

Wills and Estates

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Writing Your Will

Introduction to Writing Your Will

This publication from People's Law School is for people who are making a will in British Columbia. It explains what is involved in making a will, what to consider in appointing an executor, and what to do after making your will. This edition reflects the *Wills, Estates and Succession Act* ^[1], which became law in 2014.


The information is produced for educational purposes and is not intended as legal advice. If you need advice about a specific legal problem, please contact a legal professional. Some sources of legal help are highlighted in the Where to Get Help section.



We have tried to use clear language throughout. See the Glossary section for definitions of key legal terms, which are also bolded in the text.

People's Law School

People's Law School is a non-profit society in British Columbia, dedicated to making the law accessible to everyone. We provide free education and information to help people effectively deal with the legal problems of daily life.

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References

[1] <http://canlii.ca/t/8mhj>

Overview of a Will and Writing Your Will

This section was last reviewed for legal accuracy by People's Law School in January 2016.

You can make a will on your own, or have someone such as a lawyer or a **notary public** help you. There are rules and formalities that must be followed, no matter how simple the will, or the will may not be valid.

The person making a will is referred to as the **will-maker**.

Requirements for a will

For a will to be valid:

- The will must be **in writing**. It can be typed or handwritten.
- The will must be signed at its end by the will-maker. As the will-maker, you must sign the will or acknowledge the signature as yours in front of **two witnesses** present at the same time. If you are unable to sign the will because of illness or disability, you can ask someone to sign it for you in front of you, and in front of the two witnesses.
- The two witnesses must sign the will in front of you.
- You and the witnesses should initial each page of the will in front of each other.
- The will must have the **date** included on it.



Image via www.flickr.com

Who can make a will?

To make a will, you must:

- be age 16 or over,
- be mentally capable of managing your own affairs, and
- freely agree with the contents of the will at the time you make it; in other words, if it is proven in court that someone has pressured you to make a will that doesn't represent your intentions, the will is not valid.

In considering whether a person is mentally capable to make a will, key factors are:

- Do they understand the nature of a will?
- Do they understand the extent of their property?
- Do they appreciate the claims to which they ought to give effect? Put another way, if someone is being excluded from the will who would inherit a portion of the estate if there was no will, does the will-maker appreciate the effect of their decision? For example, if they leave their child out of the will, does the will-maker appreciate the effect of that decision?

Who can be a witness to my will?

Your two witnesses must:

- be age 19 or over, and
- be mentally capable.

It used to be that a person who witnessed a will could not also receive a gift under the will. But now, a witness may be able to inherit under a will. The witness has to apply to court and show that you **intended** to make the gift even though the person was a witness to the will. If the court isn't satisfied, the gift to the witness is void. Either way, the remainder of the will is not affected.

Ultimately, it remains good practice for your witnesses not to be people - or the spouses of people - who are named as executors, alternate executors, or beneficiaries under the will.

The witnesses do not need to read the will. All they need to do is watch you sign your name to the will, and sign the will themselves in front of you.

Elements of a will

Typically, a will has several sections:

- **Initial matters:** The first section of the will appoints the **executor**. The executor is the person who is responsible for carrying out the instructions in the will. The will can specify the extent of the executor's powers in administering the estate.
- **Distribution of the estate:** The will sets out who receives your possessions and property, also known as your **assets**, and under what conditions. The people to whom you give things are called **beneficiaries**. You can make gifts of specific property or cash gifts. Whatever amount left over after debts and taxes are paid and gifts are distributed is called the **residue** of the estate. In the will, you say who receives the residue, and in what portions.
- **Other details:** The will can also include other details as you wish. For example, if you have any children under age 19, you should name a **guardian** for them in the will. You should also provide for financial assistance for the guardian to cover the costs of raising the children.
- **Signatures:** The last section of the will includes the signatures of the will-maker and witnesses.

How detailed does my will need to be?

Your instructions in the will should be clear and specific.

You need to be specific about exactly who the beneficiaries are. For example, you should not say that you want to leave everything to "my best friend" or "my cousins."



Example

Paulo has no spouse or children of his own. He wants to leave his belongings to his niece after his death. He writes into his will her full name and relationship to him: "...to give the residue of my estate to my niece, Daniella Cortez...."

You don't need to write down every specific item you own. You only need to be specific about who should get what when it comes to items of special value, especially if you want to make certain the item goes to a particular person.



Example

You are sure that you want your child to receive your grandfather's gold watch, so you include that gift to your child in your will: "...to transfer my Omega gold watch to my child, Thomas Wilson..." You leave out any mention of your alarm clocks.

What should not be included in my will?

A will often isn't read until after the funeral. As a result, most wills don't include details relating to the funeral service. You should tell the executor or your family or leave a letter saying what kind of ceremony you want when you die, and whether you want to be buried or cremated.

Any assets you own jointly with others don't need to be included in your will. These assets go directly to the surviving joint owner on your death. They don't form part of your estate, but are said to "pass outside the will." For example, if you and your spouse own your home as joint tenants, the home goes directly to your spouse on your death.

Also, assets where you have designated a beneficiary don't need to be included in your will. For example, retirement benefit plans such as RRSPs and RRIFs, where you have named a beneficiary under the plan, pass outside the will. When you die, the bank or trust company transfers the RRSP or RRIF, or pays it out, to the beneficiary you named.

The same is true if you have life insurance that names a beneficiary.



Tips & Tools

You can designate the beneficiary of a life insurance policy or benefit plan in your will, even though the proceeds "pass outside the will" and don't form part of your estate. If you do, the beneficiary designation will alter any previous designation. Similarly, a beneficiary designation you make in your will may be altered by a later designation that is not in a will.

Does the law say I have to leave my estate to my family?

In general, you are free to leave your estate to whomever you want. However, the law does require that you make adequate provision for the proper maintenance and support of your spouse and children. Your spouse or children can apply to court for a portion of the estate that is "adequate, just and equitable in the circumstances."

Spouse includes a common-law spouse, which is a person you have lived with in a marriage-like relationship for at least two years.

If your spouse or children wish to dispute your will because they feel they have not been adequately provided for, they have to apply to court within 180 days after **probate** has been granted. (Probate is a legal procedure that confirms the will is legally valid and can be acted on.) The person disputing the will needs to prove in court that the will does not provide for them adequately.

Separated spouses generally have no legal claim to dispute the arrangements made in your will. Other relatives who are left out also generally have no claim.



Tips & Tools

If you want to leave a spouse or child out of your will, you should explain this in a separate document or letter, kept with your will. You need to show that you have considered them and your obligation to provide for them. This does not guarantee that they will not receive something if they dispute the will in court. You should seek legal advice.

Making the will

When should I make a will?

You can make a will at any time. You should make a will **if you marry** or **if you start a family**. Even if you don't marry or have children, or don't have significant property, it's still a good idea to make a will so that you can leave your belongings to the special people in your life.

Tips & Tools

You should try to make a will when you are in good health. To make a will, you need to be mentally capable. Your mental capability can be affected by illness, an accident, or drug treatment. If you are proven to have been mentally incapable when you made your will, it will be considered void and of no legal effect.


Do I have to get legal help to make a basic will?

With good do-it-yourself materials, it's not too difficult to make a will that takes care of basic concerns, such as leaving a home, investments, and personal items to loved ones.

However, getting professional help to make a basic will does not cost very much, and having your will made by a lawyer or notary public is the safest way to avoid mistakes. Using an experienced lawyer or notary can give you the peace of mind of knowing that your will is properly drafted and valid, and that your affairs will be handled according to your wishes.

Getting advice from a lawyer or notary becomes particularly important where there are features such as a blended family, a charitable gift, property outside of British Columbia, a family business, a desire to hold property in trust for someone (such as a child), or a wish to disinherit potential beneficiaries.

Ask a lawyer or notary how much it will cost before you decide to give the job to him or her. To find a lawyer or notary, see the Where to Get Help section.

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What is an Executor and Writing Your Will

This section was last reviewed for legal accuracy by People's Law School in January 2016.

Your **executor** is the person you name to carry out the instructions in your will. They are responsible for settling your affairs.

What are the executor's responsibilities?

The role of executor usually involves paying any outstanding debts, applying for the Canada Pension Plan death benefit, selling some assets, preparing the final tax return, and distributing the estate. How much time this takes depends on how complicated your affairs are.

Your executor may need to **probate** the will. Probate is a legal procedure that confirms the will is legally valid. In the probate process, the executor submits special forms and the will to court. If everything is in order, the court issues a grant of probate.

Some estates that involve only a small amount of money (under \$25,000) may not need to go through probate. It is up to the third parties who hold your assets whether they will give the executor those assets without probate.

Who should I choose to be my executor?

An executor should be someone you trust and who has the ability to carry out the instructions in your will. It's best if he or she is familiar with your situation and your wishes. An executor can be one of your beneficiaries. Most people ask a family member or close friend to be their executor.

You can also appoint a lawyer, a notary public, or a private trust company as executor. The Public Guardian and Trustee may agree to be appointed executor in some circumstances.

In choosing an executor, keep in mind that:

- Your executor should be someone who will likely outlive you.
- Your executor can be someone who does not live in the province, but all procedures to settle the estate will be done in British Columbia. It is more convenient to get documents signed and tasks done by an executor who lives close by.
- Although not recommended, you can appoint someone under age 19 as executor. However, if he or she has not reached age 19 on your death, probate may be delayed.
- It helps if the person you appoint is organized and a good communicator.
- Most importantly, the person must be willing to take on the duties of executor.

