



CERTIFIED GENERAL ACCOUNTANTS OF ONTARIO

Certified General  
Accountants  
of Ontario



## Executorship: A Guide for Those Called Upon to Act as an Estate Trustee

# Executorship: A Guide for Those Called Upon to Act as an Estate Trustee

**Certified General  
Accountants  
of Ontario**



## **Mission Statement:**

The Mission of the **Certified General Accountants of Ontario** is to ensure its members merit the confidence and trust of all who rely upon their professional knowledge, skills, judgment and integrity, by regulating qualification, performance and discipline standards for certified general accountants, while advocating the use of their professional expertise in the public interest.

The Association offers its thanks to Alan Kester, LLB, CGA, for once again revising and updating this booklet, this time to reflect 2007 law and practices. It also recognizes past contributor, John Cameron, LLB, CGA and David Mullin, CGA, who wrote the original content of this booklet in 1979.

While great care has been taken to ensure the accuracy of the information as at March 2007, the Certified General Accountants of Ontario does not assume any liability.

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# Introduction

One of the tasks (indeed, honours) that falls regularly upon a professional accountant is that of executorship. Often family members, business colleagues, friends or neighbours may name a professional accountant as their estate trustee, sometimes without his or her knowledge that it has happened.

By their education and training certified general accountants are well-suited to the role of estate trustee, a position that is both time-consuming and complex. This booklet was written to fulfil three primary purposes:

1. To prepare those who have been named as an estate trustee for the tasks that may lie ahead.
2. To guide those who are performing the duties of an estate trustee.
3. To help those who are otherwise occupied to decide whether it would be better for all concerned if they declined the office of estate trustee.

This booklet should also be helpful to the testator (the person making a last will and testament) when choosing the appropriate person to act as an estate trustee (or trustees) and when preparing to have a will drafted by a lawyer. A review of the tasks of the estate trustee may be helpful in assisting the testator to organize his or her financial and personal affairs as part of a complete personal financial planning strategy.



# Choosing an Estate Trustee

An estate trustee is the person, or one of the persons, named in the last will and testament of the deceased. An estate trustee is appointed specifically to administer the will and to ensure that the final wishes of the deceased are respected. It is someone who is considered trustworthy and responsible, and usually of a similar mind with respect to the disposition of the deceased's estate. It can be a spouse, often a close friend or family member; however, if the estate is complicated it may be a professional, such as a lawyer, certified general accountant or corporate trustee.

Since it is a position of trust, choosing an estate trustee—as well as accepting the responsibility of being an estate trustee—are decisions that merit considerable thought.

If a person dies without a valid will or without any will (intestate), the individual's heirs, or someone acting on his or her behalf, must apply to the court for a certificate of estate administration without a will. The person or persons named in this certificate usually must furnish a bond to the court, and administer and distribute the estate in accordance with the Succession Law Reform Act of the province. However equitable it may be in law, this process is usually less than completely desirable, can be very expensive and may be a source of hardship (particularly if there are a number of young children involved). Responsible adults should make a will and review it periodically, particularly as their circumstances change.

An estate trustee should possess specific qualities. These include: availability, capability, sympathy, reliability and financial responsibility. At least one of the estate trustees should be younger than the testator.

**Availability:** The estate trustee should be located in a geographical area close to yours, so that duties can be performed expeditiously and without undue expense or inconvenience. Where a trustee is not a resident of a Commonwealth jurisdiction, the trustee must provide security in the form of an administration bond, which is normally twice the value of the estate being administered. Being an estate trustee is not an honorary job; rather, it is one that must be carried out in person. When writing a will provide for alternates, so that if the person named in your will predeceases you there remains an estate trustee of your choosing. If your estate trustee is also deceased and you have not named an alternate, then the estate trustee of his or her estate has the option of becoming the estate trustee of your estate. This may be an undesirable scenario.

**Capability:** The estate trustee should be capable. This includes awareness that guidance may be required from proper sources; for example, from a lawyer on legal matters.

**Sympathy:** The estate trustee should be sympathetic. If not a member of the family, the estate trustee should be someone to whom your heirs can turn to for direction and understanding. Ideally, it will be someone the heirs know and trust.

