

# Be a Personal Representative



**Will**

## About CPLEA

The Centre for Public Legal Education Alberta, also known as CPLEA, is a not-for-profit, non-government organization committed to making the law understandable for Albertans. We offer **free** legal information and learning resources in plain language.

Our resources increase awareness and understanding of the law and empower Albertans to take action and, ultimately, gain better access to justice.

Visit [www.cplea.ca](http://www.cplea.ca) to learn more about the laws that impact your life.

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# Be a Personal Representative

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# Introduction

This booklet summarizes key information you should know before and while acting as a personal representative under someone's Will or a grant. The law can be complicated but understanding your responsibilities doesn't have to be.

This booklet replaces CPLEA's previous "Being a Personal Representative" booklet.

## **Don't miss these related CPLEA resources!**

- Estate Planning 101
- Capacity
- Be an Attorney
- Be an Agent
- Adult Guardianship and Trusteeship Act (AGTA)
- Getting a Grant of Probate or Administration
- Beneficiaries: Dying without a Will

Find the above resources as well as more information about planning ahead in different formats, including info sheets, FAQs, videos and blog posts.



**Get started** at [cplea.ca/planning-for-future-care/](https://cplea.ca/planning-for-future-care/)  
and [cplea.ca/willsandestates/](https://cplea.ca/willsandestates/)

# What is a Personal Representative?

A personal representative, also known as an **executor**, is:

- the person named in a **Will** to deal with the testator's estate according to the instructions in the Will **or**
- if the Will doesn't name a personal representative, the person who has priority in law to apply to the court for a grant naming them as the personal representative to deal with the testator's estate according to the instructions in the Will **or**
- if the deceased didn't make a Will, the person who has priority in law to apply to the court for a grant naming them as the personal representative to distribute the deceased's estate according to the law

To start acting as a personal representative, you must be 18 years or older and have **capacity**.

*The information in this booklet applies to all personal representatives, regardless of how you came into the role.*

A **testator** is a person who makes a Will.

A **grant** is a court order that confirms the personal representative named in it has authority to deal with the deceased's estate.

Learn more about **estates** on page 7. Learn more about **grants** on page 11.

A personal representative **cannot** make any decisions for a person while they are still alive. Only an **agent** named in a **Personal Directive** or a guardian named in a guardianship order can make personal decisions for the person while they are alive but no longer have capacity. And only an **attorney** named in an **Enduring Power of Attorney** (EPA) or a trustee named in a trusteeship order can make financial decisions for the person.

The person may also name you to be their agent or attorney or both. While this gives you the power to make some or all decisions for the person while they're still alive, you must separate your responsibilities. You have different legal obligations as an agent or attorney than you do as a personal representative.

Alberta's *Wills and Succession Act* sets out the rules for Wills. The *Estate Administration Act*, *Trustee Act* and *Surrogate Rules* set out the rules for personal representatives.



**Learn more** about Personal Directives and Enduring Powers of Attorney in CPLEA's Estate Planning 101 booklet: [www.cplea.ca/estate-planning-101.pdf](http://www.cplea.ca/estate-planning-101.pdf)



**Learn more** about guardianship and trusteeship orders in CPLEA's **Adult Guardianship and Trusteeship Act** booklet: [www.cplea.ca/AdultGuardianshipAndTrusteeAct.pdf](http://www.cplea.ca/AdultGuardianshipAndTrusteeAct.pdf)

## If you're a personal representative named in a Will

While you have the power to act as soon as the testator dies, you may still need a grant from the court to do certain things, like sell the testator's house and deal with their bank accounts.

The Will may name you to be a personal representative, co-personal representative or alternate personal representative.

- If you're named as the sole personal representative, you alone manage and wrap up the estate.
- If you're named as a **co-personal representative**, you share duties and tasks with the other named co-personal representatives. The Will should say whether you must act *jointly* (together) or *severally and jointly* (both alone or together). If the Will does not say anything, you must act jointly, meaning you and the other co-personal representatives must do all things together.
- If you're named as the **alternate personal representative**, the Will should say in what order you act. For example, if you're the first alternate personal representative, then you only act if the first-named personal representative can no longer act.

## If you're applying to court to be the estate's personal representative

If the Will doesn't name a personal representative or the deceased died without a Will, you can apply to be the personal representative of the estate *only if* you have priority in law. If the court issues a grant naming you as the personal representative, you have all the same authority as a personal representative named in a Will.

If the deceased *left a Will*, you must distribute the estate according to the testator's instructions in the Will.

If the deceased *died without a Will*, known as "dying intestate", you must distribute the estate to those who the law says are the deceased's beneficiaries.



**Learn more** about who has priority and how to apply for a grant in CPLEA's **Getting a Grant of Probate or Administration** in Alberta booklet:  
[www.cplea.ca/GrantOfProbateOrAdmin.pdf](http://www.cplea.ca/GrantOfProbateOrAdmin.pdf)



**Learn more** in CPLEA's **Beneficiaries: Dying without a Will** booklet:  
[www.cplea.ca/Beneficiaries.pdf](http://www.cplea.ca/Beneficiaries.pdf)

# What is an Estate?

An estate is the property the deceased owns at the time of their death, including their home, money, pets, vehicles and other belongings.