Tips & Tools

It is very important to name at least one alternate or backup executor in your will. If the executor is unable or unwilling to act, the alternate can take over.

Can more than one person act as executor?

Yes, you can appoint two or more people to act as your executors. It is important to be aware that if more than one executor is named, the co-executors must act jointly. Neither of them is the "lead" executor or "main" executor. They'll have to agree on many things, from the selling price of the house to who is going to get the family photo albums.

If one executor dies, the other one can act alone.

Sometimes people choose three executors so that if there are disagreements, the executors can vote and the majority will decide. However, you need to say in the will that this is what you want; otherwise all decisions must be unanimous. You also must say that the executor who doesn't agree with the other two will still go along with the decision and sign any necessary documents. This is called a **majority rule clause**.

Tips & Tools


If you appoint more than one executor, consider if they will be able to work together. You should discuss your wishes with both of them. It's best if you can do this with them together.

How can I make the job easier for my executor?

First, ask the person you have in mind if he or she is willing to be your executor. Once they have agreed, you can make the job easier for them if you:

- **Discuss your wishes** with the executor, including burial and cremation.
- **Register your will**, and tell your executor where the original will is kept. It is a good idea to keep it somewhere where your executor can access it.
- **Keep an up-to-date, detailed record** of all that you own and all that you owe. For example, record your bank accounts, RRSPs or RRIFs, insurance policies, real estate, and pension benefits. Note any items which are owned in joint tenancy or which name a specific beneficiary. These are dealt with outside the estate, so the executor does not have to manage them.
- **Explain your plans** to family members, the beneficiaries, or anyone who may be entitled to a share of the estate. Talking with them now will prevent problems later.
- **Review your will** and your choice of executor every few years or when your circumstances change.
- **Update the will** if there are any changes.

It is always a good idea to make a new will if you move between provinces. If someone dies in British Columbia but had a valid will in another province, the executor may be able act on the will. But the process may be more complicated.

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Where to get Help with Writing Your Will

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Access Pro Bono

Access Pro Bono operates a clinic to help low-income seniors (ages 55+) and people with terminal illnesses prepare a will.

604-424-9600

www.accessprobono.ca/willsclinic ^[1]

Clicklaw

Clicklaw offers one-stop access to legal information, education and help for British Columbians from trusted organizations. Select the topic "Wills & Estates" ^[2].

www.clicklaw.bc.ca ^[3]

Dial-A-Law

The Canadian Bar Association, BC Branch provides legal information for the public by telephone recordings and over the Internet. See the script on "Making a Will and Estate Planning" ^[4].

Lower Mainland: 604-687-4680

Toll-free: 1-800-565-5297

www.dialalaw.org ^[5]

Law Students' Legal Advice Program Clinics

Law students from the University of British Columbia offer free assistance to qualifying clients with some legal matters, including preparing certain types of simple wills. The manual used by LSLAP law students has a chapter on "Wills and Estates" ^[6] that includes sample clauses for making a will.

604-822-5791

www.lslap.bc.ca ^[7]

Lawyer Referral Service

The Canadian Bar Association, BC Branch offers referrals to lawyers who can provide a half-hour consultation for \$25. The lawyer will not be able to prepare a will for you in this time, but can answer initial questions you may have.

Lower Mainland: 604-687-3221

Toll-free: 1-800-663-1919

lawyerreferral@bccba.org ^[8]

MyLawBC

From Legal Services Society, the agency that provides legal aid in British Columbia, MyLawBC is an online resource that enables you to make a simple will through answering a set of questions. It also provides information on wills as well as personal planning documents such as powers of attorney and representation agreements.

mylawbc.com ^[9]

Nidus Personal Planning Resource Centre and Registry

Provides information, education, and support for people to make and use representation agreements and enduring powers of attorney.

info@nidus.ca

www.nidus.ca ^[10]

Public Guardian and Trustee of BC

This government office may agree to be appointed executor in a will in appropriate circumstances. They can also administer an estate when the executor is not able or willing to do so, or when someone dies without a will.

700 - 808 West Hastings Street

Vancouver, BC V6C 3L3

604-660-4444

www.trustee.bc.ca ^[11]

Self Counsel Press

Self Counsel Press publishes do-it-yourself guides on legal topics for BC, including on making a will.

www.self-counsel.com ^[12]

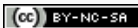
Society of Notaries Public of BC

A notary public can help with making a will. The Society of Notaries Public of BC offers a list of notaries in the province.

Lower Mainland: 604-681-4516

Toll-free: 1-800-663-0343

www.notaries.bc.ca ^[13]

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References

- [1] <http://www.accessprobono.ca/willsclinic>
- [2] <http://www.clicklaw.bc.ca/global/search?f=Wills+%26+estates>
- [3] <http://www.clicklaw.bc.ca>
- [4] <http://www.clicklaw.bc.ca/resource/1267>
- [5] <http://www.dialalaw.org>
- [6] <http://www.clicklaw.bc.ca/resource/1736>
- [7] <http://www.lslap.bc.ca>
- [8] <mailto:lawyerreferral@bccba.org>
- [9] <http://mylawbc.com/paths/wills/>
- [10] <http://www.nidus.ca>
- [11] <http://www.trustee.bc.ca>
- [12] <http://www.self-counsel.com>
- [13] <http://www.notaries.bc.ca>

Glossary for Writing Your Will

This section was last reviewed for legal accuracy by People's Law School in January 2016.

Advance directive

Written instructions about what health care you want or do not want in the future if you become incapable and a health care decision needs to be made.

Assets

What you own. Assets can include things such as money, land, investments, and personal possessions such as jewelry and furniture.

Beneficiary

A person that you designate to receive money or property in a will, benefit plan, or insurance policy.

Codicil

A document made after the will that changes some things in your will.

Estate

All of the property and belongings you own at your death, with some exceptions. The estate does not include property you own with someone else jointly (such as a joint bank account) or property where you have designated a beneficiary (such as an insurance policy).

Executor

The person you appoint to carry out the instructions in your will and settle your affairs after you die.

Notary public

A public official who is legally authorized to provide advice and prepare documents on certain matters, including wills (so long as they do not create trust terms).

Power of attorney

A legal document that enables you to appoint another person to make financial and legal decisions for you.

Probate

A legal procedure that confirms a will is legally valid and can be acted on. It allows financial institutions and others to rely on the will as being the last will you made.

Public Guardian and Trustee

An office operating under provincial law that provides support for financial and personal decision-making where there is no one else able to do so.

Representation agreement

A legal document to authorize someone to assist you or to act on your behalf for health care and personal care matters. It can also cover routine financial and legal matters.

Residue

The residue of the estate is whatever is left over after the executor pays all the debts and expenses and distributes any specific gifts.

Spouse


Two persons who are married to each other, or who have lived together in a marriage-like relationship for at least the two years prior to the death of the will-maker.

Will

A legal document that leaves instructions about what the person making the will wants done with their assets and obligations after they die.

Will-maker

A person who makes a will.

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A Death in Your Family

Immediate Details following a Death

Death at home

Expected death at home

If this is an expected death and the family member dies at home, it is likely you are already in regular contact with your family doctor and home care nurse. Your deceased family member may have discussed his or her wishes with the doctor or the nurse. In cases where the forms have been signed for "No CPR" (No Cardiopulmonary resuscitation), there is no need to call an ambulance.

Immediately after the death, you may choose to spend some time with your deceased family member and participate in rituals that are in keeping with your spiritual beliefs. You can take the time you need before calling the family doctor or the nurse. If it is late at night, you may wait until morning before calling.

The family doctor may come to pronounce the death or give the attending nurse permission to pronounce the death. This is often done to provide assurance and support to the family and verify that this was an expected, natural death.

If the doctor has already signed the form called Notification of Expected Death, a pronouncement will not be necessary.

Removal of the body

There is no legal requirement about the timing for the removal of the body from home, although there is a legal requirement about who can authorize the transportation of the body. A funeral home can take the body directly from your home. The funeral home is legally required to obtain verbal or written authorization from the executor or the next-of-kin before removing the body.

There is no urgency to transfer the body. The Funeral Service Association of BC recommends that the family not wait more than four to six hours after the death has occurred to call the funeral home. For more information, visit www.bcfunerals.com ^[1].

Unexpected death at home

If an unexpected death occurs at home, call 911 immediately. You should also call your family doctor. The *coroner* may come at the request of the police or the doctor. An *autopsy* is not usually performed unless the doctor or coroner asks for one, or if the death was unusual or accidental.

Death in hospital

Expected death in hospital

If this is an expected death and your family member was in hospital, you would have contact with *palliative care* staff. At the death, a family physician or nurse will call you according to your instructions. You can spend some time in the room with your family member. In general, the hospital will wait for the family members to say their goodbyes.

In the palliative care wards of some *hospices*, the deceased may be taken directly to the funeral home.

Unexpected death in hospital

An unexpected death in hospital will be reported to the coroner. In some cases, doctors will ask you to consent to an autopsy of the body or the coroner may be required by law to do one.

If your child dies in hospital, doctors may ask you to consent to an autopsy. An autopsy is the parent's decision except where the autopsy is required by law. To find out when an autopsy may be required by law, see the section "When might a coroner be involved?".

Questions you may have

What is a medical certificate of death?

