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## Executor Duties

In Ontario, executors are officially called “estate trustees with a Will” and in Quebec, they are called “liquidators”. However, you may be more likely to hear the term “executors” and you should note that this is generally used interchangeably with the term “trustees”. An executor named in the Will obtains his or her authority from the Will itself and the authority starts with the death of the testator. The executor is the person(s) or institution charged with the responsibility of carrying out the provisions of the Will. It should always be kept in mind that being an executor is a major undertaking and once the job is accepted, the executor must fulfill his or her obligations or risk exposure to personal liability.

This summary is not intended to replace the advice of a tax, legal and other professionals. (It merely aims to give a basic overview of some of the issues involved.) An executor has an extensive list of responsibilities requiring the services of professionals in most cases. Professional advice is strongly recommended given the complexities involved, to deal with any family law implications and to ensure all tasks are properly completed.

### **Some Duties of an Executor Include:**

- Locate, protect and manage estate assets
- Advertise for creditors
- Contact financial institutions
- Determine all assets and liabilities
- Arrange probate of Will if required
- Register assets in name of the estate
- File tax returns and pay taxes
- Obtain clearance certificate indicating taxes are paid
- Pay debts, including funeral and other expenses
- Liquidate assets to pay debts if necessary
- Distribute estate assets
- Administer trusts set out in the Will

*Also, are the investment powers of the executor outlined in the will? If not, is the executor subject to the “Prudent Investor Rule” or subject to investment restrictions under trust law i.e. a severely limited list of conservative investments?*

### **Professional Investment Services**

Nowadays, executor obligations are considered to include a reasonable level of investment planning. This generally requires a clear investment policy which is sufficient to ensure long-term capital growth, as well as income for beneficiaries of the estate. Given the complexities of today’s marketplace, it is generally prudent to enlist the assistance of a professional investment consultant. *Your CIBC Wood Gundy Investment Advisor is well-equipped to help review estate objectives and design appropriate investment guidelines.*

### **Final Tax Returns**

A final income-tax return or “terminal-year return” must be filed reporting all income earned from January 1<sup>st</sup> of the year of death to the actual date of death. Business, trust or “rights or things” income may be reported on separate tax returns if it is advantageous to do so. Where there has been professional, partnership or self-employment income, the estate may be exposed to a tax liability on income representing a period of greater than 12 months because of a “deferred year-end”. Given the complexities involved and possible exposure to personal liability, the executor should seek professional tax advice in order to file these tax returns properly, tax efficiently, before the deadlines and obtain the appropriate clearance certificate from Canada Revenue Agency (CRA) indicating taxes have been paid.

**Capital Gains at Death**

At death, you are deemed to have notionally sold all of your assets at fair market value and this artificial sale could trigger a capital gains tax obligation. (50% of capital gains are included in your taxable income.) When property is left to your spouse, the gain may be delayed until your spouse's death, at which point the entire capital gain will be taxed in your spouse's hands. (In many cases, tax-free rollovers can be used by the surviving spouse to defer tax liabilities until the second death.)

**Special Tax Considerations at Death (Professional Tax Advice Required)**

- Spousal RRSP contribution by the executor where there is a surviving eligible spouse. Subject to any unused RRSP contribution room of the deceased, this contribution can be made up to 60 days after the end of the calendar year in which the death occurred and the Will should grant authority for this to be done.
- Special rules for charitable donations at death. All charitable donations (including unused donations carried forward) receive the charitable donation tax credit for amounts up to 100% of Net Income with any excess carried back to the immediately preceding year, again up to 100% of Net Income.
- Special rules for medical expenses at death. For the year of death, the executor may claim medical expenses paid within any 24 month period inclusive of the date of death. (Limitations apply and expenses can only be claimed once.)
- Special rules for net capital losses at death. Subject to complex ordering rules as well as special rules in connection with the capital gains exemption, eligible net capital losses may be deducted when determining taxable income in the year of death and the immediately preceding year.

**RRSPs/RRIFs at Death**

- Beneficiary designations\* should avoid probate.
- Rollover available for spouse or physically/mentally infirm child dependant on deceased.
- Taxable to healthy child dependant on deceased or used to buy fixed-term annuity to age 18.
- Non-dependent children or others named as beneficiaries receive full value of RRSP/RRIF tax-free but estate pays tax on full value. (If estate comes up short, CRA will claim taxes from RRSP/RRIF beneficiaries.) If non-dependent children or others are left RRSP/RRIF assets in the Will, the full value will be taxed as income in the final return of the deceased, and then they will receive their share of the estate after taxes. (Leaving assets to one heir via beneficiary designation, and to another heir via the estate, could create a grossly inequitable situation because of the taxes.)
- In the case of a RRIF, a spouse should be designated as a "successor annuitant" rather than as a beneficiary of the RRIF\*\* (this will allow the surviving spouse to receive the remaining RRIF payments as the new annuitant). The designation as a successor annuitant can be made in the RRIF contract or in the Will but if the deceased did not make this election, the spouse can become the new annuitant if the legal representatives and the RRIF carrier consent to the surviving spouse becoming the annuitant.
- *Please note that not all financial institutions have uniform policies on beneficiary designations and other estate settlement issues.*

\* Rules differ in the province of Quebec where beneficiary designations are not recognized and assets should be distributed through your Will. Yukon residents cannot make RRIF designations.

\*\* Rules differ in Quebec and Yukon where, in the case of a RRIF, a spouse should be named as "successor annuitant" in the Will.

**LIRAs/LIFs/LRIFs at Death**

The comments under “RRSPs/RRIFs at Death” generally apply but in this case it should be kept in mind that upon the death of the annuitant, the surviving spouse *must* receive any remaining value and the funds may or may not become “unlocked.”

**U.S. Estate Tax is a concern if you are...**

- 1) A Canadian resident owning U.S. assets with a world estate valued at more than \$2000,000 (U.S.)
- 2) A Canadian resident owning U.S. real estate or business assets valued at more than \$60,000 (U.S.)
- 3) A U.S. citizen

In addition, assets in foreign countries may be exposed to estate, inheritance or succession taxes in the foreign country. This may result in double tax since any accrued capital gain is taxable in Canada and exposed to the noted taxes with generally no foreign tax credit relief.

**Death Benefits**

- Any qualifying “death benefit” paid by an employer is taxable to the estate or recipient subject to a \$10,000 exemption.
- If applicable, apply for any CPP/QPP Death Benefit (\$2,500 maximum; taxable to estate or recipient) as well as any CPP/QPP survivor benefits for spouse and children.

**Probate**

Probate affirms that the Will has been duly approved through court process and confirms the authority of the personal representative. This provides comfort to third parties dealing with the executor (such as financial institutions) that neither the Will nor the executors’ authority is under attack. (A similar process is followed in situations where there is no Will.)

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