Once the deceased passes away, you use the estate property to pay their debts and taxes before distributing the rest according to either their instructions in their Will or, if there is no Will, the law.

Two types of property are **not** usually part of the deceased's estate and so the Will does not usually deal with them: property the deceased co-owns in joint tenancy and assets with designated beneficiaries.

## Property the deceased co-owns with others

The deceased may own land, a house or bank accounts as **joint tenants** with someone else. This means each co-owner of the property owns the whole property. When the deceased dies, the other joint tenant(s) continue to be owners of the property through the right of survivorship.

The other way to own property with someone else is as **tenants in common**. This means each co-owner owns a share of the whole property. Each tenant in common can decide what to do with their share, including selling it or giving it away in their Will.

## Assets with designated beneficiaries

The deceased may have bank accounts, investments, insurance policies or a pension plan where they've named a beneficiary for the specific account or plan.

The account or plan administrator will have a record of who the beneficiary is. If the deceased named a person to receive the asset, the money goes directly to the beneficiary once they prove the deceased has died. The money does not come to you to distribute. The exception is if the designated beneficiary is the estate. In that case, the money goes into the estate for you to deal with according to the Will or, if there is no Will, the law.

# How a Will Works

A Will is a legal document used after the testator passes away to deal with their **estate** according to the instructions in the Will. A Will only comes into effect once the testator dies.

A **codicil** to a Will is a document a testator makes after they make their Will that changes part of their Will.

## Is the Will or codicil valid?

To be valid, the Will and any codicils must check all three boxes:

- ☐ be in writing
- ☐ be signed by the testator
- ☐ meet **one** of the following requirements:
  - be a **formal Will** – typed up and signed by the testator and two witnesses, all in the presence of each other
  - be a **holograph Will** – written in the testator's own handwriting and not witnessed
  - be a **military Will** – written by the testator while on active service with the Canadian Forces (naval, land or air force) and not witnessed

If the Will or any codicils do not meet these three requirements, they are not valid. In some cases, you can apply to the court to validate an invalid Will or codicil.

A Will may:

- revoke previous Wills
- name a personal representative and alternate personal representatives
- name beneficiaries of specific gifts
- name beneficiaries of the residue of the estate
- create trusts for certain property and beneficiaries
- if the testator has children under 18 years, name someone to care for them
- set out what the testator wants to happen with their body
- set out funeral arrangements

A Will made outside Alberta is valid in Alberta if it meets the legal requirements above. The court also has the power to validate a Will that does not meet all the legal requirements.



A Will can deal with property in and outside Alberta. You may have to apply to the court in the province where the property is located for a grant to deal with that property.

Learn more about **grants** on page 11.



**Learn more** about **who are a child's guardians** on CPLEA's website about family law in Alberta: [family.cplea.ca](http://family.cplea.ca)

## Types of beneficiaries in a Will

There are two different types of beneficiaries: those of specific gifts and those of the residue of the estate. Beneficiaries can be individuals or charities.

A **specific gift** is specific property that the Will says goes to a specific beneficiary. If the specific property no longer exists when the deceased dies, the beneficiary doesn't receive the gift or anything in its place.

→ **EXAMPLE** The testator wishes for their oldest child to have their wedding ring. If the testator loses, sells or gives away their wedding ring before they die, the oldest child doesn't get the ring or something of similar value.

The **residue** of the estate is the rest of the assets in the estate once you pay the debts and taxes, and give away the specific gifts. You will usually sell everything else so that all you have left is money to divide between the **residual beneficiaries**.

→ **EXAMPLE** The Will says the residue of the estate shall be divided equally among the testator's grandchildren. If the residue of the estate is worth \$100,000 and there are 5 grandchildren, each grandchild gets \$20,000.

A testator doesn't have to name any beneficiaries of specific gifts, but they should say who gets the residue of their estate. If the Will doesn't list beneficiaries for every piece of property **and** doesn't name a residual beneficiary, then you must distribute the residue to those who the law says are beneficiaries. It's the same people who would inherit the estate if the testator didn't have a Will.



**Learn more** in CPLEA's **Beneficiaries: Dying without a Will** booklet: [www.cplea.ca/Beneficiaries.pdf](http://www.cplea.ca/Beneficiaries.pdf)

## Trusts

A trust is a way of holding property. The **trustee** holds and manages the trust property for the **beneficiaries**.

Sometimes a Will creates a trust to hold money for a specific period of time for a beneficiary who is a minor or a dependent.

All trusts must have a trustee. If the Will creates a trust, it must say who the trustee is. It may be you, another adult, a registered trust company or the Public Trustee.