When a person dies in British Columbia, the death must be registered with the BC Vital Statistics Agency. The first step in the process is the completion of the *medical certificate of death*. This is not the same as the *death certificate*.

It is the responsibility of the funeral home or funeral provider to ensure they obtain the medical certificate to enable them to register the death.

A doctor or coroner will usually complete and sign a medical certificate of death within 48 hours of the death.

- **If the family member died at home**, the family doctor or the coroner will complete the medical certificate of death.
- **If the family member died in hospital**, staff will contact the resident doctor to sign the medical certificate of death, or the funeral home will make arrangements to have the family doctor complete the medical certificate of death.

Even though the medical certificate is signed and the body is technically released, the funeral home cannot pick up the deceased until the hospital provides permission. In the case of private care hospitals without *morgues* or storage facilities, you likely have already given the private facility the name of the funeral home of your choice. Once the doctor or attending professional has pronounced the death and signed the medical certificate, the private hospital would contact the funeral home to remove your family member.

When might a coroner be involved?

The Coroners Service of British Columbia ^[2] is responsible for the investigation of all unnatural, sudden and unexpected, unexplained, or unattended deaths. It is the coroner's duty to confirm who, how, when, where, and by what means the death occurred. The coroner then classifies the death as natural, accidental, suicide, homicide, or undetermined. Anyone may report a death to the coroner including agencies, hospitals or doctors.

If the coroner's preliminary investigation reveals the death is a natural event, the coroner will consult the family doctor to ensure the nature of death is consistent with the deceased's medical history. If there is no concern, the family doctor completes the medical certificate of death.

What is an autopsy?

Either the coroner or the doctor can order an autopsy if they cannot determine the cause of death or if the death took place in suspicious circumstances. A trained pathologist performs the autopsy. The autopsy is usually carried out within 48 hours. When the autopsy is completed, the coroner releases the body to the next-of-kin. Funeral arrangements can then go ahead.

If the autopsy is not required by law, next-of-kin must sign a consent form before an autopsy can be done. Before you give consent for an autopsy, make sure that you understand the reasons for the autopsy. Keep a copy of the signed autopsy form. You can refuse to give consent for an autopsy, unless it is required by law.

You can request an autopsy. If you ask for an autopsy and it is not ordered by a doctor or coroner, you will have to pay for it. Ask ahead of time how much it will cost.

The results of the coroner's investigation are released in a public document called a *judgment of inquiry*. It is available by request from the Regional Coroner's office. The report incorporates information from all agencies involved in the death, including police, ambulance, and hospitals. It also contains the findings of the autopsy. The autopsy report itself is confidential and is released only under certain conditions.

In some cases there will be an inquest. A coroner's inquest is a formal court proceeding that allows for the public presentation of all evidence relating to a death. The coroner has a fact-finding role, not a fault-finding role. The inquest does not decide criminal or civil liability.

What information does the funeral home need right away?

Your deceased family member may have made arrangements with a funeral home, and may even have prepaid for services. He or she also may have left instructions in a will. Check to see if they made prior arrangements. If they have not been made, contact a funeral home. A funeral home representative may visit your home to help you make the arrangements.

If the deceased was a member of a memorial society, check with the funeral home to see if they have a contract with that society. If not, ask whether they will agree to provide services for the same cost as the memorial society.

You will need to provide the funeral home with certain personal information about the deceased:

- full name,
- residential address,
- date and place of birth,
- date of death,
- place of death,
- name of spouse (maiden name required),
- name of parents (mother's maiden name required) and places of birth,
- Social Insurance Number,
- personal health number on the deceased's BC Care Card,
- any military service or veterans affairs numbers,
- occupation,
- length of time in occupancy,



- marital status, and
- name of executor.

What is involved in the death registration?

After the funeral home has received the medical certificate of death and obtained the personal information about the deceased, they can complete the Death Registration form. This form goes to Vital Statistics ^[3].

What do I need to know about death certificates?

The funeral director will ask you how many "original" death certificates you will require. The fee is set by Vital Statistics and may change at any time.

You will need the death certificate to notify the institutions that handled the deceased's affairs. Some institutions will require either the original document or a notarized copy of the death certificate, while others will accept a regular copy. You may wish to order two originals, then have additional "certified true copies" prepared by a notary public or a lawyer.

Almost all funeral homes in BC are registered as "registrars" of Vital Statistics. They administer the documentation onsite and can produce the death certificate. This means that for up to three months, the funeral home can produce more death certificates upon request.

After that time, you must apply directly to the office of Vital Statistics in Victoria; the processing may take four to six weeks.

Anyone may order and receive a death certificate for a person who has died in British Columbia. The release of a death certificate is not limited to immediate family.

How can I get information about the cause of death?

The medical certificate of death contains information about the cause of death. Neither the death registration nor the death certificate has that information.

If you are a member of the immediate family, you can obtain a certified copy of the medical certificate of death by requesting it from the family doctor, the coroner involved, or the doctor who originally signed it. Only immediate family members are eligible to obtain a certified copy of the medical certificate of death.

What is a disposition permit?

When the death is registered, a *disposition permit* is produced along with the death certificate. The permit typically has three parts: one each for the funeral home, person conducting the funeral cemetery or crematorium.

It is illegal to bury or cremate human remains unless you have a disposition permit issued under the *Vital Statistics Act* ^[4]. Usually the funeral home obtains the permit.

Who do I need to notify of the death?

The first people to notify are the family doctor, the funeral home, and family members.

If there is no will or executor, the next-of-kin has the right to control what happens to the body of the family member. In some cases, you may wish to know who within the family has priority as next-of-kin, after the executor or spouse.

The executor or the administrator is responsible for making funeral arrangements and paying for them from the deceased person's *estate*.

Many people and institutions will need to be notified. Tasks may include contacting the federal government about pensions and the land registry about property your family member owned. In most cases, these tasks are not urgent. They can be left to the executor or administrator to handle.

What is organ donation?

Hospital staff may ask if you wish to donate your deceased family members' organs. Your family member may have left instructions or, as next-of-kin, you can give your consent when they ask if the family member wished to donate organs and tissue.

What if your deceased family member wished to donate organs and tissue?

He or she may have made a decision to donate organs and tissue and may have discussed those wishes with you. Or the wishes may be recorded in the will.

In BC, the *Human Tissue Gift Act* ^[5] regulates organ and tissue transplants or donations. This law governs donations made after a donor's death, as well as donations made from one living person to another.

The BC Transplant Society ^[6] is responsible for all aspects of organ transplantation in BC. The Organ Donor Registry of the BC Transplant Society has replaced all previous ways of indicating organ donation.

When your family member dies in hospital, the medical staff enters the deceased's personal health number into the organ registry database. If the deceased is registered in the Organ Donor Registry, the system will send the hospital the form that indicates the deceased's decision. The medical staff will show you this form.

If your deceased family member was not registered with the Organ Donor Registry, medical staff will ask you as next-of-kin, if you are willing to have organs donated. While you are not legally bound to do so, you may wish to make your decision based on what your family member would have wished.

What is the Body Donation Program?

If your family member donated his or her body for anatomy or medical studies, you need to make separate arrangements with the Department of Cellular and Physiological Sciences' Body Donation Program ^[7] at the University of British Columbia.

For more details about the donation process and to receive the "Body Donation Program" brochure and body donor consent form, contact the UBC Department of Cellular and Physiological Sciences:

604-822-2578

anatomy@interchange.ubc.ca ^[8]

cellphys.ubc.ca/bodyprogram ^[7]

✓ The above was last reviewed for legal accuracy by People's Law School, 2012.

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- [7] <http://cellphys.ubc.ca/bodyprogram/>
- [8] <mailto://anatomy@interchange.ubc.ca>

Making the Funeral Arrangements

Legally, the person named in the will as the executor of the person's estate has the responsibility for dealing with the body and arranging the funeral. If there is no executor, then the next-of-kin is responsible.

If you wish to know who within the family has priority as next-of-kin, after the executor or spouse, there is a list in the *Cremation, Interment and Funeral Services Act* ^[1]. See the "Helpful Information" section.

The will may have instructions about the disposition of the body. The law says if there are written wishes, you should follow them unless the wishes are unreasonable, impossible to follow, or would cause hardship.

You may choose to hold a service or memorial in a manner and in a place that reflects the lifestyle and personality of your deceased family member.

There will be many details to finalize about the funeral or memorial service. You may wish to use the online information provided by the Funeral Service Association of BC ^[2].

By law, a deceased person must be buried or cremated. The body must be placed in a rigid container or casket that is sufficient to hold and transport the body and to prevent a health hazard. The casket or container could be homemade; it does not have to be provided by a funeral home.

There is no law that states a specific time-frame for burial. The timeline is usually determined by the need to secure all permits and authorizations, notify family and friends, prepare the cemetery site, and observe religious and cultural rituals.

Cremation

Because cremation is an irreversible process and eliminates any ability to determine cause of death, 48 hours must elapse after the time of death before cremation may take place.

The cremated remains are returned to the executor or person who has the legal authority to control the disposition of the cremated remains. As long as the cremated remains are treated with respect, the law does not limit what you can do with them. You can scatter the remains, keep them at home, take them overseas, put them in a garden on private property, or inter them in a cemetery.

If permitted by municipal bylaws, the remains can be scattered on land, sea, or air or in any place that has personal meaning. The BC Funeral Association has information about cremation on their website in the section on "Burial or Cremation" ^[3].

