate attention. These might include finding and reviewing the most recent *will*, arranging the funeral and determining if any family members have immediate financial needs.
- **Protecting the estate:** Your role includes identifying the deceased’s assets and protecting them until final distribution. For example, you may need to arrange for the care of any vacant property, arrange for the safe custody of personal valuables and important documents, cancel club memberships, health insurance, subscriptions, credit cards, etc. and ensure adequate property insurance exists.
- **Valuing the estate:** Once the estate has been identified, it needs to be valued. This may include developing a full valuation of household goods, furniture, artwork, automobiles and other personal effects, determining benefits due under insurance policies and pension plans, and preparing a detailed inventory of assets and liabilities.
- **Tax issues:** While neither the federal nor the provincial governments imposes direct death duties, there are several tax issues that arise when a person dies. As a result, you will need to determine capital gains at the date of death, make the various elections permitted under federal and provincial laws, prepare and file final income tax returns and request clearance certificates (required before any general disbursements can be made).
- **Administration and distribution:** In addition, you will be required to clear the estate and distribute the assets. This may include arranging for probate of the *will*, if necessary, and settling all claims and debts, investing surplus cash and managing the investments to ensure that enough money is available to pay income tax and other liabilities. You should deliver personal property that was bequeathed, discharge any bank or private loans, mortgages or other liabilities, pay any legacies (planned gifts) and other bequests, and then distribute the assets to the beneficiaries. The beneficiaries will also require a full accounting of the estate’s administration.

## Are Executors compensated?

Although most family members and close friends may choose not to be compensated, the law allows for everyone to charge for their services. Acceptable fees for administration are usually found to be in the range of: 1% - 2.5% of the value of original estate assets plus 1% - 2.5% of capital distributed plus up to 5% of income from the estate.

*These fee guidelines are generally followed but in the case of conflict or pressure from the beneficiaries, the courts will establish a “fair and reasonable compensation”. A judge will consider the size of the estate, the duties involved with its care, the time required to perform those duties, the skill and ability necessary to do so and the success of the administration of the affairs of the estate.*

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