If you are the trustee, you must invest the trust's assets and file annual trust tax returns. You are also responsible for making payments from the trust to the trust's beneficiaries as the Will instructs.

→ **EXAMPLE** A parent has two children under 18 years. Their Will says each child shall receive half of the parent's estate once they each turn 21 years. The Will says the personal representative shall hold the money in trust for the children until they reach 21 years. Before each child reaches 21 years, the trustee can pay money from the trust to the children's guardian for the benefit of each child, such as for their education or extracurricular activities. If the parent dies while the children are young, the personal representative must continue to manage the money in the trust until each child reaches 21 years. Then they can pay out the money that's left to each child.

# How a Grant Works

A grant is a court order that confirms you have authority to deal with the deceased's estate.

There are different types of grants:

- A **grant of probate** confirms the Will is valid and that, as the personal representative named in the Will, you have authority to deal with the estate.
- A **grant of administration with Will annexed** names you as the personal representative when there is a Will but it doesn't name a personal representative.
- A **grant of administration** names you as the personal representative if there is no Will or if the Will is invalid.
- A **grant of resealed probate/administration** allows you to deal with property in one province after you've already gotten a grant of probate/administration in another province.

If you are the personal representative named in the Will, you can apply for a grant. For the other grants, you can apply to the court naming you as the estate's personal representative *only if* you have priority in law to apply.

If the situation calls for one, you must get a grant of administration with Will annexed, a grant of administration or a grant of resealed probate/administration before you can start acting as the personal representative.

A grant of probate, though, is not always necessary. It depends on what is in the estate. A grant of probate *may be* necessary if:

- the deceased owned real estate on their own or as a tenant in common
- a financial institution requires a grant to release money or other assets
- the estate is complex (such as lots of assets, lots of beneficiaries, or beneficiaries that are companies, trusts or other organizations)
- someone is challenging or might challenge the validity of the Will

Each province has the authority to issue grants dealing with property within its borders. The Court of King's Bench of Alberta can issue grants to deal with property owned in Alberta by residents and non-residents of Alberta. For example, if the deceased lived in Ontario and owned property in Ontario and Alberta, the Alberta court must issue a grant to deal with the Alberta property and the Ontario court must issue a grant to deal with the Ontario property.



**Learn more** about grants in CPLEA's **Getting a Grant of Probate or Administration in Alberta** booklet: [www.cplea.ca/GrantOfProbateOrAdmin.pdf](http://www.cplea.ca/GrantOfProbateOrAdmin.pdf)

# Personal Representative Duties and Core Tasks

Your responsibilities and duties **start** when the deceased dies.

Your responsibilities and duties **end** when one of the following happens:

- a court decides the Will is invalid or you can no longer act
- you lose capacity
- you decide you no longer want to be a personal representative (though once you start acting, you cannot stop unless the court allows you to)
- you die

## Duties

You must perform your role honestly, in good faith, and using care, skill and diligence.

If there is a valid Will, you must follow the testator's intentions and lawful instructions. If there is no Will, you must get a grant and follow the law about who the beneficiaries are. You must also follow any directions from the court.

You owe a **fiduciary duty** to the estate beneficiaries, meaning you must act in the best interests of the beneficiaries when dealing with the estate property. This means maintaining the estate's value. It doesn't mean always doing what the beneficiaries want.

If you work in a job that requires a higher skill level for the core tasks done by personal representatives, you must apply those higher skills to your role as a personal representative.

You can hire professionals to help you if there is enough money in the estate to pay them. For example, you may hire an accountant to file taxes, an investment manager to invest the estate money until you're ready to give it to the beneficiaries, a realtor to sell the deceased's home or a lawyer to help you apply for a grant. However, you are still responsible for all decisions.

## Core tasks

The law sets out core tasks of a personal representative:

- locate all the estate's assets
- apply to the court for a grant, if needed
- pay the funeral costs (from the estate's assets)
- pay the estate's debts and taxes (from the estate's assets)
- distribute the remaining money and property (if any) according to the Will or, if there's no Will, the law

There are many steps you'll have to take to complete these core tasks. Following the steps in the "Once the Deceased Dies" section is a good starting point.

# Before You Agree to Act

Below are some things you should think about before agreeing to act as a personal representative, either under a Will or if you have priority in law to apply for a grant.

## **Do you want to act?**

The testator of a Will should talk to you before they name you as their personal representative. You can decide at that point whether you are willing to act when they pass away. If you decide you don't want to be a personal representative at any time before the testator dies, talk to the testator right away so they can change their Will, if necessary. Once the testator dies, you can renounce (quit) **before** you take any steps as the personal representative.

If there's no Will and you have priority in law to apply for a grant, you can choose not to apply for a grant. You can name someone else to apply or let the person with the next highest priority apply.

Once you start acting as the personal representative, you cannot renounce unless the court allows you to do so.

## **What is your relationship with the deceased?**

You may be a family member or close friend of the deceased. It's important to know the testator well enough to understand what assets and debts they have.