Funeral and cemetery costs

In British Columbia, funerals and cemeteries are regulated under two laws. The *Business Practices and Consumer Protection Act* ^[4] governs the nature of the contractual relationship between you and the funeral home and burial/cremation service. The *Cremation, Interment and Funeral Services Act* ^[1] deals with specific aspects of cremation, as well as funeral and cemetery services.

All funeral providers and cemetery operators must be licensed with Consumer Protection BC ^[5], which is responsible for the administration and enforcement of legislation concerning cemeteries, crematoriums, and funeral providers.

The funeral home will pick up the body, prepare the body for burial or cremation, and provide a casket or container to transport the body. They may also provide a range of optional services, from placing the *obituary notice* in the newspaper to arranging catering for the reception.

Prices for funeral services vary widely. All funeral providers must display a current price list of the services and products they offer. If you ask for prices over the phone, they must provide them to you.

When you meet with the funeral home staff to make the arrangements, make sure you know what you are purchasing and consider whether it really is what you want. While some services provided will be basic legal requirements, other services are optional, such as embalming.

Some funeral homes have a compassionate policy when a child has died. The funeral home will have expenses related to the funeral, such as fees for the cemetery or cremation, death certificates, and clergy. Some funeral homes require you to pay for those items prior to the funeral service. If you pay the funeral home directly, you must wait until after the estate is settled to receive reimbursement.

If you ask the funeral home for an invoice, you can take it to the bank; they will pay the funeral home directly from your deceased family member's account. The bank may wish to see a copy of the *death certificate* and the will, if there is one.

If the family member served in the Canadian Armed Forces and had absolutely no *assets*, you may be able to get help with funeral expenses from the Last Post Fund ^[6]. This national non-profit organization provides grants to the spouse or family of a deceased veteran toward funeral and burial or cremation costs when the estate cannot afford to pay. Veterans include war veterans, merchant mariners, and qualified civilians.



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The price for the funeral service does not include sale of a cemetery lot (that is, a grave, crypt, or niche), or sale of a memorial marker (a headstone, tombstone, monument, or plaque). You must arrange for these separately. The funeral home can assist you.

The prices of cemetery lots and memorial markers vary widely. Before purchasing a marker, make sure it meets the requirements of the cemetery you have selected. Most memorial dealers can tell you the requirements for local cemeteries.

What if I need more information or have a complaint?

If you need more information or have a complaint about a cemetery, crematorium, or funeral home, you may wish to contact one of the following:

- Cemetery and Crematorium Association of BC ^[7]
- Funeral Service Association of BC ^[2]

Both non-profit groups have extensive information and can provide assistance with problem solving.

If you have a complaint and cannot resolve the problem, send your complaint in writing to Consumer Protection BC ^[5]. They have the authority to investigate.

✓ The above was last reviewed for legal accuracy by People's Law School, 2012.

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- [1] <http://canlii.ca/t/84mx>
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- [4] <http://canlii.ca/t/84mr>
- [5] <http://www.consumerprotectionbc.ca>
- [6] <http://www.lastpostfund.ca>
- [7] <http://www.ccabc.org>

Managing Affairs after the Death

Legally, only the executor appointed under the will or administrator appointed by the court has the right to deal with the assets and property of the person who has died. An executor must get a grant of probate of the will from the court to confirm his or her authority.

If your family member died without a will, a person seeking to be appointed as administrator must apply to the court for a grant of administration before he or she has the authority to deal with the assets.

If you are the executor or the person seeking to be the administrator, excellent information is available about what you need to do:

- People's Law School booklets "Being an Executor ^[1]", "Power of Attorney ^[2]", and "Writing Your Will ^[3]."
- Nidus Personal Planning Resource Centre and Registry website at www.nidus.ca ^[4].
- Self-Counsel Press publication ^[5].

First steps

If you cannot find the person's will, you can check with his or her notary public or lawyer. You can also do a wills search through Vital Statistics or your local government agent. Fee for service applies and is subject to change.

You need the following information to perform a wills search:

- date and place of death,
- date and place of birth,
- full legal name and all alias names, and
- occupation, if not retired.

If an executor is not involved or if you are the executor, you may want to secure the assets. Make sure the following valuables are safe:

- will or copies of the will,
- wallet, purse or briefcase,
- social insurance card, medical card, driver's licence, etc.,
- credit cards, bank statements,
- utilities statements,
- life or property insurance policies, and
- income tax papers.

You also may need to do the following: Make sure the deceased's motor vehicle is locked in a safe place. Retain the keys and any valuable contents to hand over the executor. Retain access to the deceased's residence to take care of pets, make sure appliances are off.

Usually the executor or administrator will send a change of address to Canada Post so that the deceased's mail goes to the executor's address while he or she is dealing with the person's estate. It is the responsibility of the executor or administrator to notify institutions and cancel credit cards, club memberships, magazine subscriptions, etc.

Note: This booklet is not intended to explain the process for obtaining a grant of probate or an appointment of an administrator or the process for the distribution of the deceased's assets.

What do I need to know about benefits for survivors?

The following is a general overview about benefits for survivors. Many of the tasks involved will be completed by the executor or administrator.

If you had a joint account with right of survivorship, you can withdraw the whole amount from the account at any time. If you encounter difficulties, speak to the bank manager. Once you have the death certificate, you can have the account transferred to your name alone.

If the accounts were in the deceased's name alone, notify the bank. Banks may release small amounts of money to the survivor before the estate is settled, but they are not required to do so. They will pay funeral expenses directly if presented with the bill. They will not reimburse a person who has paid the funeral home directly until the estate is settled.

Money left to the designated beneficiary in insurance policies, pension funds, and RRSPs passes outside the will. If you are the designated beneficiary, contact the relevant institutions to learn what documents they need.

If your spouse was receiving a government or private pension, you may be entitled to a portion of the pension as the surviving spouse. Check with each agency.

If your deceased family member was a veteran, member of a union, or receiving a pension from another country, there may be pension benefits for survivors. For pensions, the estate or the survivor is entitled to keep the cheques issued

in the month of your deceased family member's death. *Note:* This applies to you if you are a dependent child of a parent who has died.

If the family member paid into the Canada Pension Plan (CPP), the death benefit is payable to the estate or survivor. CPP survivor benefits may be payable if the deceased is your spouse and you are under 60 or if you are a surviving child under 18 years of age or between the ages of 18 and 25 if attending school full-time.

If the deceased was still employed, benefits may be available. Death benefits payable by labour unions vary. They may be payable to the next-of-kin or the estate. The union office will have the information.

If the death was work-related, benefits may be available as workers' compensation through WorkSafeBC ^[6].

If the death was due to a car accident, benefits are available from ICBC ^[7]. Also, the deceased's family members may bring a legal action for compensation if the accident were the fault of another.

If the death was a result of a crime, assistance and benefits may be available to survivors from the Crime Victim Assistance Program ^[8].

What do I need to know about re-arranging my own legal affairs?

In time, you may wish to change your will if the death of your deceased family member means your old will is out of date.

It may be appropriate to review your arrangements for future planning, and consider such tools as a power of attorney, enduring power of attorney, advance directive, or representation agreement. See Clicklaw ^[9] for further information, under the common questions "When might I need a power of attorney?" ^[10] and "Should I have an enduring power of attorney or a representation agreement?" ^[11].

If you have lost your partner, you may need financial advice or help with reorganizing your banking arrangements. Talk to your bank or credit union.

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- [3] <http://www.clicklaw.bc.ca/resource/1020>
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- [6] <http://www.worksafebc.com>
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- [8] <http://www.clicklaw.bc.ca/resource/1300>
- [9] <http://www.clicklaw.bc.ca>
- [10] <http://www.clicklaw.bc.ca/question/commonquestion/1004>
- [11] <http://www.clicklaw.bc.ca/question/commonquestion/1005>

Bereavement Support

Grieving is an important process that requires more time than people often acknowledge or allow. Support during time of bereavement can help bring healing, renewal, and hope for the future.

Family and friends can be a great source of comfort. Expressing your feelings with them can help you in the grieving process.

You also may wish to link up with resources in the community that offer comfort, support, referrals, and services, when needed. The BC Bereavement Helpline ^[1] is a free and confidential service that connects the public to grief support services within BC. See the Helpful Information section for contact details and further options for bereavement support.

