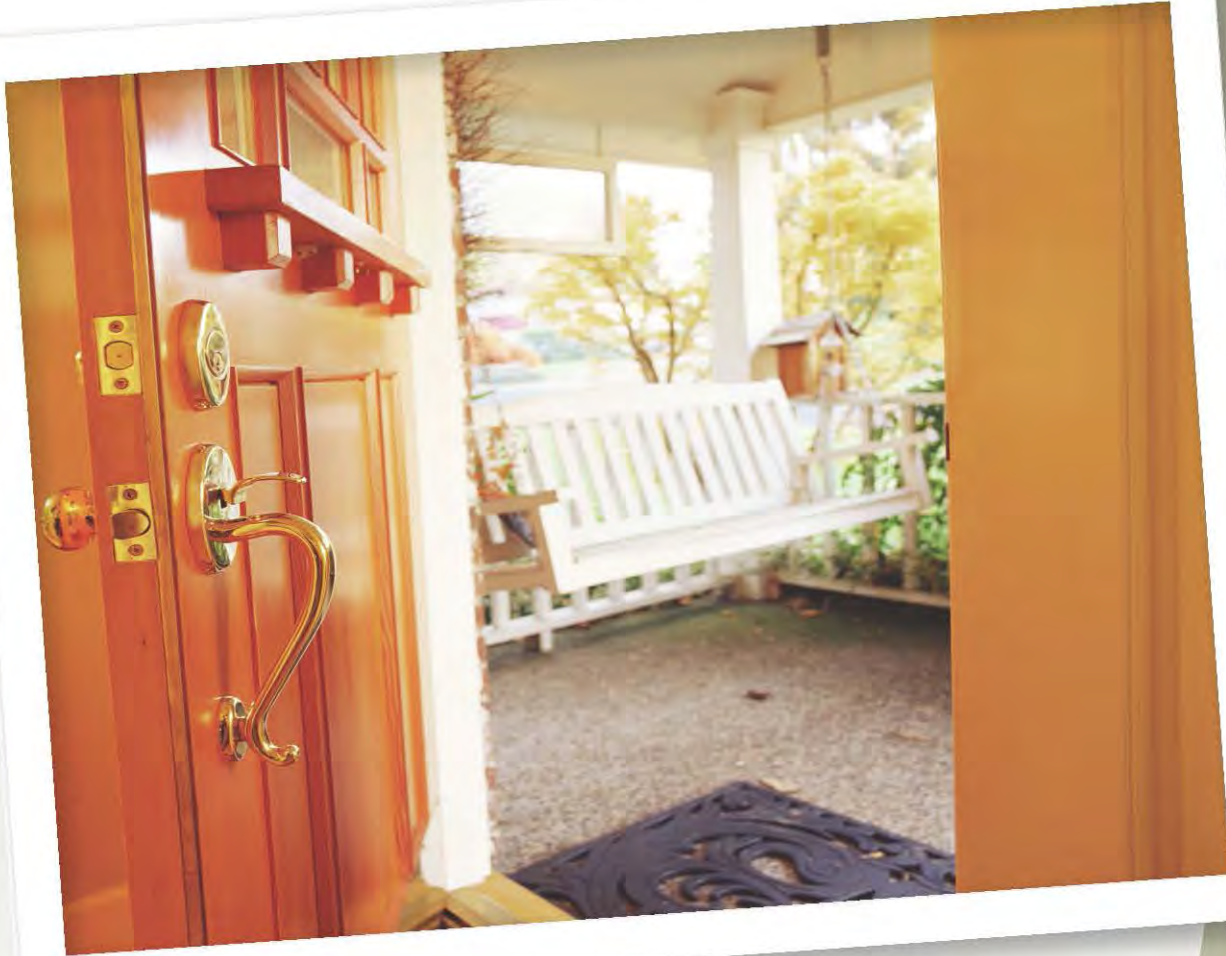




Lancaster, Brooks & Welch LLP
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Duties of Estate Trustees



Accessibility and Convenience

Lancaster, Brooks & Welch LLP have offices in both St. Catharines and Welland which are conveniently located in the downtown core.

Regular office hours are Monday to Friday from 8:30am to 5:00pm.

We are happy to make appointments at other times to satisfy our clients' needs.

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What authority do I have as an estate trustee?

Estate trustees legally hold the property of the deceased in trust for creditors and beneficiaries of the estate.

With a Will

As an estate trustee, also called executor, you are named in the Will and derive your authority from that document. Your responsibilities begin when you acknowledge you will act. This authority is normally confirmed by the court. You may renounce the position before a Certificate of Estate Trustee With a Will is issued.

Without a Will

When a will does not exist, legislation defines who may be appointed to act as estate trustee. Usually members of the deceased's family apply to act. Their rights and responsibilities start from the date the certificate is issued. The legislation sets out who is entitled to receive estate assets after bills and expenses are paid.