## **What financial obligations does the deceased have?**

Being a personal representative can be complicated if:

- there are many beneficiaries
- some or all of the beneficiaries are hard to find
- the deceased owns a business
- the deceased has a lot of investments or debts
- the Will includes a trust, such as for minor or adult dependent children
- someone has or may challenge the Will in court
- the deceased's family does not get along

### **Do you have the time to be a personal representative?**

Being a personal representative can take a lot of time and energy. It can take a few years or more to wrap up an estate, depending on how complex the estate is. During this time, you'll have to file annual taxes for the estate, manage and protect the estate's assets, and communicate with beneficiaries.

### **Are you well suited to be a personal representative?**

Being a personal representative can be stressful. It requires you to be good with money, paperwork and communication. You will have to sort through and sell the deceased's property. You may have to apply to the court for a grant. You will have to keep beneficiaries updated on your work.

### **Do you want to be paid?**

The estate must reimburse you for any expenses you incur, such as for photocopying and parking.

You can also receive payment for your time. Sometimes a testator will specify an amount or percentage in the Will.

If the Will doesn't mention payment for your time, or if there is no Will, you have two options:

- propose how much you should get paid and get approval from the estate's residual beneficiaries *or*
- apply to the court for reasonable compensation

### **Are you organized?**

You must keep all the estate's documents organized as you must give an accounting of your work administering the estate to the beneficiaries at least every two years. You must prepare financial statements showing the property and money in the estate and any money paid out.

### **What are the deceased's family dynamics?**

Dealing with others can be challenging, especially after someone has passed away. If the deceased has complicated family relationships, things can get messy.

# If You Agree to Act

If you agree to the testator naming you as their personal representative in their Will, there are several steps you can take while the testator is still alive to help you perform your role once they pass away.

## **Ask the testator where the original Will is and if you can review it**

The testator should store their original Will in a safe place. You should know where it is and be able to access it quickly.

If you can, review the Will quickly to get an idea of who the beneficiaries are and what the testator's wishes are.

## **Ask the testator if they also have a Personal Directive and an Enduring Power of Attorney**

If they don't, suggest they make both documents.

If they do, ask who are their agent (under their Personal Directive) and attorney (under their Enduring Power of Attorney). You may be filling one or both of these roles too. If you're not the agent and attorney, you may have to get information from them to wrap up the estate if they were acting right before the deceased died.

## **Ask the testator what they want to happen to their body and what kind of funeral they want**

Find out if the testator wants to be buried or cremated. Find out if they want a funeral and what kind they want.

If they've already made arrangements for their body or funeral, find out what these plans are, what they've already paid for and who to contact when they die.

## **Ask who the beneficiaries of their estate are**

If you aren't able to read the Will, it can be helpful to know who the beneficiaries are and how to contact them.



## **Talk with the testator about what property they have**

This is the most important conversation you can have with the testator! It's hard to wrap up their estate if you don't know what's in their estate.

You'll want to know the following information:

- Do they own or rent their home?
- Do they own other real estate? If so, where is it? Do they own it alone or with others?
- Do they own other valuable property, such as art, jewelry or vehicles? If so, where is this property?
- Do they own any property with others? If so, who are the other owners? Do they own the property as joint tenants or tenants in common?
- Where are their bank accounts? Do other people have access to the accounts?
- Do they have credit cards? If so, where are they?
- Do they have debts? If so, who do they owe money to and how much?
- Do they receive any government benefits? If so, which ones?
- Do they have investments, pensions or life insurance policies? If so, who administers these accounts? Has the testator named beneficiaries for these accounts?
- Where do they keep their important documents?

You can even ask the testator to make a list of their assets and debts and keep it with their Will. The testator should update this list as their property changes.

## **Request the testator inform you if anything changes**

The testator can change their Will at anytime as long as they have capacity. They may change the beneficiaries of their estate or who will be their personal representative. They may also buy or sell new property. Ask the testator to keep you informed of any changes that affect your role.

# Once the Deceased Dies

You can start acting as the personal representative as soon as the deceased dies *if*:

- you're the first-named personal representative in the deceased's valid Will *and*
- you are 18 years or older and have capacity

If there's no valid Will, the law says who makes what decisions. Some decisions need to be made right away, such as what to do with the deceased's body and registering their death. The law says who has priority to make these decisions. The law also says who can apply for a grant to deal with the deceased's estate and who the estate's beneficiaries are.

## BEFORE YOU GO ON

The activities below are not necessarily in order of how you should complete them. You may have to complete some activities at the same time while others will be ongoing. It's a good idea to read through this section in full before you decide what steps you should take first.

## Deal with the deceased's body

*If there's a Will*, review it to see if the deceased left instructions for their body and the farewell ceremony. If they didn't leave instructions in their Will or somewhere else, make decisions based on what you think the deceased would have wanted.

