

\$4.99

Executor and Trustee Duties and Checklist

BRITISH COLUMBIA



E. info@crlawyers.ca
crlawyers.ca

 **CR Lawyers** LLP

DUTY OF CARE

In acting as a Trustee, your conduct must meet a certain standard. In legal terms, you have a duty of care in how you handle an Estate. You owe this duty of care to all persons interested in the Estate. If you do not meet this standard, you are personally liable for the losses that occur in the Estate because of your failure. Treat the estate property as if it were your own. You must act honestly, prudently, and to the best of your ability. If you do, you likely are not responsible for things that go wrong in the Estate. The following are some things you should pay particular attention to in handling an Estate:

1. Do not deal with estate property in any way that personally benefits you. Even further, do not deal with estate property in any way that even appears to personally benefit you.
2. Keep a detailed record of the careful thought you have put in to making any decision. You may even want to keep a journal of your activities as a Trustee.
3. Invest estate property, as needed, in safe investments. However, this does not mean that you should invest only in fixed income products.
4. Do not choose a side in any discord that occurs among the beneficiaries. Instead help them to look to objective standards to resolve their issues. As best as you can, continue on with your prudent handling of the Estate.

Above all, really listen to the concerns of the beneficiaries.

Your duty as an Executor and Trustee ("Trustee") is to carry out the wishes of the deceased person, the Will Maker, as expressed in his or her Will. The Will Maker requires you to clear up his/her personal affairs and give out the Estate property to his/her heirs. You are accountable to the heirs and other persons interested in the Estate. What if you have been asked to be a Trustee, even accept, and then the circumstances change? Or, perhaps, you were never asked to be the Trustee, but now you need to make a decision whether to act? You have the choice at the beginning of an Estate whether you will act as the Trustee or not. Note that you must not intervene in the Estate before you have made your decision. That law indicates that once you "intermeddle" in the Estate, you have taken on the responsibility to act. Usually this means you will act as the Trustee until the Estate is concluded. To renounce your Trusteeship before you act is much easier than getting a Court to release you later on.

Handling an Estate is not just about getting the job done - how you get it done is important as well. Particularly in an Estate, emotions are high as the heirs and others experience grief, loss, and other strong emotions. You should be up to dealing with hard issues in a way that helps preserve harmony and good feelings among all concerned. Your qualities of impartiality, objectivity, and a good sense of fairness are invaluable in fulfilling the Trustee's role. Within your overall duty as Trustee, you have three general phases of settling an Estate. These phases are outlined below, along with some of the tasks associated with each phase. Also, as a Trustee you are expected to complete his or her administration of an Estate within one year and therefore a broad timeline as to the completion of the tasks is also provided.

Phase 1: Gather Information and Safeguard the Estate Property

WITHIN 2 WEEKS (OR SO)

- ☐ Check for organ donor instructions
- ☐ Notify relatives
- ☐ Look for funeral arrangements or instructions
- ☐ Locate and review Will for funeral instructions
- ☐ Arrange for care of pets
- ☐ Meet with other Trustees, if any
- ☐ Make arrangements for the disposition of the body and funeral, memorial or other similar services
- ☐ Obtain proof of death certificates
- ☐ Ensure financial needs of deceased's dependents are met
- ☐ Take possession of personal items, cash, and other valuables
- ☐ Protect or secure the safety of any estate property, and terminate lease(s), if applicable
- ☐ Provide for the protection and supervision of vacant land and buildings
- ☐ Examine existing insurance policies, advising insurance companies of the death and placing additional insurance, if necessary
- ☐ Dispose of perishable items
- ☐ Determine the names and addresses of those beneficially entitled to the Estate properly and notify them of their interests

WITHIN 1 MONTH (OR SO)

- ☐ Plan for ongoing, regular communications with beneficiaries
- ☐ Review all materials and records regarding deceased's affairs
- ☐ Arrange with a bank, trust company or other financial institution for access and list the contents of safety deposit box
- ☐ Apply for and collect Canada Pension Plan Death Benefit
- ☐ Cancel Old Age Security
- ☐ Locate Social Insurance card, passport and driver's license, health card and cancel passport and driver's license (you will require Social Insurance number for processing the Estate)
- ☐ Cancel health care insurance and destroy card
- ☐ Cancel subscriptions and services
- ☐ Determine the full nature and value of property and debts of the deceased as at the date of death and compile a list, including the value of all land and buildings and a summary of outstanding mortgage, leases and other encumbrances
- ☐ Locate all life insurance policies, notify insurers of death
- ☐ Apply for and collect life insurance benefits
- ☐ Advise any joint tenancy beneficiaries of the death of the deceased