What is the Certificate of Appointment of Estate Trustee With/Without a Will?

On death it is necessary to apply to the court for formal appointment of estate trustee(s), unless all financial institutions that hold assets of the deceased waive this requirement. The certificate confirms the power of the trustee to act and allows asset-holders, such as banks, to deal with the estate trustee. All beneficiaries named in a Will must receive a copy of the notice of application for appointment of trustee(s), together with the relevant portion of the Will for specific beneficiaries and the entire Will for residual beneficiaries. If there are minor children or adults with special needs, a government department must also receive such notice.

Are there court filing fees?

When the Application for Certificate of Appointment is filed

with the court, a fee is paid calculated on the value of estate assets:

- \$5 per \$1,000 on the first \$50,000
- \$15 per \$1,000 on the balance

For example, on \$100,000, the filing fee would be \$1,675, usually obtained from the deceased's bank account. This fee is based on assets belonging to the deceased alone and does not include jointly-held assets.

What are my initial duties?

You must attend to the following matters immediately:

- Arrange a funeral, if not done by family members
- Obtain the funeral director's death certificates
- Pay the funeral bill (from deceased's bank account).

What information do I need about the deceased?

The estate lawyer will require the following information:

- Social Insurance Number
- Marital status
- Spouse's name (if married)
- Name of employer
- Last occupation
- If divorced, Certificate of Divorce ("Decree Absolute").

What about the beneficiaries?

- Explain Family Law Act provisions to any surviving spouse
- Obtain names and addresses of beneficiaries in the Will, plus ages and birth dates of under-18s.



What else do I need to do?

- Redirect mail
- Advise health plan (OHIP) of death
- Advise mortgage holder
- Write to all known creditors
- Cancel all credit cards, requesting final statements
- Cancel subscriptions and TV cable, etc., requesting refunds
- If deceased owned a home, redirect all utilities and confirm dwelling's insurance coverage.

Pensions, insurance, etc.

- Request final pay cheques from employer, plus sick benefits, insurance, etc.
- Advise Canada Pension, Old Age Security, employer pension and any Veterans Pension of death
- Apply for CPP death benefit (plus any spousal or dependant's benefits).

For Canada Pension Benefits, obtain these documents:

- Birth certificate if deceased had not filed for Canada Pension
- Marriage certificate if applying for CPP and pension spousal benefits
- Birth certificates for dependent children entitled to receive support benefits.

Assets

Compile a list of all these assets and fair market values at the date of death:

- Bank accounts
- Investment certificates
- Retirement Savings Plans
- Retirement Income Funds



Estate Law Group

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- Life insurance
- Stocks
- Bonds (including Canada Savings)
- Automobile/s
- Household goods and furnishings
- File an Estate Information Return if required

Cancel insurance on automobiles when they are sold and apply for prepaid premium refunds.

Liabilities

- Pay all sums owing (if sufficient funds)
- Advertise for creditors.

Income Tax

Obtain copy of last tax return filed and file these returns:

- Returns for all previous years not filed
- Terminal T1 Return to date of death (for current year)
- T3 Trust Return (not always required).

Real Property

- Secure residence (change locks if others have keys)
- Advise fire insurance company if property is vacant
- Arrange for property maintenance
- Dispose of perishable goods
- Dispose of contents

- Ensure continued supply of utilities during cold months.

If rental: Obtain lease and consider giving Notice to Vacate.

If owned: Obtain title papers including mortgages and arrange valuation and sale.

When sold: Advise fire insurance company and request any premium refund.

Business

If the deceased owned or operated a business, the trustee should arrange for its management until its disposition is completed.

Accounting

Because residual beneficiaries have a right to a full accounting of all estate monies received and paid out from the date of death to the date the estate is wound up, you must keep accurate records, including the date of receipts and the date, nature and amounts of disbursements.

Disposition of assets

After all assets have been liquidated or transferred, all debts and taxes paid or monies held for any possible tax liability, you are responsible for:

- Preparing the estate trustee's accounts
- Obtaining releases from all beneficiaries
- Making payments to beneficiaries.

In certain circumstances and when residuary beneficiaries have not waived this requirement, the court must approve estate accounts.

Compensation

You may ask beneficiaries for compensation for your work, and all beneficiaries must approve before payment. Compensation ranges from 3% to 5% of the estate value. You must justify the request for compensation, so keep complete records of all work done and time spent.

At Lancaster Brooks & Welch, we recognize that dealing with an estate can be an emotional and sometimes confusing task. Any of the lawyers in our estate department are happy to answer your questions and provide assistance.

The information provided in this brochure is designed to provide topical information of a general nature only. You may wish to discuss any specific matter with your lawyer and you should feel free to do so at any time. This material is provided for information purposes only, not as legal advice, and is not intended to be exhaustive of your rights under the relevant legislation.

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