*If there's no Will*, the law says who makes decisions about the deceased's body. The people with priority include, in order:

- spouse or adult interdependent partner who was living with the deceased at the time of their death or who was living apart from the deceased for reasons other than a relationship breakdown
- deceased's adult child
- deceased's parent
- deceased's guardian under the *Adult Guardianship and Trusteeship Act*, *Child, Youth and Family Enhancement Act* or *Family Law Act*

## Register the death and get a death certificate

All deaths that occur in Alberta must be registered with the Government of Alberta's Vital Statistics Office.

Most times, the body goes to a funeral home to prepare it for burial or cremation even if there won't be a funeral. The funeral home will give you the **Registration of Death** form to complete and will send it to Vital Statistics for you. The funeral home will also give you a Funeral Director's Statement of Death as proof of death before the government issues the death certificate.

You must apply to the government for a **death certificate** – a legal document with information about the deceased, including their name, date and place of death, and cause of death. You'll need this certificate as proof of the deceased's death when carrying out your role. It's a good idea to order a few copies.

## Find and review the Will

If the deceased has a Will, find the original document. You'll need this as proof you have authority to act. It's also a good idea to get a few notarized copies of the Will, meaning a notary certifies that a photocopy of the document is a true copy of the original.

If you don't know where the Will is, look in the deceased's home or safety deposit box. Or ask the deceased's family, friends, lawyer, accountant or attorney under their Enduring Power of Attorney. You can also check the Alberta Will Registry, a service provided by a non-profit organization in Alberta.



**Learn more** about the Alberta Will Registry on their website: [www.albertawillregistry.ca](http://www.albertawillregistry.ca)

## Apply for a grant

*If you're named as the personal representative in the Will*, you may need to apply for a grant of probate to allow you to deal with some of the estate's property. It's also a good idea to get a grant if you think someone may challenge the Will.

*If there's no Will or the Will doesn't name a personal representative* and you have priority in law to apply, you'll need a grant before you can deal with any of the estate's property.

Applying for a grant involves lots of steps and paperwork. You may want to hire a lawyer to help you.



**Learn more** about how to apply for a grant in CPLEA's **Getting a Grant of Probate or Administration in Alberta** booklet: [www.cplea.ca/GrantOfProbateOrAdmin.pdf](http://www.cplea.ca/GrantOfProbateOrAdmin.pdf)

## Notify all the beneficiaries and potential claimants

You must notify all beneficiaries named in the Will and anyone else who may have a legal claim on the estate, such as a partner, child or separated spouse. If there's no Will, the law says who the beneficiaries are.

If the deceased had minor children or if any of the beneficiaries are minors, you must notify the Office of the Public Guardian and Trustee.

The Government of Alberta created specific forms for you to use when giving notice. It's a good idea to get legal advice to make sure you notify everyone you need to and include the right information.

To avoid potentially being personally liable for the estate's debts, you also must advertise for possible creditors in local newspapers (print or online).

## Manage the estate

Managing the deceased's assets and debts can be a lot of work depending on the size of the estate. It's a good idea to start a filing system to keep track of everything that comes up, including important documents and the decisions you make.

## Make a plan to deal with the estate

If the deceased didn't leave a list, you'll have to search through their documents to figure out what assets and debts they had. Documents may be in a filing cabinet or safety deposit box, or on their computer.

First, make a list of everything. If you apply for a grant, you'll need this information. You may want to organize your list as follows:

- **Real property:** the deceased's home, land and other real estate that they owned solely or as tenants in common
- **Personal property:** including cash, bank accounts, investments, pensions and other benefits, vehicles, valuable belongings, etc.
- **Debts:** any money the deceased owes, including unpaid bills, mortgages, loans, taxes, credit cards, legal claims against them, etc. Note the deadline for paying each debt.
- **Beneficiaries:** the people you will be distributing the estate to and the gifts they each receive

Make a separate list for property the deceased owns in joint tenancy or for which they have designated a beneficiary.

Learn more about [joint tenancy and designated beneficiaries](#) on page 7.

Second, gather documents about these assets and debts. For example, certificates of title for real estate, copies of mortgages, share certificates, investment documents, copies of insurance policies, bank statements, and appraisals for real estate and other valuable belongings.

Third, take immediate action where necessary. For example, you should:

- contact the Canada Revenue Agency and give them the deceased's date of death
- cancel all government benefits the deceased was receiving before they died, such as Canada Pension Plan, GST credit, Canada child benefit or Old Age Security
- contact the deceased's bank to open an estate account

## Notify joint tenants and designated beneficiaries

If the deceased owns property in joint tenancy, you must notify the other joint tenants that the deceased has died. You or the other joint tenants must take steps to remove the deceased's name and transfer the property to the surviving joint tenants. You will need a death certificate as proof of the deceased's death.

To transfer a bank account to the other joint tenants, follow the bank's process.

To transfer real estate to the other joint tenants, you, another joint tenant or a lawyer must take the following steps:

- complete **FORM A: Statutory Declaration Re: Proof of Death**
- attach proof of death, such as an original death certificate
- file both documents with Alberta's **Land Titles Office**
- pay the filing fee

If the deceased designated beneficiaries for certain assets, you can let the beneficiaries know who to contact. They'll likely need proof of the deceased's death, such as a notarized copy of the death certificate, from you.