Phase 2: Administer the Estate

WITHIN 3 MONTHS (OR SO)

- ☐ Retain a lawyer to advise on the Administration of the Estate, to Apply for a Grant of Probate from the Court or to bring any matter before the Court
- ☐ Retain a Chartered Professional Accountant (CPA) to file terminal tax return and apply for clearance certificate(s)
- ☐ Pay Probate taxes (fees) to the Provincial Government
- ☐ Obtain notarial copies of Grant of Probate for transfer agents (obtained through a lawyer)
- ☐ Review investments and make changes where needed
- ☐ Determine whether to advertise for claimants, investigate all claims and debts
- ☐ Determine if there are any family law issues
- ☐ Determine if there are any child/spousal support issues
- ☐ Instruct a lawyer in any litigation necessary
- ☐ Apply for any pensions, annuities, death benefits, life insurance or other property passing outside the Will
- ☐ Advise any designated beneficiary of their interests under life insurance or other property passing outside the Will
- ☐ Sell assets to meet cash requirements of the Estate
- ☐ Establish any trust(s) stipulated in the Will
- ☐ Arrange for supervision of vacant home and other properties
- ☐ Notify financial institutions where deceased held accounts
- ☐ Open an estate account to deposit income and pay expenses
- ☐ Transfer balances from other accounts to estate account
- ☐ Cancel all credit cards and return cards to issuers
- ☐ Collect mail and reroute future mail to Trustees
- ☐ Communicate with beneficiaries directly
- ☐ Gather contact information from all beneficiaries
- ☐ Contact former employer and determine employment benefits
- ☐ Locate investment certificates, stocks, bonds, property deeds, etc.
- ☐ Pay all legitimate debts and obtain records of payment
- ☐ Arrange for valuations of estate property where necessary and for appraisals on real estate
- ☐ Set beneficiaries' expectations regarding distribution of the Estate
- ☐ Obtain a copy of previous tax returns of deceased
- ☐ File any outstanding returns from previous years
- ☐ Wind up or continue deceased's businesses
- ☐ Provide an update to all beneficiaries of Trustee's activities

WITHIN 6 MONTHS (OR SO)

- ☐ Determine the income tax or other tax liability of the deceased and of the Estate, filing the necessary terminal tax return, paying any tax owing
- ☐ File any necessary foreign tax returns and paying any tax owing

WITHIN 12 MONTHS (OR SO)

- ☐ Ensure tax return for the Estate has been filed (by CPA)
- ☐ Ensure clearance certificate(s) obtained (by CPA)

Phase 3: Distribute the Estate

- ☐ Initiate sale of assets and transfers of title
- ☐ Distribute specific bequests and legacies to beneficiaries (Obtain written receipts from beneficiaries)
- ☐ Arrange for final distribution of estate property
- ☐ Obtain receipts from beneficiaries
- ☐ Reconcile your expenses and fees as Trustee
- ☐ Prepare an accounting of your administration
- ☐ Consider an interim distribution of Estate to beneficiaries
- ☐ Advise beneficiaries on progress of estate and decisions made
- ☐ Ask beneficiaries to consult advisors regarding their gifts
- ☐ Respond to beneficiaries' inquiries regarding estate distribution of the estate
- ☐ Obtain beneficiary consent and written release
- ☐ Apply to Court to approve Administration of Estate (known as Passing the Accounts)
- ☐ Pay final expenses and distributions
- ☐ Close estate account
- ☐ Communicate with beneficiaries as to final closing of Estate

Each Estate will unfold in its own unique time and way. The sequences of the tasks are not critical, nor are all tasks needed in every Estate. Also, the size and the nature of the Estate may require the Trustee to complete additional tasks.

© **LYLE DENNIS CARLSTROM**, B.A., LL.B.

Founding member of the Estate & Financial Planning Institute (AB)
and the Financial & Estate Planning Institute (BC)