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References

[1] <http://www.bcbereavementhelpline.com>

Helpful Information When a Family Member Dies

Information about bereavement

BC Bereavement Helpline	A non-profit society that facilitates the care and support of the bereaved throughout BC.	Website: www.bcbereavementhelpline.com ^[1] Phone: 604-738-9950 (Lower Mainland) Phone toll-free: 1-877-779-2223 Box 53530, 984 West Broadway, Vancouver, BC V5Z 1K7
BC Children's Hospital	Offers support services for parents on the death of a child.	Website: www.bcchildrens.ca ^[2] Phone: 604-875-2345 (Lower Mainland) Phone toll-free: 1-888-300-3088 Email: FSRC@cw.bc.ca ^[3] 4480 Oak Street, Vancouver, BC V6H 3N1

Information about burial and cremation

Cemetery and Crematorium Association of BC	A non-profit provincial death-care association that provides information for cremation, cemetery and memorialization professionals.	Website: www.ccabc.org ^[4] Phone: 604-866-7292 (Lower Mainland) Phone toll-free: 1-866-587-3213 Email: info@ccabc.org ^[5] PO Box 10082, Aldergrove, BC V4W 3Z5
Consumer Protection BC	Responsible for the administration and enforcement of the <i>Consumer Protection Act</i> and the <i>Cremation, Interment and Funeral Services Act</i> .	Website: www.consumerprotectionbc.ca ^[6] Phone: 604-320-1667 (Lower Mainland) Phone toll-free: 1-888-564-9963 PO Box 9244, Victoria, BC V8W 9J2
BC Funeral Association	A non-profit association that provides general information about funeral services in BC. The section of their website “When Death Occurs,” has information about what to do first, how to contact the funeral home, and what to expect.	Website: www.bcfunerals.com ^[7] Phone: 250-592-3213 (Victoria) Phone toll-free: 1-800-665-3899 Email: info@bcfunerals.com ^[8] 211 – 2187 Oak Bay Avenue Victoria, BC V8R 1G1

Memorial societies

Memorial Society of BC	A non-profit organization that helps to plan funerals that are simple, dignified and affordable.	Website: www.memorialsocietybc.org ^[9] Phone: 604-733-7705 (Lower Mainland) Phone toll-free: 1-888-816-5902 Email: mail@memsoc.org ^[10] 205 - 640 West Broadway, Vancouver BC V5Z 1G4
People’s Memorial Society of BC	A non-profit and locally-operated society that provides pre-arrangement, burial, cremation, memorial, funeral, and transfer services.	Website: www.peoplesmemorialsocietybc.com ^[11] Phone toll-free: 1-800-661-3358 Email: info@peoplesmemorialsocietybc.com ^[12] 505 Stn Main, Vernon BC V1T 9Z9

Information about legal and medical matters

British Columbia Hospice Palliative Care Association	Provides leadership and support for its member organizations and individuals. Its goal is to ensure quality care for British Columbians faced with a life-threatening illness, death, and bereavement.	Website: www.bchpca.org ^[13] Phone: 604-267-7024 (Lower Mainland) Phone toll-free: 1-877-410-6297 Email: office@bchpca.org ^[14] 1100-1200 West 73rd Ave, Vancouver, BC V6P 6G5
British Columbia Probate Kit, Self-Counsel Press	Provides step-by-step instructions of how to probate an estate and includes all the required forms on enclosed CD-ROM. This kit also contains administration forms, which you will need if no valid will is available.	Website: www.self-counsel.com ^[15] You can also find Self-Counsel Press publications for sale in many bookstores and in your local public library.

British Columbia Transplant Society	BC Transplant directs, delivers, or contracts for all organ transplant services across BC.	Website: www.transplant.bc.ca ^[16] Phone: 604-877-2240 (Lower Mainland) Phone toll-free: 1-800-663-6189 Email: BCTS_Webmaster@bcts.hnet.bc.ca ^[17] 555 West 12th Avenue (West Tower), Vancouver, BC V5Z 3X7
Coroners Service	The Coroners Service of British Columbia is responsible for the inquiry and investigation of all unnatural, unexpected, unexplained, or unattended deaths.	Website: www.pssg.gov.bc.ca/coroners ^[18] Phone: 604-660-7745 (Lower Mainland) Phone toll-free: 1-800-663-7867 (Service BC) Email: CoronerRequest@gov.bc.ca ^[19] Chief Coroner's Office Metrotower II 800 – 4720 Kingsway, Burnaby, BC V5H 4N2
Lawyer Referral Service	The Lawyer Referral Service enables members of the public to consult with a lawyer for up to 30 minutes for a fee of \$25 plus taxes.	Website: www.clicklaw.bc.ca/helpmap/service/1044 ^[20] Phone: 604-687-3221 (Lower Mainland) Phone toll-free: 1-800-663-1919 Email: lawyerreferral@bccba.org ^[21]
Public Guardians and Trustee Office	Administers estates of people in BC who die with or without a will when an executor, family member, or other eligible person either does not wish or is unable to carry out the administration of the estate.	Website: www.trustee.bc.ca ^[22] Phone: 604-660-4444 (Lower Mainland) Phone toll-free: 1-800-663-7867 (Service BC) Email: mail@trustee.bc.ca ^[23] 700 – 808 West Hastings Street, Vancouver, BC V6C 3L3
Society of Notaries Public of BC	A notary public can provide assistance with notarizing death certificates and providing extensive information about wills and estates. Contact the Society office to obtain the name and telephone number of a notary public near you. Ask the notary public how much it will cost for the first meeting.	Website: www.notaries.bc.ca ^[24] Phone: 604-681-4516 (Lower Mainland) Phone toll-free: 1-800-663-0343 Box 44, 1220 - 625 Howe Street, Vancouver, BC V6C 2T6
Vital Statistics Agency	The British Columbia Vital Statistics Agency is responsible for the registration of births, marriages, and deaths in British Columbia. Offices are located in Victoria, Vancouver, and Kelowna.	Website: www.vs.gov.bc.ca ^[25] Phone: 250-952-2681 (Victoria) Phone toll-free: 1-888-876-1633 PO Box 9657 Stn Prov Govt, Victoria, BC V8W 9P3
Will and Estates: Attorney General	The Ministry of Attorney General website has information about wills and estates, including probate procedures.	Website: www.clicklaw.bc.ca/resource/1682 ^[26]

Information about benefits

Crime Victim Assistance Program	Administered by the Victim Service Division of the BC Ministry of Justice. Immediate family members of an injured or deceased victim may be eligible for financial assistance and benefits including funeral expenses.	Website: www.pssg.gov.bc.ca/victimservices/financial/index.htm [27] Phone: 604-660-3888 (Lower Mainland) Phone toll-free: 1-866-660-3888 Email: cvap@gov.bc.ca [28] PO Box 5550 Station Terminal, Vancouver BC V6B 1H1
ICBC	Will provide no-fault accident benefits, including payment for the cost of funeral expenses or \$2,500, whichever is less.	Website: www.icbc.com [29] Phone: 604-661-2800 (Lower Mainland) Phone toll-free: 1-800-663-3051
Ministry of Social Development	When a person dies and there are no resources for funeral expenses, through either the individual's estate or family, the Ministry of Social Development may help with these costs.	Website: www.hsd.gov.bc.ca/publicat/bcea/Funerals.htm [30] Phone toll-free: 1-866-866-0800
Service Canada	On the Service Canada website, the section "Following a Death" [31], includes information about benefits available under the Canada Pension Plan.	Website: www.servicecanada.gc.ca [32] Phone toll-free: 1-800-OCANADA (1-800-622-6232) Phone toll-free TTY: 1-800-926-9105 (for hearing or speech impairment) PO Box 1177 Station CSC, Victoria BC V8W 2V2
The Last Post	Its primary mandate is to deliver the Veterans Affairs Canada Funeral and Burial Program which provides funeral, burial and grave marking benefits for eligible Canadian and allied veterans.	Website: www.lastpostfund.ca [33] Phone: 604-572-3242 (Lower Mainland) Phone toll-free: 1-800-268-0248 Email: lpfinfowest@lastpost.ca [34] 203 – 7337, 137th Street, Surrey, BC V3W 1A4
WorkSafeBC	Dedicated to promoting workplace health and safety for workers and employers in BC. "For Families: A Guide for Families Coping with a Work-Related Death or Terminal Illness" is a booklet available on their website.	Website: www.worksafebc.com [35]

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- [5] <mailto://info@ccabc.org>
- [6] <http://www.consumerprotectionbc.ca>
- [7] <http://www.bcfunerals.com>
- [8] <mailto://info@bcfunerals.com>
- [9] <http://www.memorialsocietybc.org>
- [10] <mailto://mail@memsoc.org>
- [11] <http://www.peoplesmemorialsocietybc.com>
- [12] <mailto://info@peoplesmemorialsocietybc.com>
- [13] <http://www.bchpca.org>

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- [28] <mailto://cvap@gov.bc.ca>
- [29] <http://www.icbc.com>
- [30] <http://www.hsd.gov.bc.ca/publicat/bcea/Funerals.htm>
- [31] <http://www.servicecanada.gc.ca/eng/lifeevents/loss.shtml>
- [32] <http://www.servicecanada.gc.ca>
- [33] <http://www.lastpostfund.ca>
- [34] <mailto://lpfinfowest@lastpost.ca>
- [35] <http://www.worksafebc.com>

Glossary for A Death in Your Family

autopsy

A specialized surgical procedure that consists of a thorough examination of a corpse to determine the cause and manner of death and to evaluate any disease or injury that may be present.

assets

What you own. Assets can include things such as money, land, investments, and personal possessions such as jewelry and furniture.

coroner

A coroner is a government official who investigates human deaths, determines cause of death, and issues death certificates.

death certificate

Issued by Vital Statistics, a death certificate declares the date, location and cause of a person's death as later entered in an official register of deaths.

disposition permit

A document that outlines how human remains will be disposed of.

estate

All of the property and belongings you own at your death. The estate does not include property you own with someone else in joint tenancy, or joint bank accounts.

hospice

Facility that provides special care for people who are near the end of life.

medical certificate

A legal document issued by a qualified medical practitioner certifying the death of a person.

morgue

A place in which dead bodies are temporarily kept until identified and claimed or until arrangements for burial have been made.

next-of-kin

A person's closest living blood relative or relatives.

obituary notice

A published notice of a death, sometimes with a brief biography of the deceased.

palliative care

Care which improves the quality of life of patients and their families facing life-threatening illness.

pathologist

A doctor who specializes in medical diagnosis.