**Reliability:** The estate trustee should be reliable. Being an estate trustee may call for business judgment in areas such as the realization of assets, dealing with insurance and a variety of other financial decisions. This means that the choice of an estate trustee should not be based solely on friendship or affection. If a business is to be continued or sold, business judgment, professional skills and basic honesty will be of particular importance.

**Financial Responsibility:** The estate trustee should be financially responsible. Note that an estate trustee may be personally liable in certain situations, such as making investments in unsuitable assets, failing to act properly or having to pay the deceased's unpaid income tax liability.

## The Spouse as Estate Trustee

Ontario's Family Law Act permits a spouse to elect to take under the will or to receive the entitlement set out in Section 5 of the Family Law Act. This entitlement provides that when a spouse dies, if the net family property of the deceased spouse exceeds the net family property of the surviving spouse, the surviving spouse is entitled to one-half the difference between them. Under these circumstances, a spouse that is an estate trustee will be placed in a situation of conflict of interest, and they may be considered to have predeceased the testator.

Before a testator names a spouse who may be placed in such a situation, it is wise to seek legal advice.

## Alternative Estate Trustees and Beneficiaries

It is not unusual for a husband and wife to die in the same accident or within a short time period. For this reason alternative estate trustees should be named, as well as alternative beneficiaries.

## Consult Your Estate Trustees Before Naming

It is common courtesy to ask permission before naming someone as your estate trustee. In addition, it is a good business decision. Someone who has been asked in advance to fulfil a role is less likely to refuse to act when required.

If you have asked someone to be your estate trustee, and that individual feels overly committed, intends to move away or appears unwilling to act, you should then select someone else.

Respect the fact that not everyone is willing to accept the responsibility of being an estate trustee.

## Trust Companies as Estate Trustees

There are advantages and disadvantages to appointing a trust company as your estate trustee. Among the advantages are experience and reliability of a trust

company's staff. As well, if estate assets remain in a trust there is continuity of administration, as well as investment, tax and accounting expertise.

Selecting a trust company as your estate trustee may result in some disadvantage in the areas of cost, sympathy and flexibility; however, if there is any question of family dissension, or it is a large or complex estate, then a trust company is a necessary choice. Trust companies try to compensate for the impersonal aspect of this scenario by appointing an experienced trust officer to handle each estate (so that the beneficiaries deal with a single representative). In recent years, trust companies have become dissatisfied with the estate trustee's fees allowed by the Ontario Superior Court of Justice. Consequently, often trust companies decline to act in estates of less than \$200,000. In almost every estate where they do accept an appointment, trust companies rely on a fees memorandum, in which the testator—at the time the will is drawn—agrees to fees set by the trust company, which are usually higher than what would otherwise be allowed by the tariff set by the Ontario Superior Court of Justice.

## **An Estate Trustee's Fees**

The fees that an estate trustee may charge (including trust companies where there is no executed fees memorandum) are overseen in Ontario by the Ontario Superior Court of Justice. Fees charged should not be a deciding factor in your choice of an estate trustee. If the chief beneficiary is also the estate trustee there will be a saving of fees. However, this should not be the main consideration. If the work of the estate trustee is done improperly, the resultant legal fees at a later date may well offset any advantage in fees to a competent estate trustee. Fees approved by the Ontario Superior Court of Justice depend upon the complexity and size of the estate, time involved in performing duties, care and responsibility involved, skill and ability shown. Fees average between two and three per cent for the amount of receipts and disbursements of income and capital, together with a minor management fee where there is an ongoing trust.

## **Fulfilling the Role of Estate Trustee**

Several years ago an aunt advised that she was making a new will. She asked for your consent to name you as her estate trustee. Recently you were advised of her death. What do you do? Assuming that the will remains valid, you have a choice. If your circumstances have changed, or for any reason you no longer wish to act as her estate trustee, then you should refuse the position. Often it is advisable to refuse an estate trusteeship if there is concern about health, age, business pressures or travel commitments. Do it now, before undertaking any of the responsibilities of an estate trustee.

However should you choose to accept the job, there are a number of responsibilities to be undertaken, some more urgent than others. Consult with the remaining members of the family, as well as a legal adviser, without delay.

# Duties of an Estate Trustee

The various duties of an estate trustee are listed on the following pages. Very few estates will require all of these steps; however, this booklet aims to cover as many points as possible.

