

How to apply for probate in Ontario



Estate planning involves the transfer of someone's assets (e.g. property, money) when they die, as well as a variety of other personal matters. Wills, estates, trusts and power of attorney are all common tools used in estate planning. This section also contains information about family members who can't take care of themselves.

It's best to speak with a lawyer for legal advice. A lawyer can help you determine if a court application is necessary. They can also help you complete forms, explain the legal duties and responsibilities of an estate trustee, identify your legal risks and advise you on estate tax issues. You may also want to speak with a lawyer if a person is likely to challenge your application or make a claim against the estate.

If you need to speak to a lawyer, you can find one through:

- [Law Society of Ontario's Lawyer Referral Service](#)

You may also wish to contact or visit:

- Your local [Community Legal Clinic](#) to determine whether they can assist you with your estates matter.
- [JusticeNet](#), a federally incorporated not-for-profit organization, for a directory of lawyers who provide reduced-cost legal services to financially-eligible individuals.

Overview

When a person dies they may leave behind belongings, real estate and other assets which is called their estate.

In Ontario, an estate trustee is the only person with the legal authority to manage or distribute an estate.

Probate is a procedure to ask the court to:

- give a person the authority to act as the estate trustee of an estate; or
- confirm the authority of a person named as the estate trustee in the deceased's will
- formally approve that the deceased's will is their valid last will.

You can apply for probate in the Ontario Superior Court of Justice and learn about the process by reviewing the [Estates Act](#) and the estates court rules (called the [Rules of Civil Procedure](#)).

If your probate application is successful, the court will issue a Certificate of Appointment of Estate Trustee, which is proof that a person has the legal authority to deal with the estate and - if there is a will – is proof that the will is valid.

Determining if it is necessary to apply to the Court

A probate Certificate is not always required in order to administer an estate. Before starting an application for probate you may wish to determine whether the person or institution holding estate assets or requiring a payment or action by the estate requires a Certificate. A person might apply for a probate Certificate if:

- the deceased person died without a will
- the deceased's will does not name an estate trustee
- a financial institution wants proof of a person's legal authority to receive the money or investments of the deceased
- the estate's assets include real property which does not pass to another person by right of survivorship
- there is a dispute about who should be the estate trustee
- there is a dispute or potential dispute about the validity of the will
- some beneficiaries named in the will are not able to provide legal consent.

Only one Certificate can be issued by the court. Before you start an application for probate you may want to determine whether anyone else has already started a court application or has been issued a probate Certificate by contacting:

- the estate trustee named in the will (if any) or the estate trustee's lawyer (if any);
- relatives and friends of the deceased; or
- the [courthouse](#) in the county or district where the deceased lived at the time of death. If the deceased was not living in Ontario when they died, contact the [courthouse](#) in the location where they owned Ontario property.

If you have a financial interest in the estate, you can ask the court to inform you of the start of any proceedings by filing [Form 74.3](#) with the court. This request expires three years after filing, but a further request can be filed any time before the court issues a certificate.

To learn about an estate's administration, you can contact the estate trustee and/or the estate trustee's lawyer. If the [Ontario Public Guardian and Trustee](#) was appointed as the estate trustee, you can contact them.

What you will need

To apply to the court for probate you will need to submit documents required by the estates court rules, including:

- the deceased's original will, if any
- any addition or supplement that explains, changes or revokes a will or part of a will
- proof of death
- court forms (information about the deceased's assets and beneficiaries is needed).

Find a will

A will might be found in the deceased's home, in a safety deposit box or at the office of the deceased's lawyer or through a private will registry. In some cases, wills can be found in a court record.

To find the deceased's will, you can contact the deceased's lawyer, relatives or friends, search online will registries or search the court records in the [Ontario courthouse](#) closest to the deceased's home. If the deceased did not live in Ontario, visit the courthouse in the location where they owned Ontario property. A [fee](#) must be paid to view the court file.

You can also search the [Archives of Ontario](#) for estate court files which were started before 1977.

Get proof of death

Proof of a person's death must be filed as part of the application, which can take the form of a death certificate or a court order.