RRSP

A Registered Retirement Savings Plan or RRSP is an account that provides tax benefits for saving for retirement in Canada.

will

A document, conforming to the requirements of British Columbia law, that contains directions for the disposal or distribution of a person's assets after his or her death.

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Being an Executor

Introduction to Being an Executor

This publication from People's Law School is for people who have been appointed as executor in a will. It covers the steps involved in British Columbia in dealing with an estate after a person dies, including the procedure to probate the will. This edition reflects the *Wills, Estates and Succession Act* ^[1], which became law in 2014.


The information is produced for educational purposes and is not intended as legal advice. If you need advice about a specific legal problem, please contact a legal professional. Some sources of legal help are highlighted in the Where to Get Help section.



We have tried to use clear language throughout. See the Glossary section for definitions of key legal terms, which are also bolded in the text.

People's Law School

People's Law School is a non-profit society in British Columbia, dedicated to making the law accessible to everyone. We provide free education and information to help people effectively deal with the legal problems of daily life.

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[1] <http://canlii.ca/t/8mhj>

Ten Steps to Being an Executor

This section was last reviewed for legal accuracy by People's Law School in January 2016.

Being the executor of someone's estate can be time-consuming and intimidating. This section outlines the main steps involved.

What are the key responsibilities of the executor?

On a person's death, the executor's responsibilities include:

- safeguarding the property left behind, such as by notifying the house insurance company if the house is now unoccupied,
- paying for the funeral arrangements,
- locating the property, also known as **assets** of the estate,
- paying any **debts** and taxes, and
- distributing what remains of the estate among the people named in the will to receive a share of the estate, known as the **beneficiaries**.



Image via www.flickr.com

! Tips & Tools

The executor is a trustee, bound to act for the good of the estate, even though the executor may also be a beneficiary or have a personal interest in the estate assets. The executor must put the interests of the estate before their own personal interests. As a trustee, the executor is accountable to the beneficiaries. For example, as executor, you must keep records and give all beneficiaries a final statement of accounts.

What if I don't want to act as executor?

Before you do anything as executor, you should first decide if you are prepared to take on the responsibility. You don't have to. However, if you start dealing with any assets of the estate, you are legally bound to continue until you get discharged. Examples of dealing with an asset include paying debts or changing the insurance on a house. You are said to have **intermeddled** in the estate, and you can only be relieved of being the executor by a court order discharging you.

If you haven't started dealing with any of the estate assets, you can decline or **renounce** your appointment as executor by filing a form in court. The form is called a Notice of Renunciation^[1]. If the documents required for the grant of probate (explained below) have not already been filed in court, you will also need to file them with your renunciation.

If two people are named as co-executors, one of the co-executors can decide they do not want the job. It will not be necessary for the co-executor who does not want the job to complete the Notice of Renunciation form.

If there is no co-executor, the alternate executor can take over, as most wills name an alternate in case the executor is unable to act. If there is no alternate named in the will, someone will have to apply to court to become **administrator** of the estate. The process is similar to the process to probate the will, described below.



Example

I found out after my brother died that he had named me executor. He didn't ask me first. Although I loved my brother, I didn't want the job. I was 78 years old. Also, I live in Alberta and he lived in BC. It was going to be too difficult. So I signed a Notice of Renunciation form, and the alternate executor took over.

Step 1: Locate the will

As executor of someone's estate, your first step is to locate the original will. The will may have instructions about the will-maker's wishes for organ donation, burial or cremation, and their funeral or memorial service. You need the original will if you are required to probate the will.

How can I find the will?

The original will may be in the will-maker's home, in a safety deposit box, or at the office of the lawyer or notary public who drafted the will.

To check on the location of the will, you can do a search of the Wills Registry ^[2] maintained by the provincial government's Vital Statistics Agency. See below for details on how to do the search. If the will-maker filed a notice of their will with the Registry, the search certificate will indicate the location of the original will. Filing a Wills Notice is optional, so it's possible the will-maker didn't file a notice or may have since moved the will or revoked it.

If you need to look in a safety deposit box for the original will, make an appointment with the financial institution. You will need a key to the box, your own identification, and a copy of the death certificate (see below for how to get a copy). If you can't find the key, the bank may permit the box to be drilled open for a charge.

If the will is in the safety deposit box and names you as executor, the bank will let you take the will. With a bank representative, you must make a list of the contents of the box and leave the list in the box before you remove any contents. You will need a copy of this list if you are required to probate the will.

How do I search the Wills Registry?

You can search the Wills Registry ^[2] by submitting a completed application form ^[3] and fee to the Vital Statistics Agency. If you are not a lawyer or notary public, you must provide a copy of the death certificate with your search application. See the Vital Statistics Agency website ^[4] for the application form, the current fee, and instructions. Their contact information is:

Vital Statistics Agency

Victoria: 1-250-952-2681

Toll-free: 1-888-876-1633

www.vs.gov.bc.ca ^[4]

You will be provided with a Certificate of Wills Search. You will need a copy of this certificate if you are required to probate the will.

How do I get a copy of the death certificate?

The death certificate may be obtained by the funeral services provider, or you can order a death certificate from the Vital Statistics Agency. See the Vital Statistics Agency website at www.vs.gov.bc.ca ^[4] for the application form ^[5], the current fee, and instructions. You may want to order more than one death certificate so you can deal with more than one institution at a time.

Step 2: Confirm the validity of the will

Once I've located the will, what's the next step?

Once you are confident you have the original last will of the will-maker, make sure that it is valid. There are several ways in which a will might be invalid or might need to be rectified by a court:

- **It might not have been properly witnessed or signed:** For example, a will must be signed at the end by the will-maker in front of two witnesses present at the same time.
- **The will-maker might not have had the legal capacity to make a will:** To make a will in BC, a person must be age 16 or over and mentally capable of making a will.
- **The will-maker might have been under duress or subject to undue influence:** A will or a gift in a will may be invalid if the will-maker was dominated by or dependent upon another person who persuaded the will-maker to make the gift.

If any of these concerns arise, it is important to seek the advice of a lawyer.

Tips & Tools

If you have concerns about the validity of the will, or a reasonable belief that a newer will exists, it is important to seek professional advice before taking any further steps in relation to the estate.

Can a witness to a will receive a gift under the will?

It used to be that a person who witnessed a will could not also be a beneficiary. But now, a witness may be able to inherit under a will. The witness has to apply to court and show that the will-maker **intended** to make the gift even though the beneficiary was a witness to the will. If the court isn't satisfied, the gift to the witness is void. Either way, the remainder of the will is not affected.

Step 3: Protect the assets

As the executor it is your responsibility to protect the assets of the deceased. You should make sure the assets are safe and properly insured. For example:

- Search for cash, jewelry, securities, and other valuables. Arrange for their safekeeping.
- Lock up the deceased's residence, if it is not occupied. If it is vacant and not being supervised, tell the police.
- Check on the insurance of the home and any vehicles. Check the expiry dates of the insurance. If the deceased lived alone, check the vacancy provisions to ensure that the coverage continues (most home insurance is cancelled automatically if the home is vacant for more than 30 days).



What other things should I do right away?

Other steps you should take to protect the assets include:

- Notify financial institutions where the deceased held accounts.
- Cancel any credit cards.
- Cancel any subscriptions and redirect mail to a safe location.
- Apply for Canada Pension Plan death benefits ^[6].
- If the deceased owned a business, arrange for its ongoing management.
- If the will includes a **trust**, take steps to ensure that the assets that form part of the trust are properly invested or kept in a safe place.

Tips & Tools

A trust is a part of the estate that is set aside in the will for a beneficiary, often a child, on certain terms. For many estates, the executor is often also the trustee. The trustee is responsible for:

- making sure that all the assets that form part of the trust are properly invested or kept in a safe place,
- filing annual trust tax returns, and
- making payments to the beneficiary of the trust as directed by the will.

Step 4: Arrange the funeral

The executor is responsible for the funeral arrangements and paying the funeral expenses. There are many decisions to make when arranging the funeral, usually in a very short time period. For example:

- Where and when will the funeral be?
- Will there be an obituary and funeral announcement published in the paper?
- Will the deceased be buried or cremated?

Often people leave instructions about what they want, either in their will or a letter. When possible, arrangements should be in accordance with the will-maker's wishes. You'll also want to consider the wishes of the relatives.

Are the will-maker's wishes binding on the executor?

Where the will sets out the will-maker's wishes for burial or cremation, those wishes are binding on the executor, unless they are unreasonable or impracticable or cause hardship. If as the executor you are unwilling or unable to give instructions on the question of burial or cremation, the spouse may.

If there is any question about what the person wanted, the executor has the legal authority to decide.

Tips & Tools

To pay the funeral expenses, you could take the invoices to the bank where the deceased kept an account. If there's enough money in the account, the bank will typically give you funds from that account to pay the expenses.

Step 5: Communicate with beneficiaries

Once the funeral is over, family members and beneficiaries are often anxious to know about the estate, what happens next, and when they will receive their inheritance.