This list of duties is not a substitute for advice from your lawyer; rather it may help the estate trustee in organizing duties and priorities. For example, do not distribute assets before receiving a written opinion from the lawyer retained for the estate. The lawyer will indicate when you are allowed to distribute assets, as well as which assets can (or should not) be distributed.

The main responsibilities of an estate trustee are the duty of care, the duty to act personally, and the duty to act in the beneficiary's best interests.

## **The first set of steps – gather facts and determine wishes of deceased:**

1. Locate and examine the last will and testament of the deceased and determine if there are any special instructions. For example, the donation of organs, eyes or body.
2. If necessary, make funeral arrangements. While this is an estate trustee's responsibility, the family usually attends to these details. Provide for the family's immediate or emergency personal and financial requirements.
3. Consult with a lawyer, possibly the one who drew up the will. Obtain advice as to the meaning of terms of the will and any special instructions. Determine beneficiaries and their entitlement under the will. Also, contact other individuals familiar with the affairs of the deceased, in order to obtain all pertinent information concerning private and business affairs.
4. Communicate with all persons or parties interested in the estate. Notice of the estate trustee's application for a certificate of appointment as estate trustee must be served on all persons entitled to share in the distribution of the estate. This includes charities and institutions.

## **The second set of steps – take inventory, take control and protect property:**

1. Become familiar with the deceased's private and business interests and take all necessary steps to protect property. If a private business is involved, immediately take steps to ensure the continuance of its operation, arranging for competent management if necessary.
2. Take an inventory and custody of cash, securities, jewelry and other valuables, real estate deeds, mortgages, as well as any other documents of potential value, from the private residence and place of business of the deceased.
3. Ask banks for details of securities held in safe custody, loans and loan guarantees outstanding. Additionally, determine cash on deposit at the deceased's banks, trust companies, credit unions or other financial

institutions. Have bank books updated and request statements of any balances on deposit.

4. Ascertain the particulars of insurance policies, including amounts, benefits, terms and beneficiaries. Determine if additional insurance is required to protect assets—see #6 below.
5. Determine benefits, if any, due under government or corporate pensions. Obtain details of any outstanding salary, death benefits, deferred profit sharing, medical, group life or health insurance or any other possible amounts due arising from the deceased's employment.
6. Check on the adequacy of insurance coverage on real estate, household effects, automobiles and any other assets of the estate. If necessary, immediately increase insurance coverage for vacant property or business assets. Because an estate trustee may be held personally liable for losses if underinsured, the review of the insurance should be prompt and comprehensive.
7. If the deceased's premises are now vacant, arrange for the protection and supervision of real estate, particularly if required for insurance purposes. Have the estate lawyer search the title to all real estate in which the deceased had an interest.
8. Determine whether the surviving spouse will elect to take under the will (or if no will, in Ontario, according to entitlement under the Succession Law Reform Act) or to receive the entitlement under Section 5 of the Family Law Act. The surviving spouse has six months from the date of death before a final decision must be made. The surviving spouse should obtain independent legal advice on this point. If a Section 5 claim is involved, outside appraisals almost certainly will be required. Consult a lawyer on this point.
9. Check the Ontario Government's website for useful information on what to do when someone dies and helpful resources to consult and government offices that may need to be notified:
  - Life Events: [www.gov.on.ca/MBS/english/myontarioweb/bereavement2.html](http://www.gov.on.ca/MBS/english/myontarioweb/bereavement2.html).
  - Ontario Senior's Secretariat: [www.citizenship.gov.on.ca/seniors/index.html](http://www.citizenship.gov.on.ca/seniors/index.html)
  - Farmers, Wills and Taxation: [www.omafra.gov.on.ca/english/index.html](http://www.omafra.gov.on.ca/english/index.html)
  - Frequently Asked Questions About Estates (see Applying for certificate with or without a will, plus other useful information): [www.attorneygeneral.jus.gov.on.ca/english/estates/estates-FAQ.asp](http://www.attorneygeneral.jus.gov.on.ca/english/estates/estates-FAQ.asp)
  - Finding wills filed with the Ontario Surrogate Court to 1961: [www.archives.gov.on.ca/english/interloan/c-efile.htm](http://www.archives.gov.on.ca/english/interloan/c-efile.htm)

### **The third set of steps – inspection and valuation:**

1. Inspect and value (or have valued) real property, including the summer cottage, farm, commercial unit or apartment building. Check leases, mortgages and taxes. Provide for continuing supervision and insurance of investment properties.
2. Determine values of any mortgage investments and arrange for collection of future payments.
3. Determine the deceased's interest in any other estates or trusts.