A death certificate can be issued by a funeral director. An official Province of Ontario death certificate can be issued by the Registrar General and can be requested [online](#).

Prepare a list of assets with values

You will need to determine the value of an estate for the court application form and to calculate and pay the provincial estate tax when the application is filed, unless a court orders the deferral of payment.

To calculate the value of the estate and [taxes owing](#), prepare a list of the deceased's assets and list the value of each asset. You can use an [Estate Information Return](#) to prepare the list and calculate the values. This is **not** a court form, so it does **not** need to be filed with the court. It is a form that should be sent to the Ministry of Finance **after** you receive a Certificate of Appointment of Estate Trustee from the court. The [guide](#) to the Estate Information Return explains how to list estate assets and values. For more information, see the [Ministry of Finance website](#).

An estates tax calculator is available on the Ministry of the Attorney General website. A lawyer can also help you with valuing the estate and estates tax issues.

Get copies of the court forms

You will need to complete certain [court forms](#) for your application, including the following:

- **Notice of Application** (typically [Form 74.7 or 74.17](#))
- **Affidavit of Service** (typically [Form 74.6 or 74.16](#); this is evidence that the Notice of Application and any other required documents were served on the persons with an interest in the estate. See below for information on serving the necessary documents.)
- **Application** (typically [Form 74.4 or 74.14](#); a complete list of Applications can be viewed on the Ministry of the Attorney General website.
- **Affidavits, as required** (the evidence that is required by [legislation](#) and the [court rules](#). For example, [Form 74.8, 74.9, or 74.10](#))
- **Certificate of Appointment of Estate Trustee** (typically [Form 74.13 or 74.20](#). The court registrar will sign this Certificate if the application is successful.)

You might also need to complete additional forms, for example:

- **Bond, if required** ([Forms 74.32 or 74.33](#), see [court rule](#) 11 and the [Estates Act s.35](#)) OR ***motion to dispense with a bond*** (a Notice of Motion, Affidavit and draft order are filed for this motion).
- **Renunciation, if required** ([Form 74.11 or 74.18](#); this is needed if a person who is named in a will as estate trustee or is entitled to be in priority to be an estate trustee has not joined the application)
- **Consent to Applicant's Appointment as Estate Trustee, if required** ([Form 74.12, 74.12.1 or 74.19](#); this is needed where a person dies without a will and where there's a will but the applicant is not named as estate trustee)

The type of forms that are required depend on the situation. To learn more about which court forms are required review [court rule](#) 74.04 and 74.05. If the person died with a will, the necessary forms will contain the heading "with a will". If the person died without a will, the necessary forms will contain the heading "without a will".

Court staff cannot provide you with legal advice. A lawyer can help you determine which forms are needed and help you complete the forms. A lawyer can help explain the risks of providing incorrect information in the forms, explain the legal responsibilities of an estate trustee and advise you on whether a bond is needed.

A bond protects the beneficiaries and creditors of the estate in the event of improper administration of the estate assets. It is posted with the court by the estate trustee as security for the collection, administration and accounting of the assets of the deceased's estate. A bond is required to be filed with the probate application under the [Estates Act s.35](#) in the following situations (with certain limited exceptions set out in the Act):

1. the deceased died without a will;
2. the deceased died with a will, but the applicant was not named as the estate trustee in the will;
3. the deceased died with a will, but the applicant is not resident in Ontario, or in a province or territory of Canada, or in a [Commonwealth country](#).

The civil court rules set out who may act as a surety for the bond. A surety is the person who is responsible for the payment of the amount of the bond if the estate trustee fails to properly administer the estate. [Court rule](#) 74.11 explains that the applicant can present to the court for consideration as a potential surety the following companies or persons:

1. an [insurer who is licensed in Ontario](#) to write surety and fidelity insurance in Ontario;
2. for estates valued at over \$100,000, two personal sureties (persons who are Ontario residents and is not a minor, is not a lawyer and is not a court registrar and has sufficient assets to pay the amount of the bond);
3. for estates valued at \$100,000 or less, one personal surety (person who is Ontario resident and is not a minor, is not a lawyer and is not a court registrar and has sufficient assets to pay the amount of the bond).