Once you understand the terms of the will, it is important to communicate with the beneficiaries. Although it's not mandatory to hold a meeting with the beneficiaries, doing so allows you to:

- review the terms of the will and explain next steps,
- set expectations around timelines for administering the estate and distributing the assets,
- discuss the different duties and liabilities of the executor,
- request approval for compensation, if you intend on charging a fee,
- gather personal information from the beneficiaries (for example, their full name, address, and Social Insurance Number), and
- discuss how the personal assets will be divided.

Step 6: List the assets and liabilities

Making an inventory of the estate is one of your most significant tasks as executor. The inventory lists the estate assets and liabilities, valued as at the date of death.

Among the steps to take to identify the assets are:

- **Bank accounts:** Contact the will-maker's bank or credit union to gather information on account balances, loans outstanding, and investments held as of the date of death. You may want to put all money into one account for the estate.
- **Life insurance:** Begin claims on life insurance policies including group insurance or other plans.

- **Wages and benefits:** Contact the will-maker's employer to verify any income owing and to determine any benefits to which the spouse or family may be entitled.
- **Government benefits:** Contact Canada Pension Plan and Old Age Security ^[7] to cancel pension benefits. Establish whether any surviving spouse or children are eligible for survivor or continuing benefits.
- **Investments:** Locate all original investment certificates, stocks, or bonds, and obtain the market value as of the date of death.
- **Real estate:** List all real estate that the will-maker owned alone or with others. List any mortgages. Have appraisals done, as of the date of death, on any properties that were not jointly owned.
- **Personal possessions:** List any other assets, including cars, boats, household goods, jewelry, electronic equipment, collections such as coins or art, and other personal effects. Estimate values. Where you're not sure, get an appraisal.

Letters requesting this information will need to include proof of death and a copy of the will to demonstrate your authority to act on behalf of the estate. If the third party will not release the information about the estate assets, you may need to consult with a lawyer for assistance.

Tips & Tools

As executor, you are responsible to account for the estate assets. Keep records of all income received and any expenses paid. Keep all receipts. Keep copies of all letters and forms you send.

In listing the liabilities of the deceased, include:

- the funeral expenses,
- any amounts owing relating to their home, including utilities, rent, or strata fees,
- any professional fees,
- if the will is probated, the probate fees,
- municipal and income taxes owing, and
- all other claims as of the date of death.

What can I do to protect myself from liability?

As the executor, you could be personally liable if you don't pay the deceased's debts, including any taxes owed, before you distribute the estate.

To find out who the deceased owed money to, look in the deceased's records for evidence of mortgages, loans, and accounts with outstanding charges.

Depending on the circumstances, you may want to advertise for possible creditors. Advertising for creditors involves placing a notice in the *BC Gazette* ^[8], a government publication. A creditor will have 30 days after publication of the notice to come forward with a claim against the estate. After 30 days, you may distribute the estate and you will not be liable for any claim that wasn't brought forward.

Tips & Tools

An executor must notify a surviving spouse that he or she may have a right to the spousal home. If the executor disposes of the home without having provided proper notice, the executor may be liable.

Step 7: If necessary, apply for probate

As the executor, you may need to **probate** the will. In the probate process, you submit special forms and the will to court; see below for details. If everything is in order, the court issues a grant of probate. This document allows financial institutions and other organizations such as the Land Title Office to rely on the will as being the last will made by the will-maker.

When is probate required?

Not all wills need to be probated. If the estate involves less than \$25,000, probate is not typically required.

It depends in part on the type of assets involved. Not all things owned by the will-maker form part of the estate. Certain types of assets “pass outside the will.” For example, property owned jointly by the will-maker and someone else automatically becomes the exclusive property of the other joint owner. Examples include a joint bank account or a house owned in joint tenancy. As the executor, you will be able to transfer these assets to the joint owner without a grant of probate (note that you will need to provide the death certificate).

Assets where the will-maker designated a beneficiary also pass outside the will. The beneficiary is entitled to receive the proceeds on the death of the owner. Examples include a life insurance policy or a retirement benefit plan where the will-maker designated a beneficiary.

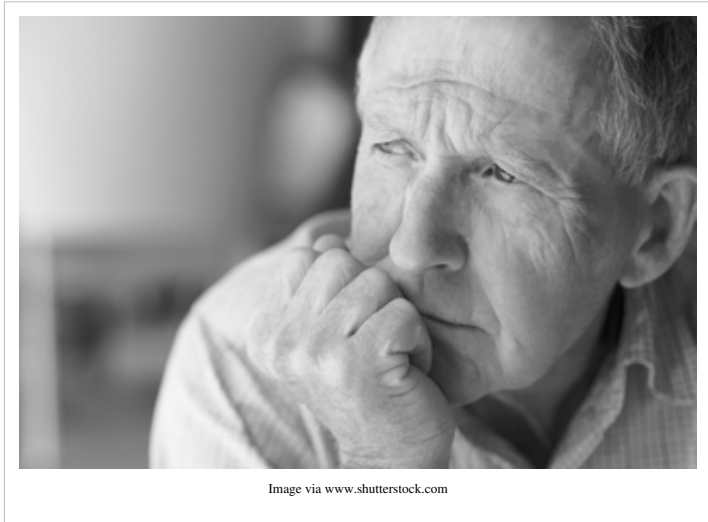
Many couples will hold all their assets through joint ownership or with beneficiary designations so when one of them dies, no probate is required.

What if the will-maker owned land?

If the will-maker owned land other than in joint tenancy, then probate is required. For example, if the will-maker’s only asset was 10 percent of a piece of property in BC worth \$200,000, the value of the estate would be \$20,000 (less than the \$25,000 threshold). However, the Land Title Office will still require that you provide a grant of probate to transfer the land.

What if the estate involves more than \$25,000?

If the estate assets are worth more than \$25,000, probate will usually be required. It is up to the institutions who hold the assets whether they will transfer them to you without probate. Check with the institutions that hold the deceased’s assets to find out what they require.



Step 8: Deal with debts and taxes

If probate is required, once you have the grant of probate, you will be able to transfer the estate assets into your name as executor. With the assets, you can then settle the deceased's debts and any expenses that you incur in the course of administering the estate.

Tips & Tools

If the estate does not have enough money to pay all outstanding debts, it is very important to get advice from a lawyer as soon as possible so that you do not become personally liable for the debts.

Prepare and file income tax returns

As executor, you must file income tax returns for the deceased and possibly for the estate:

- You must file a tax return for the deceased for the year of death.
- If the deceased had not filed a return for any year before the year of death and tax is payable, you must file a tax return for the person for those prior years.
- If the estate earns any income before distribution to the beneficiaries, you must file a tax return for the estate for each year after the date of death.
- If the will establishes a **trust**, you must file a tax return for the trust.

If the deceased had assets or income in another country, you may need to file a foreign income tax return as well.

After the income tax is reported, assessed and paid, apply for a Clearance Certificate ^[9]. For your own protection, you should have this certificate before you begin to distribute the estate. For more information, see the Canada Revenue Agency publication *Preparing Returns for Deceased Persons* ^[10], available at www.cra-arc.gc.ca ^[11] or by calling 1-800-959-8281.

Step 9: Account to the beneficiaries

Before you distribute the estate among the beneficiaries, you must give them an accounting of your administration of the estate and they must agree with it.

Prepare a final statement of assets, debts, income, expenses and distribution. This statement is for the beneficiaries to approve. If they refuse to approve it, you will need to have the accounts reviewed by the court so that your administration is approved. This process is called the "passing of accounts."

In the accounting, set out any executor's fee you are charging. If the beneficiaries do not agree with the proposed executor fee, you will need to have your accounts reviewed by a Registrar of the Court, who will set the fee.

Tips & Tools

The beneficiaries must approve your statement of accounts. In seeking their approval, you should ask them to sign a release. In the release, the beneficiary agrees, in consideration for receiving the gift from the estate, not to make any claims against you related to your work as executor.

Step 10: Distribute the estate

Once you ensure that all debts, expenses and taxes have been paid, that all claims against the estate have been satisfied, and that your accounts have been approved by the beneficiaries or the court, you can distribute the remainder of the estate.

If probate is required, you may not distribute the estate until 180 days after probate is granted and no claim is made against the estate. You do this to make sure that no one is going to challenge the will. If all those who have a claim on the estate sign a form saying they will not challenge the will, you can go ahead sooner.

Who can challenge the will?

In general, the will-maker is free to leave their estate to whomever they want. However, the law does require that the will-maker make adequate provision for the proper maintenance and support of their spouse and children. The spouse or children can apply to court for a portion of the estate that is “adequate, just and equitable in the circumstances.”


A spouse includes a common-law spouse, which is a person the will-maker lived with in a marriage-like relationship for at least the two years prior to the death of the will-maker.

How does the distribution work?

In distributing the estate, first distribute any gifts of specific property. Sometimes the will-maker attaches a separate list with the will that says who should receive particular items. That list may or may not be binding on the executor, depending on the will.

Estate assets are transferred first to the executor, and then to the beneficiary. These steps are often done at the same time. The Land Title Office^[12] has the forms for transferring real estate. Autoplan^[13] handles transfers of motor vehicles.

If any cash and belongings remain after you distribute the specific gifts, divide what remains, known as the **residue**, as instructed by the will. If the will does not have a residue clause, you must distribute the remainder as if there was no will. This is called “intestacy.” You will need to get legal advice if this situation occurs.

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- [10] <http://www.cra-arc.gc.ca/E/pub/tg/t4011/>
- [11] <http://www.cra-arc.gc.ca>
- [12] <https://ltsa.ca>
- [13] <http://www.icbc.com/vehicle-registration/sell-vehicle>

Probate Checklist for Being an Executor

This section was last reviewed for legal accuracy by People's Law School in January 2016.