## The fourth set of steps – carrying out executor responsibilities and administering the estate:

1. Prepare a detailed inventory of assets and their value.
2. Prepare a list of debts and obligations determined to date.
3. Determine whether to make an RRSP contribution to the deceased's spouse RRSP within 60 days of the year of death. Seek advice from a tax consultant at this point.
4. In consultation with the lawyer, determine whether or not to apply for a certificate of appointment of estate trustee from the Ontario Superior Court of Justice. This application requires production of the original will and an affidavit from the witnesses. After obtaining general advice from a lawyer, often in the case of a small estate, it is possible to make personal application for grant of probate.
5. Pay the necessary probate tax to the court and—after obtaining the certificate authorizing the executor to act—request the lawyer to notarize the necessary copies of the certificate in order to provide to banks, brokers or lawyers when dealing with the assets of the estate.
6. The estate trustee is now in a position to **administer the estate**; that is, to deal with the assets, settle the liabilities, and prepare for the final distribution, subject to obtaining tax clearance from any relevant tax authorities. Note that an estate trustee has personal liability for the deceased's unpaid income taxes to the extent estate assets have been distributed prior to the payment of these taxes.
7. One of the more important duties of the executor is to prepare final income tax return(s) to the date of death and obtain relevant tax authority clearance certificate(s).
8. Also, prior to estate funds being disbursed, the estate bank or trust company will normally provide drafts drawn on accounts of the deceased, assuming balances are adequate, to pay the funeral account and the court fees, before the grant of a certificate is issued to estate trustee.
9. Administering the estate is detailed more fully in the next section.

# Administering the Estate

## Dealing with the Assets

Dealing with the assets is done simultaneously with any payment of death duties, taxes and debts (see the next section, page 14). It is no longer necessary to obtain succession duty releases under the former Succession Duty Act, before assets can be disposed of or released. However, Section 6 of the Family Law Act (the spousal election to take under the will, under the Succession Law Reform Act or under the Family Law Act), places onerous responsibilities on the estate trustee with respect to the distribution of assets and should be delayed until the decision to elect or not has been made or the six months have passed.

**Cash:** When released, withdraw cash balances and close-out bank, stock and investment firm accounts. Whenever feasible, invest part or all of cash balances until funds are needed.

**Bonds, Stocks and Mutual Funds:** Remove securities from the safety-deposit box and take possession. Register securities in the estate trustee's name. Review securities to determine which should be held and which should be sold. Sell securities as determined, to pay tax and other liabilities, as well as to provide cash for any bequests. Review investments regularly for appropriateness while the estate continues.

**Real Estate:** If necessary, convey or sell residence and any other real property, for example the summer cottage, farm and commercial or apartment building(s).

**Mortgages:** With mortgages and real estate investments, arrange to collect mortgage payments and other sums due.

Arrange for continuing management of these assets and for their realization or sale.

**Insurance and Annuities:** Submit necessary claim forms and supporting documents to life insurance companies and collect proceeds of life insurance and annuity policies.

Arrange for cancellation or transfer of general insurance on assets as they are conveyed or sold.

**Household and Personal Possessions:** Deliver to the beneficiaries all household goods, jewelry and other personal possessions that have been bequeathed. Arrange for the removal and sale of the balance of these assets, preferably through an auctioneer.

**Private Business:** Arrange for, and participate in, continuation and competent management of the business. Alternatively, provide for its sale or transfer through the shareholder or partnership agreement or wind-up.

**Other Assets:** Deal with any mining claims, royalty contracts, stock options, interest in any other estates or trusts, and any other assets.

## Settling the Liabilities

While the will may seem quite straightforward and provide for outright distribution, the time involved will often run from six months to one year for even the simplest estates before final wind-up. In particular, the final tax clearance can take up to 12 months to obtain.

