

Being Named the Executor of an Estate

Many times we have had frustrated people seek advice when they suddenly find themselves thrust into acting as an Executor of an Estate. They often have simply grabbed the Will and set off to the Registry Office, government offices, banks, and other financial institutions thinking, with Will in hand, they have the power to deal with the deceased's assets unquestioned.

At their very first encounter, they leave the institution frustrated and bewildered exclaiming "I'm the Executor! Look, I'm named in the Will! Why won't you do as I say?" The problem is that being named and being empowered to act as an Executor under the Will are two very different things. Sometimes, if the deceased's investments are small enough, or if their assets were held jointly with someone else, a notarized copy of the Last Will and Testament and Proof of Death (usually in the form of a Death Certificate issued by a funeral home) are sufficient to allow you to carry out your office as Executor of the deceased's Estate.

More often than not however, you actually need to be appointed as Trustee under the Will by the Superior Court of Justice in Ontario. This requires the assistance of a lawyer who will make application to the Court on your behalf. They will support the application with the original Will, Proof of Death and an Affidavit setting out the nature of the deceased's assets, the value of the Estate and basis for belief that the document produced is indeed the Last Will and Testament signed by the deceased. Just being named in a Will is not always enough until the Court identifies the Will as the Last Will and Testament of the deceased and actually empowers you to act under that document.

Each financial institution has different rules when it comes to dealing with the deceased's assets. Therefore, it is important that you seek advice from your lawyer. They will ensure that you are able to act under the Last Will and Testament as expeditiously and inexpensively as possible. As well, there are numerous issues that have to be considered when acting as an Executor surrounding the deceased's assets, their debts and taxation. To avoid personal liability when acting as an Executor, seek your lawyers help.

The opinions expressed are for information purposes only and readers should consult with a lawyer in relation to specific cases.