The amount of the bond shall be double the amount of the value of the estate ([Estates Act](#) s.37). A judge decides whether a person or insurer who is proposed to act as a surety is acceptable and decides the amount of the bond. A judge can also decide whether to make an order that a bond is not required. Preparing and filing the motion material to ask the court to dispense with an estate administration bond can be complicated. You may wish to speak with a lawyer.

Learn more about preparing probate applications by visiting the following website:

Serving the necessary documents

Notice of your application must be delivered (served on) to estate beneficiaries. For a list of the persons who must be served with a Notice of Application (typically [Form 74.7 or 74.17](#)) see estates [court rules](#) 74.04(2) to 74.04(7) and 74.05(2) to 74.05(5).

The documents can't be filed with the court if they were not served on the appropriate persons. A lawyer can help with this process and explain the risks of failing to serve the appropriate persons.

Filing documents with the court

The court application should be made at the court in the county or district where the deceased lived at the time of death. If the deceased was not living in Ontario when they died, contact the [courthouse](#) in the location where they owned Ontario property. Visit the Ministry of the Attorney General website to view a list of court locations.

The documents that should be filed with the court are set out in the estate [court rules](#) and the [Estates Act](#). They should include an original will (if one can be found), proof of death and the court forms such as those listed above.

When the documents are filed with the court, the applicant must at the same time pay the required Estate Administration Tax. The amount of the tax varies depending on the value of the estate. [Court rule](#) 74.13 explains the deposit that is payable at the time of the application. An estates tax calculator is available. For more information, visit the [Ministry of Finance website](#).

The application documents and the tax payment can be mailed to the courthouse. The court will accept payment of the tax by certified cheque, money order, bank draft, lawyers' trust account cheques and debit.

After you file

Applications are typically processed within 15 business days. However, if all necessary documents are not filed, if there is a question about the material filed or if a motion was filed or is needed, it will take longer to get a response.

If the application is complete, court staff will determine whether a Certificate of Appointment of Estate Trustee can be issued to you. This involves searching the court records to learn whether any other person has made the same application to the court, whether any person has objected to your application and whether a more recent will was deposited with the court (see: estates [court rules](#) 74.12(1)).

If court staff have questions about the application they will direct the application to a judge or contact you to ask for additional material to be filed or for further steps to be taken. A judge may decide whether the probate Certificate can be granted and make a court Order.

To learn the status of a probate application you can contact:

- your lawyer
- the lawyer for the applicant (if another person is applying for probate); or
- the Court. Visit the Ministry of the Attorney General to view a list of court locations.

After hearing from the Court

You must submit an Estate Information Return to the Ministry of Finance within 180 calendar days of the issuance of a Certificate of Appointment of Estate Trustee by the court. Visit the Ministry of Finance website for information on this process and the timelines.

It is best to speak with a lawyer about your new role as an estate trustee. A lawyer can explain your responsibilities as an estate trustee and your legal risks and help explain the options to deal with any estate issues such as tax issues, bond issues and claims against the estate. A lawyer can also help explain the laws which set out how the estate must be distributed.

To learn more about the laws and your legal duties as an estate trustee you can review the following:

- [Estates Act](#)
- [Estates Administration Act](#)
- [Estate Administration Tax Act](#)
- [Succession Law Reform Act](#)
- [Trustee Act](#)
- [Rules of Civil Procedure rules relating to estates \(including rule 9, proceedings by or against an estate trustee, rule 15, lawyer to represent estate trustee in civil proceeding, rules 74 and 75, procedure in estate proceedings\)](#)
- [Ministry of the Attorney General: How an Estate is Distributed](#)
- [Ministry of the Attorney General: How do I make a payment from an estate to a child?](#)
- [Law Society of Ontario: How to Administer an Estate on an Intestacy](#)
- [Law Society of Ontario: Dependant's Support Claims](#)
- [Law Society of Ontario: Seeking court approval of estate trustee accounts](#)

If the court does not issue a Certificate of Appointment of Estate Trustee, you should take the steps directed by the court to have your application considered further. You may want to speak with a lawyer.