**Find FORM A and more instructions** on the Government of Alberta's website:  
[www.alberta.ca/change-land-title-ownership](http://www.alberta.ca/change-land-title-ownership)

## Apply for death benefits

A death benefit is money owed to a beneficiary when the benefit holder dies. Various public and private programs offer death benefits.

**Examples of death benefits include:**

- Canada Pension Plan (CPP) death benefit, survivor's pension and benefits for children under 25 (federal government program for deceased CPP contributors)
- Allowance for the Survivor (federal government benefit for low-income spouse or partner of the deceased)
- Public pension plans (such as for government employees or former employees)
- Private company or union pension plans (such as for employees of certain companies or unions)
- Workers' Compensation Board (WCB) benefits (if the death was work-related)
- Funeral expense and grief counselling support (if the death was a homicide)
- Last Post Fund (funeral benefits for eligible veterans)
- Benefits from social groups or clubs the deceased belonged to

***You must inquire if you have good reason to believe the estate can claim a death benefit from a program.*** Find more information about death benefits on each program's website.

If the deceased received income or benefits from one or more of these programs before they died, notify the program immediately. The estate may not be able to keep the money if payments keep coming.

## Protect the assets

You are responsible for the estate's assets until you have distributed everything to the beneficiaries.

**Specific tasks may include:**

- ☐ access and make a list of what's in the deceased's safety deposit box
- ☐ arrange to safely store valuable items
- ☐ collect from others any monies owed to the deceased
- ☐ make sure the deceased's vehicle is safely stored
- ☐ make sure the deceased's home is secure and maintained (check appliances are off, mow the lawn, shovel the snow, lock the doors, install security cameras if necessary)
- ☐ make sure the deceased's pets are cared for

- ☐ if the deceased rented their home, arrange with the landlord to remove the deceased's property and end the lease or arrange a sub-lease
- ☐ cancel subscriptions and memberships, such as the deceased's cell phone plan, streaming services, gym membership, health insurance
- ☐ cancel the deceased's driver's license
- ☐ close the deceased's social media, email and other online accounts
- ☐ ensure there is enough insurance for the deceased's property until you sell or distribute it
- ☐ contact Canada Post to reroute the deceased's mail to you
- ☐ send change of address forms to organizations you will be working with as the personal representative, such as banks

## Pay the debts

You must pay the estate's debts before you can give anything to the beneficiaries.

If there are more debts than assets, the estate is an "insolvent estate". This means the beneficiaries may not get anything.

The law sets out a system for paying off debts, called "marshalling". It's a good idea to get legal advice to make sure you pay debts correctly and do not become personally liable. You must pay mortgages and funeral and estate administration expenses before paying other debts proportionately and without any preference or priority.

## Sell property except for specific gifts

You can start selling and consolidating the estate property once:

- you have a grant (if you need one)
- you've paid the estate's expenses and debts, *and*
- you've made sure there are no claims against the estate

The goal is to turn all assets that are not specific gifts into cash that you can distribute to the residual beneficiaries.

Specific tasks may include selling the deceased's house, vehicle and belongings, cashing in investments, selling shares and cancelling insurance policies.

As you go through this process, it's important to keep records of every transaction and decision. Keep copies of all letters, forms, contracts, statements, policies, etc.

***Remember, you cannot sell any property that is listed as a specific gift in the Will, and you cannot deal with assets owned in joint tenancy or with designated beneficiaries.***

## File income tax returns

The estate continues to be a taxpayer by law until you've paid all its debts and distributed all its assets to the beneficiaries.

First, you must file tax returns for **previous years** that the deceased did not file.

Second, you must file a **T1 Income Tax and Benefit Return**, or **Final Return**, for the deceased to report income from January of the year they died up to the day they died. If the deceased died between January 1st and October 31st, the final return is due by April 30th of the following year. If the deceased died between November 1st and December 31st, the final return is due within 6 months after the date of death.

There are **three optional returns** you can file for the year the deceased died: **Return for Rights or Things**, **Return for a Partner or Proprietor**, and **Return for Income from a Graduated Rate Estate**.

Third, you must file a **T3 Trust Income Tax and Information Return** for every year the estate exists to report income the estate earns after the deceased's death.

If the deceased had assets or income in another country, you may need to file a foreign income tax return as well.



**For more information** talk to an accountant or visit the CRA's website: [www.canada.ca/en/revenue-agency/services/tax/individuals/life-events/doing-taxes-someone-died/prepare-returns.html](http://www.canada.ca/en/revenue-agency/services/tax/individuals/life-events/doing-taxes-someone-died/prepare-returns.html)

## Prepare financial statements

You must prepare financial statements for the residual beneficiaries at least every two years showing the property and money in the estate and any money paid out. The court can order a longer or shorter accounting period.