**Debts and Liabilities:** Advertise for creditors in newspapers. Check all claims and pay valid debts. Some credit cards have a death benefit feature (the estate trustee should investigate this possibility). As funds become available, discharge any bank or private loans, mortgage payable, or business liabilities.

**Income Tax:** At death the deceased is deemed to have disposed of all property at fair market value at that time. Therefore in addition to determining regular taxable income relative to the year of death, all the deceased's capital gains or losses as of the date of death must also be determined. If the surviving spouse or spouse trust receives the entire estate, it is possible that no capital gains tax will be payable until that spouse dies.

Prepare an income tax return for the portion of the year to the date of death and for any previously unpaid period. Prepare a rights and things return—and any other income tax return—as appropriate. Pay taxes and obtain tax clearance. Prepare income tax returns for the estate annually until wound up and advise beneficiaries of taxable income, if any, allocated to them for which they are liable for income tax relating thereto.

As income tax at death is a specialized matter, in many estates the trustee(s) should seek professional advice.

**Other Duties or Taxes:** Estimate duties or taxes in respect of other provinces or foreign jurisdictions and instruct your estate lawyer to prepare and file returns. Settle and pay any balances owing and obtain discharges. If the deceased died in another country or has property in another country, contact the Canadian Consulate in that country on how to proceed. If the deceased was a U.S. citizen or held U.S. real property, then contact a U.S. tax specialist in order to deal with the U.S. filing requirements and possible U.S. estate tax liability.

## Distributing the Estate—Outright Distribution

1. Seek legal advice concerning the Family Law Act and rights of spouse to elect to take under will or under Family Law Act.
2. Pay legacies and other bequests.
3. Make interim distribution of the bulk of the assets to beneficiaries, withholding sufficient funds to provide for potential tax liabilities and other obligations.
4. Prepare and submit full accounting of estate administration to beneficiaries and (where required) to a judge of the Ontario Superior Court of Justice.
5. After the audit and after receipt of any relevant tax authority clearance, arrange final distribution of balance of assets to beneficiaries, obtain an acknowledgement of receipt and obtain release from further liability from each beneficiary.

**or**

## Ongoing Administration—with Testamentary Trusts

1. Seek legal advice concerning the Family Law Act.
2. Pay legacies and other bequests.
3. Set up trust funds as directed by the will and notify beneficiaries of trust terms and conditions.
4. Prepare and submit full accounting of estate administration to beneficiaries and (where required) to a judge of the Ontario Superior Court of Justice.
5. Maintain accounts and records for trusts, and issue regular statements to beneficiaries.
6. Make income payments or issue promissory notes to life beneficiaries. Exercise discretion—where permitted under the will—to meet the special needs of beneficiaries.
7. Provide continuous investment management and safekeeping of securities, mutual funds, real estate and mortgage investments.
8. If a private business is to be continued, serve as a director or officer, and arrange for competent management and provide supervision.
9. Maintain residence, summer home, farm or other real property, including the supervision of repairs and insurance.
10. Account regularly to the court (where necessary) on the administration of the trust.
11. Provide annual income tax forms to beneficiaries, prepare trust tax returns and, if necessary, assist and advise beneficiaries with income tax issues and returns. Each beneficiary should obtain independent tax and legal advice, as appropriate.
12. Make final distribution of estate on death of life tenant(s) or upon beneficiaries reaching age of entitlement. Final income tax clearance is necessary before the estate can be wound up. Consult the estate lawyer regularly before and during this process.

# Succession Law Reform Act and Intestacy

The Succession Law Reform Act in Ontario establishes the requirements for making different types of wills, including: holograph wills, military wills, wills by minors and international wills. It also establishes the entitlement or share of an estate where no will is found, or where the will is found to be legally deficient or where the will only deals with part of the estate. The code of distribution for an intestate estate is based upon one's relationship to the deceased. The closest next-of-kin is considered to be the spouse. The spouse is entitled to a preferential share, calculated after any debts and liabilities have been deducted, which is currently \$200,000.

If the net value of the estate is less than the preferential estate, the entire estate passes to the spouse.

If the net value of the estate is greater than the preferential share, the preferential share passes to the spouse, and the spouse shares in the remainder as follows:

- one-half of the residue over the preferential share if there is one child and the remaining one-half to the child; or
- one-third of the residue over the preferential share if more than one child and the remaining two-thirds is shared equally among the children.