As the executor, you may need to **probate** the will in order to distribute the estate.

What is probate?

In the probate process, you submit special forms and the original will to court. If everything is in order, the court issues a grant of probate. The executor can then show a notarized copy of the grant of probate to banks and other asset holders, confirming that the executor has the authority to act for the estate.

The probate procedure involves several steps and considerable detail. Many court forms and other documents must be filed in the Probate Registry of the Supreme Court of BC.



Image via www.flickr.com

! Tips & Tools

You can download the court forms required for probating a will from the Ministry of Justice website at www.ag.gov.bc.ca/courts^[1]. If the form does not open on your computer, try **saving the form** to your computer and opening it with Adobe Acrobat^[2].

How do I start the probate process?

You must notify several people that you intend to apply for probate. To do so, complete a copy of the court form P1, Notice of Proposed Application in Relation to Estate^[3]. Together with a copy of the will, mail or deliver the court form to:

- each person named in the will as executor or alternate executor,
- each beneficiary named in the will,
- each person who is entitled to apply to vary the will under the *Wills, Estates and Succession Act*^[4] (that is, the will-maker's spouse, common-law spouse, and children), and
- each person who would be entitled to a share in the estate if there had been no will (there is an extensive list in the *Wills, Estates and Succession Act*).

You must deliver this notice at least 21 days before submitting the probate application to court.

What documents are required for probate?

A typical probate application will involve these documents, which you must file with the Probate Registry:

- **A Submission for Estate Grant in Form P2** ^[5]: This form gives details about your application for probate.
- **An Affidavit of the Applicant in Form P3** ^[6] **or P4** ^[7]: This form identifies you and your relationship to the will-maker.
- **Affidavits of Delivery, in Form P9** ^[8]: These affidavits confirm that notice of the application was delivered to all persons to whom notice must be given.
- **An Affidavit of Assets and Liabilities in Form P10** ^[9] **or P11** ^[10]: This form sets out all the will-maker's assets and liabilities that pass to you under the will.
- **The originally-signed version of the will**, or if the original does not exist, a copy of the will.
- **Two copies of a Certificate of Wills Search**, obtained by doing a search ^[11] of the Wills Registry ^[12] maintained by the provincial government's Vital Statistics Agency.
- **Payment of the court filing fee**: Currently \$214, unless the estate has a value of less than \$25,000, in which case there is no fee payable.

Additional documents are required to deal with issues relating to the will, dispensing with notice, the executor renouncing their executorship, and various unusual applications.

To find the closest Probate Registry to where you are located, contact Enquiry BC:

Lower Mainland: 604-660-2421

Toll-free: 1-800-663-7867

Tips & Tools

If there is nothing to list under one of the headings on a form, write nil or none. Blank spaces may suggest that information is missing. This is one of the main reasons forms are rejected.

Do I need witnesses when I sign the forms?

You will need to sign some of the documents in front of a lawyer, notary public, or a commissioner for taking affidavits. All court registries have a commissioner for taking affidavits, and some community groups do as well. When you sign, it means you are swearing or affirming that the information you are providing in the document is true.

What assets and liabilities do I need to list?

The Affidavit of Assets and Liabilities in Form P10 ^[9] or P11 ^[10], one of the probate forms, includes a statement that has three parts:

- **Part I, Real property**: List the will-maker's home and any other land.
- **Part II, Personal property**: List the will-maker's personal property, such as cash, jewelry, furniture, vehicle, and the Canada Pension Plan death benefit.
- **Part III, Liabilities**: List any debts or amounts owing.

Do not list assets that are owned jointly (such as a house owned in joint tenancy) or that name a specific beneficiary, such as a life insurance policy. These assets do not form part of the estate.

Parts I and II ask the value of the assets at death. Provide a value, or if the asset has no value, put nil or none.

If you cannot obtain information about all of the deceased's assets you can still apply for probate. However, as you find new assets, you will need to prepare a new affidavit and pay further probate fees based on their value.

Tips & Tools

To help determine the market value of the person's home, refer to BC Assessment's property assessment information at evaluatebc.bccassessment.ca^[13].

How long will my application take?

The time frame for the Probate Registry to review and approve probate applications can vary considerably, but generally the review process takes two to three months.

Once the application is reviewed, the Probate Registry will assess the probate fees that are payable.

What are the probate fees?

Probate fees are based on the gross value of the estate assets that were located in British Columbia when the will-maker died.

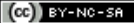
Estate value	Probate fee
\$0 to \$25,000	0
\$25,000 to \$50,000	\$6 for every \$1,000 (or part of \$1,000)
\$50,000 or more	\$14 for every \$1,000 (or part of \$1,000)

For example, if the gross value of an estate is \$125,000, the probate fees will be \$1,200. This fee is in addition to the court filing fee of \$214.

What if my probate application is rejected?

If your application is rejected, the Registry staff will tell you the reason. You can correct the problem and re-apply.

Once you are granted probate, you can proceed with the remaining steps in administering the estate.

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- [11] http://www2.gov.bc.ca/assets/gov/health/forms/vital-statistics/vsa532_fill.pdf
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- [13] <http://evaluatebc.bccassessment.ca>

Where to get Help for Being an Executor

This section was last reviewed for legal accuracy by People's Law School in January 2016.

Access Pro Bono

Volunteer lawyers provide free legal advice to qualifying persons who cannot obtain legal aid or afford a lawyer.

Lower Mainland: 604-878-7400

Toll-free: 1-877-762-6664

www.accessprobono.ca ^[1]

Canada Revenue Agency

The CRA publication *Preparing Returns for Deceased Persons* ^[2] provides information and forms for those filing tax returns for a deceased person.

1-800-959-8281

www.cra-arc.gc.ca ^[3]

Clicklaw

Clicklaw offers one-stop access to legal information, education and help for British Columbians from trusted organizations. Select the topic "Wills & Estates."

www.clicklaw.bc.ca ^[4]

Dial-A-Law

The Canadian Bar Association, BC Branch provides legal information for the public by telephone recordings and over the Internet. See the script on "Your Duties as Executor" ^[5].

Lower Mainland: 604-687-4680

Toll-free: 1-800-565-5297

www.dialalaw.org ^[6]

Lawyer Referral Service

The Canadian Bar Association, BC Branch offers referrals to lawyers who can provide a half-hour consultation for \$25.

Lower Mainland: 604-687-3221

Toll-free: 1-800-663-1919

lawyerreferral@bccba.org ^[7]

MyLawBC

From Legal Services Society, the agency that provides legal aid in British Columbia, MyLawBC is an online resource that enables you to make a simple will through answering a set of questions. It also provides information on wills as well as personal planning documents such as powers of attorney and representation agreements.

mylawbc.com ^[8]

Public Guardian and Trustee of BC

This government office manages estates, for a fee, when the executor is not able or willing to do so, or when someone dies without a will.

700 - 808 West Hastings Street

Vancouver, BC V6C 3L3

604-660-4444

www.trustee.bc.ca ^[9]

Self Counsel Press

Self Counsel Press publishes do-it-yourself guides on legal topics for BC, including the *British Columbia Probate Kit*, which includes the forms required for probate and a step-by-step explanation of the process.

www.self-counsel.com ^[10]


Society of Notaries Public of BC

A notary public can help with making a will and certifying legal documents. They are not able to assist with the probate process. The Society of Notaries Public of BC offers a list of notaries in the province.

Lower Mainland: 604-681-4516

Toll-free: 1-800-663-0343

www.notaries.bc.ca ^[11]

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- [6] <http://www.dialalaw.org>
- [7] <mailto:lawyerreferral@bccba.org>
- [8] <http://mylawbc.com/paths/wills/>
- [9] <http://www.trustee.bc.ca>
- [10] <http://www.self-counsel.com>
- [11] <http://www.notaries.bc.ca>

Glossary for Being an Executor

This section was last reviewed for legal accuracy by People's Law School in January 2016.

Assets

What the deceased owned. Assets can include things such as money, land, investments, and personal possessions such as jewelry and furniture.

Beneficiary

A person designated to receive money or property in a will, benefit plan, or insurance policy.

Debts

What the deceased owed at death. These may include credit card balances, loans, and mortgages. Also called "liabilities."

Estate

All of the property and belongings owned by the deceased, with some exceptions. The estate does not include property owned with someone else jointly (such as a joint bank account) or property which has a designated beneficiary (such as an insurance policy).

Estate administrator

A person appointed by the court to take charge of an estate where the executor is unable or unwilling to act, or there is no valid will.

Executor

The person named in a will to carry out the instructions in the will and settle the will-maker's affairs after they die.

Intermeddled

To interfere in the affairs of others. In the context of an estate, to deal with the assets or liabilities of the deceased.

Probate

A legal procedure that confirms a will is legally valid and can be acted on. It allows financial institutions and others to rely on the will as being the last will made by the deceased.

Renounce

To decline an appointment as executor.

Residue

The residue of the estate is whatever is left over after the executor pays all the debts and expenses and distributes any specific gifts.

Trust

A part of the estate that is set aside in the will to provide ongoing income for a beneficiary, often a child.

Will

A legal document that leaves instructions about what the person making the will wants done with their assets and obligations after they die.

Will-maker

A person who makes a will.