Beneficiaries of specific gifts only get an accounting for that gift, not for the whole estate.

There are lots of rules about accounting for your work as a personal representative. It may be a good idea to hire an accountant to help you prepare the financial statements.



## Wrap up the estate

The final wrap up of the estate can be quick or take a while, depending on the situation.

### Apply for a Clearance Certificate

After you file all the necessary tax returns and pay the income tax assessed, you must apply for a Clearance Certificate. The CRA issues this certificate after the estate has paid all its taxes.

For your own protection, you should have this certificate before you begin to distribute the estate. If you distribute the estate without this certificate, you may be personally liable for the estate's unpaid taxes, plus interest.

### Complete the passing of accounts

Prepare a final financial statement for the residual beneficiaries' approval. The financial statements include a schedule of distribution and a schedule of your compensation. This process is called "passing of accounts".

The residual beneficiaries can complete form [ACC 12](#), which says they approve the financial statements and release any claims they may have against you and the estate.

If the residual beneficiaries do not all sign a release, you must apply to court for an order approving the final statements or allowing you to proceed without formally passing accounts.

It's a good idea to get help from a lawyer to complete this step.

### Distribute to the beneficiaries

The (almost) final step is to distribute the estate to the beneficiaries.

You should **not** distribute the estate until at least 6 months after the court issues the grant. Some dependents can make a claim against the estate within this period. If everyone who has a possible claim against the estate signs a release saying they won't challenge the Will, then you can distribute the estate sooner. It's a good idea to get legal advice before accepting these releases.

You also must wait until after you've paid all debts and expenses and received a Clearance Certificate from the CRA. If you distribute the estate too soon, you could be personally liable for any claims against the estate.

**If there's a Will**, follow the instructions in the Will about who gets what. For beneficiaries of specific gifts, transfer the property to them. For residual beneficiaries, write them a cheque or get a bank draft for their share.

**If there's no Will**, you must distribute the estate to those the law says are the beneficiaries.

Get a receipt from each beneficiary you give property or money to as proof they received their portion of the estate.



**Learn more** in CPLEA's **Beneficiaries: Dying without a Will** booklet:  
[www.cplea.ca/Beneficiaries.pdf](http://www.cplea.ca/Beneficiaries.pdf)

## **Close the estate bank account**

Once you've distributed everything to the beneficiaries, there should be no money left in the estate bank account. You can then close the account.

## **Act indefinitely**

Unless the court discharges you from the role, you remain responsible for the estate indefinitely. This means you may have to deal with things that pop up years later.

If the Will creates a trust, such as for minor or dependent children, and you're the trustee, you'll have to keep acting until the trust is fully distributed.

# When Problems Arise

Issues may come up. You may not be able to find the Will, or there may be more than one Will. Someone may challenge the Will. You may disagree with a co-personal representative or the beneficiaries. Or there may not be enough money in the estate to pay the deceased's debts.

If you have to hire a lawyer or go to court on behalf of the estate, you can usually pay legal fees and expenses from the estate's assets.

## If you cannot find the original Will

If you cannot find the original but you have a copy of the Will, you may be able to apply to court to validate the copy. It's a good idea to get legal advice right away. You cannot start acting as the personal representative without the court's permission.

If you can't find the original or any copies, you cannot act. The person with priority in law must apply to the court for a grant of administration to act as the personal representative.

## If there is more than one Will

If there is more than one Will, review them all.

The most recent one that meets all the legal requirements for making a Will is usually the valid one. However, previous Wills that also meet the legal requirements for a Will continue to be valid if the testator has not revoked them.

The testator can revoke a Will by:

- making a new Will that says it revokes all previous Wills and testamentary dispositions (which includes codicils)
- making a written declaration that revokes a previous Will. This written declaration must meet the same legal requirements as making a Will.
- burning, tearing or destroying their Will (or having someone else do it) with the intention of revoking it

You must make reasonable efforts to make sure you have the correct Will. If there is a dispute over which Will is the official one, the court can decide.

## If someone challenges the Will

Someone may challenge the validity of the Will. Maybe they think there is a more recent Will or that the testator didn't have capacity when they made the Will. You can hire a lawyer to represent the estate and pay legal fees from the estate's assets.

## **If the testator did not provide for their family**

A person has a legal obligation to provide for certain family members when they die. If the testator does not leave enough money in their Will for these family members, they can ask the court to give them more money from the estate. The court looks at the whole situation before deciding whether to give support to a family member.

## **If you need advice or direction**

You can apply to the court for advice or direction about anything to do with managing the deceased's estate.

## **If you and a co-personal representative disagree**

If there are two or more co-personal representatives, you must act unanimously unless the Will or the court says otherwise.

If you and your co-personal representatives disagree on something, review the Will. If it gives a process for resolving disagreements, follow the process. If the Will doesn't say how to resolve disagreements, or if there is no Will, you can apply to the court for its advice or direction.