For other situations, such as no spouse or no spouse/children, there is a detailed code of distribution contained in the Act. An estate lawyer should be consulted to determine who has rightful claims to the deceased's estate.

It should be noted that the Succession Law Reform Act does not provide for any distribution to common-law spouses. Therefore, if a couple never formally marries, the surviving partner will not be entitled to any statutory share of the deceased's estate. The situation makes it important for unmarried couples to have wills. The surviving partner still has a right to support under the Family Law Act, but he or she will have to litigate against the deceased's estate, in order to enforce this right.

The surviving partner still has a right to support under the Family Law Act or to a claim as a dependent under Part V of the Succession Law Reform Act; however, he or she will have to make the claim against the deceased's estate in order to enforce this right.

# Glossary

As an estate trustee you may encounter some of the following terms that are used in wills or in the administration of estates.

## abatement

The reduction of a gift under a will, which occurs when—after payment of all debts and liabilities—there are insufficient assets to satisfy all the gifts in full.

## accumulations

Accumulation is the continual increase of principal created by the reinvestment of interest. The accumulation of income beyond the accumulations period is rendered void by the Accumulations Act (Ontario), currently 21 years after a life.

## ademption

If a specific gift is either not in the deceased's possession at the time of death or cannot be located, the gift to the beneficiary is not made. The gift has adeemed.

## advancement

Under this doctrine, a beneficiary's share of or gift from an estate is reduced by the value of money or property given to the beneficiary by the deceased during the lifetime of the deceased.

## beneficiary

A person or entity entitled to benefit under the terms of a will. An income beneficiary is entitled to receive income, such as interest from a mortgage held by the estate. A capital beneficiary receives capital, such as a sum of money or a property.

## bequest

Disposition of personal property by will, also known as a legacy.

## breach of trust

Every omission or commission in carrying out the trust or will, according to its terms of care and diligence in protecting and investing the trust property and of using perfect good faith.

## Certificate of Appointment of Estate Trustee

- a) **Without a Will:** a grant from the court to the personal representative of a person who dies intestate, i.e., without a will.
- b) **With a Will:** a grant from the court to the personal representative of a person who dies leaving a valid will which names an estate trustee. (Also refer to the definition of probate in this glossary, page 20.)

## **codicil**

A written supplement or addition to a will for adding, altering or revoking provisions in the existing will. A codicil refers to the original will by date, substitutes what is desired and otherwise confirms the will. It must be executed by the testator, with the same formalities as a will.

## **contingent interest**

An interest in property dependent upon specific conditions. For example, a child who inherits only if he or she attains majority has a contingent interest. If the child dies before that date, his or her estate receives nothing.

## **demonstrative legacy**

A testamentary gift that, by its terms, must be paid from a designated fund. For example, from bank account No. \_\_\_\_.

Where the funds for a demonstrative legacy are needed to pay debts, the legatee receives the balance, if any, and the remainder ranks as a general legacy. Where the funds for a demonstrative legacy have been parted with by the testator, the bequest ranks as a general legacy.

## **devise**

A testamentary disposition of real estate.

## **encroachment**

Discretionary payment, complying with terms of the will from capital or income, made to or on behalf of a beneficiary.

## **estate trustee**

The person, or one of the persons, who administers and settles the estate of a testator.

## **Family Law Act**

The Ontario Act that, among other things, normally entitles the surviving spouse to an equal share of the growth of the assets owned by both spouses during the subsistence of the marriage.

## **fiduciary**

A relationship that exists between two persons where one is legally obligated to act for the benefit of the other, e.g., a trustee to a beneficiary.

## **holograph will**

In Ontario, a will requires certain formalities to be undertaken for there to be a valid enforceable will. However, a document intending to be a will that is completed wholly in the testator's handwriting and signed by the testator is also recognized as a valid will. If these requirements are met, no witnesses are required. Additionally, a holograph codicil is valid and does not have to be witnessed. Note that a stationer's form will **not** be considered to be a valid holograph will.

## **hotchpot**

Where a fund is appointed to be divided among a class of beneficiaries, and one of the class has already received a special or appointed share, that individual may be required to theoretically add back that special share to the fund for the purpose of computing the share of each beneficiary before distribution. The individual is then said to have brought the share into hotchpot.

