

BC EXECUTOR GUIDE

TAX & ESTATE PLANNING



What Is An Executor?

An estate executor, also known as an estate administrator, is the individual responsible for overseeing the implementation of your will's directives. Their duties encompass dispersing assets to designated beneficiaries and representing your interests in business and financial matters upon your passing. Typically, this role is filled by a family member or a trusted confidant, such as a spouse, sibling, or close friend.

The person creating the will, known as the testator, designates one or more executors to safeguard the execution of their final wishes. These responsibilities may encompass a wide range of tasks, such as asset distribution, debt settlement, bill payment, and the fulfillment of funeral or burial requests.

What Are The Responsibilities Of An Executor In BC?¹

Some of the basic executor duties in BC include:

- Taking inventory and valuing all assets and debts
- Gathering the names and addresses of all beneficiaries and family members
- Cancelling subscriptions and changing cards, as well as rerouting mail and completing other personal matters
- Taking possession of all assets, including transferring ownership registrations and collecting any debts
- Paying all debts owed to the estate that are lawful or confirmed (the executor or administrator could be held personally liable for these debts if they remain unpaid after the distribution of the estate)
- Filing tax returns for the deceased and for the estate
- Selling necessary assets and distributing the estate
- Preparing and obtaining approval from the beneficiaries, heirs-at-law or the court for accounts showing assets, receipts, disbursements, and distribution of the estate

What Is A Typical Executor Fee In BC?²

In British Columbia, under the Trustee Act, RSBC 1996, c. 464, executors of an estate are entitled to maximum compensation of 5% of the gross aggregate value of the estate. This compensation is in place to cover the time and effort spent on the estate settlement process.

The Trustee Act provides that the estate executor is entitled to a maximum of 0.4% of the average market value of assets managed on a yearly basis in circumstances where they must manage assets on an ongoing basis.



If the testator has specifically established a fixed fee for the executor in the will, these clauses do not apply. If a predetermined compensation is not specified in the will, the beneficiaries may decide on appropriate compensation. If the beneficiaries are unable to agree for whatever reason, the probate court will typically decide on the compensation.

The court has a set of criteria to determine the proper compensation for an executor. These include:

1. The magnitude of the estate
2. The care and responsibility involved
3. The time occupied in administering the trust of the estate
4. The skills and ability displayed
5. The success achieved in the result

How Does An Estate Executor Get Paid In BC?

An estate executor must first provide the beneficiaries with a complete accounting report before they can distribute the estate, including their own compensation. Before they can move further, the beneficiaries must agree to the final report. If they are unable to reach an agreement, they must file a disagreement with the probate court, which will make the final decision.

While the maximum compensation fee for an estate cannot exceed 5% of the total estate value. But not every instance allows for the whole 5%.

Can An Executor Be A Beneficiary In BC?

Yes. The executor has a legal responsibility to treat all beneficiaries fairly under the directions given in the will. There's nothing stopping an executor from being a beneficiary of the estate if they don't have a conflict of interest or if there's a risk they won't treat all beneficiaries fairly.

In reality, it is customary for a simple estate distribution, when the majority of the estate passes to a single beneficiary, for that beneficiary to also be named as the executor of the will.

What Is Probate In BC?

In BC, probate is the process through which a will is legally authorized by the courts. It also refers to the appropriate paperwork, which includes the legal confirmation of the executor's appointment.

Does My Will Need To Be Probated in BC?

Not all wills need to be probated. This is determined by a number of criteria, including the estate's complexity, the amount and nature of assets, the number and nature of beneficiaries, and so on. In practice, however, the majority of estates must go through the probate process.

Executors are often encouraged to have the will probated in BC, even if it's not required. Without this formal confirmation, many people can speculate or claim that the will is invalid, that it was signed under duress, or that a more recent will exists.



How Long After Probate Can Funds Be Distributed In BC?

If probate is required, the law states that the estate cannot be distributed until 210 days after probate is granted and no claim is filed against it.

Can I Choose An Executor In Another Province Or Country?

Yes. You can appoint an executor from outside your province or Canada, but keep in mind that they may be required to deposit an estate bond to safeguard beneficiaries against unlawful estate administration.

There may also be tax issues for out-of-country executors, and travelling to settle your estate may be inconvenient for them. Before choosing an out-of-country executor, it's usually a good idea to seek professional guidance.

What Happens When There's No Will Or Executor In BC?

If the deceased person did not leave a will, some individuals are eligible to petition for a grant of administration to manage the estate. If the administrator is successful, they are legally able to distribute the estate.

A grant of administration can also be used to appoint an administrator if the following conditions are met:

- The deceased did not name an executor
- The executor has died since the will was made and no alternate executor was named
- The named executor gives up the right to apply to the court for probate

What If I Am Unwilling Or Unable to Serve As An Executor?

If an alternate executor is named in the Will, they may be able to take your position. The courts can also appoint someone to distribute the estate if no alternate has been chosen.

Summary

Being an executor of a will can seem overwhelming. But this important task ensures your loved one's wishes are taken care of. Before agreeing to take on the position, it's essential that you have a clear understanding of the role.

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1. “Wills and Estates.” Province of British Columbia, 5 Mar. 2021, www2.gov.bc.ca/gov/content/life-events/death/wills-estates.
2. “Trustee Act [RSBC 1996] Chapter 464.” Province of British Columbia, 31 Dec. 2023, www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96464_01.

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