## **If you and the beneficiaries disagree**

Remember, you have a fiduciary duty to act for the beneficiaries of the estate. Sometimes keeping them informed can help reduce conflict. It's also a good idea to get legal advice about how to proceed. If you and the beneficiaries cannot resolve the issue, you may have to ask the court to decide.

## **If you make a mistake**

No one is perfect. As a personal representative, you are legally responsible for the estate. If you've made a mistake, get legal advice or apply to the court for advice or direction.

# Glossary

An **adult interdependent partner**, or **AIP**, is a person in an adult interdependent relationship.

An **adult interdependent relationship**, or **AIR**, is unique to Alberta and describes an unmarried couple who live together, with or without children. It exists in three situations:

1. Two people have signed an Adult Interdependent Partner Agreement.
2. Two people have lived together in a relationship of interdependence for three or more years.
3. Two people live together in a relationship of interdependence and have a child together, by birth or adoption.

A relationship of interdependence exists where two people share one another's lives, are emotionally committed to one another and share their home and finances.

An **agent** is a person named in a Personal Directive to make personal decisions for the maker.

An **attorney** is a person named in an Enduring Power of Attorney to make financial decisions for the donor.

A **beneficiary** is someone who receives a benefit from someone else, such as receiving property or money from a deceased person according to their Will or the law.

**Capacity** means a person can understand and appreciate the nature of their decisions.

A **codicil** to a Will is a document a testator makes after they make their Will that changes part of their Will.

A **donor** is a person who makes an Enduring Power of Attorney.

An **Enduring Power of Attorney** (EPA) is a legal document that names an attorney to make financial decisions for the donor while they are still alive but do not have capacity.

A **grant** is a court order that confirms the personal representative named in it has authority to deal with the deceased's estate.

**Joint tenants** are co-owners of property where each owns the whole property. When one co-owner dies, the other joint tenants continue to own the property through the right of survivorship.

A **maker** is the person who makes a Personal Directive.

A **Personal Directive** is a legal document that names an agent to make personal decisions for the maker while they are still alive but do not have capacity.

A **personal representative**, also known as an executor, is a person named in a Will to deal with the testator's estate when they die.

**Tenants in common** are co-owners of property where each owns a share of the property. Each tenant in common can decide what to do with their share, including selling it or giving it away in their Will.

A **testator** is a person who makes a Will.

A **Will** is a legal document that sets out the testator's wishes for their property after they pass away. It names a personal representative to deal with the testator's estate. It can also name guardians for the testator's minor children and what the testator wants to happen with their body.

# More Resources

## Legal Support

### **Free legal clinics in Alberta**

List of legal clinics across Canada that provide free legal support to those who qualify: [www.cplea.ca/legalhelp/](http://www.cplea.ca/legalhelp/)

### **Alberta Legal Coaches and Limited Services**

Lawyers who provide coaching and limited services, for a fee: [albertalegal.org](http://albertalegal.org)

### **Law Society of Alberta Lawyer Directory**

Find a lawyer in Alberta by name, location, practice areas, language(s) spoken, gender and whether they offer limited scope retainers: [www.lawsociety.ab.ca/public/findalawyer/](http://www.lawsociety.ab.ca/public/findalawyer/)

## Government & Court Services

### **Alberta Law Libraries**

Free legal information and resources available at courthouse libraries across Alberta. Some services are also available online: [lawlibrary.ab.ca](http://lawlibrary.ab.ca)

### **Government of Alberta**

Services and information about advance care planning and death: [www.alberta.ca/death](http://www.alberta.ca/death)

### **Office of the Public Guardian and Trustee**

An Alberta government office providing services and support for vulnerable Albertans and their families, including help with guardianship and trusteeship orders: [www.alberta.ca/opgt-supports](http://www.alberta.ca/opgt-supports)

### **Alberta King's Printer**

For free online and print copies of Alberta laws: [kings-printer.alberta.ca/Laws\\_Online.cfm](http://kings-printer.alberta.ca/Laws_Online.cfm)

## Notes

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## Still have questions? CPLEA has you covered!

### More on this topic

Check out more booklets, checklists, blog posts and videos from the Centre for Public Legal Education Alberta (CPLEA) about estate planning, including about:

- Capacity
- Make a Personal Directive checklist
- Make an Enduring Power of Attorney checklist
- Make a Will checklist
- Be an Agent
- Be an Attorney
- Be a Personal Representative
- Getting a Grant of Probate or Administration
- Beneficiaries: Dying without a Will
- Adult Guardianship and Trusteeship Act

Visit [www.cplea.ca/planning-for-future-care](http://www.cplea.ca/planning-for-future-care) and [www.cplea.ca/willsandestates](http://www.cplea.ca/willsandestates) to learn more!

### Other legal topics

CPLEA also offers free legal information about other legal topics, including:

- Abuse and protection
- Consumer, money and debt
- Family and relationships
- Housing
- Recreation
- Resolving disputes
- Work

Visit [www.cplea.ca](http://www.cplea.ca) to get started!