## **in loco parentis**

A person (or persons), whom for all purposes acts in the stead of a parent, is said to be acting in loco parentis. This may be a legal guardian appointed by the court.

## **intestacy**

The situation where a person dies without a valid will or certain assets are not dealt with by an existing valid will, then the assets of the deceased are dealt with and distributed according to a statutory scheme—refer to the Succession Law Reform Act and Intestacy (page 16).

## **legacy**

Personal property bequeathed by a will. A general legacy is one not paid out of a particular fund and not particularised as a specific legacy. A will may provide that real estate is to be charged with the payment of legacies. If it does not, real estate may not be resorted to for the payment of legacies.

## **passing of estate accounts**

Submission of the estate accounts from time to time by estate trustees for scrutiny by the court.

## **per capita**

Distribution of property to persons as individuals, literally. If an estate is left to daughter A and grandchildren C, D and E (children of predeceased son B) in equal shares per capita, each would receive a quarter share. Per capita distribution is assumed unless otherwise specified.

## **per stirpes**

Distribution of property to persons as members of a family, rather than as individuals. If an estate is left to daughters A and B in equal shares per stirpes, then if B is deceased, A would receive one half and grandchildren C, D and E (children of predeceased B), would divide the other half equally among themselves. That is, they take by their right of representing such ancestor, one share for each line of descendants.

## **probate**

The former term for the procedure by which a will is confirmed by the court as valid, and the appointment of the estate trustees is confirmed. The authority of an estate trustee springs from the will itself but usually has to be legally recognized by the courts before institutions will accept the executor's authority.

## **residue**

That portion of the estate that remains after the payment or transfer of debts, legacies and devises.

## **specific legacy**

A bequest, made under a will, of a specific item. For example, "My three-diamond ring to my niece, Jean Anne Smith." Where the particular property in a specific legacy no longer exists or has been parted with by the testator, then the legacy is "adeemed," and the legatee receives nothing.

## **testamentary trust**

A trust arising out of the will of a deceased.

## **testator**

The maker of a last will and testament.

## **will**

The short form for the last will and testament, the document by which the individual who signs it—the testator—directs to whom his or her property is to go after his or her death. The will must be in writing.

## Suggested Additional Reading

Suzanne Hanson and Sandra Bussey; *The Death of a Taxpayer*, 8<sup>th</sup> edition; CCH Canadian Limited

Laurie L. Ouellette, CGA; *A Practical Guide to Estates and Trusts*, 2<sup>nd</sup> edition, CCH Canadian Limited

Anne E.P. Armstrong; *Estate Administration: A Solicitor's Reference Manual*, two-volume loose leaf, Carswell Thomson Professional Publishing

Karen M. Gibbs, etc; *The Practical Guide to Ontario Estate Administration*, 5<sup>th</sup> edition (2006), Carswell Thomson Professional Publishing

Larry H. Frostiak, FCA, CFP, TEP; John E. S. Poyser, BA, LLB, TEP; *Practitioner's Guide to Trusts, Estates and Trust Returns 2006-2007*, Carswell Thomson Professional Publishing



# Other Resources from the Certified General Accountants of Ontario

## Other Booklets in This Information Series

- ABCs of Accounting: Accounting Definitions
- Effective Planning to Achieve Goals
- How to Conduct a Meeting
- Keeping the Record Straight: Accounting for Not-for-Profit Organizations
- Resource Guide for Business Immigrants to Ontario

## Accountant Referral Service

The Certified General Accountants of Ontario offers an accountant referral service, free of charge to Ontario residents and businesses that would like to hire a professional accountant for help with financial planning, tax returns, financial statement preparation and other accounting services. CGA Ontario will match clients' specific needs to a CGA Ontario practitioner's preferred area of practice.

To access CGA Ontario's online accounting referral service, visit [www.cga-ontario.org/contentfiles/services/accountant\\_referral.aspx](http://www.cga-ontario.org/contentfiles/services/accountant_referral.aspx) or for more information, call CGA Ontario at 416-322-8884 or toll-free at 1-800-242-9131.

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[www.cga-ontario.org](http://www.cga-ontario.org) or  
[www.nameyouneed.org](http://www.nameyouneed.org)

