

## THINGS TO DO

1. Canada Pension Plan: Forms and assistance to complete forms required may be obtained at the Offices of Services Canada (adjacent to OPP building), 280 Armstrong Street, New Liskeard - 8:30 a.m. to 5 p.m., and 10 Government Road East, Kirkland Lake - 8:30 a.m. to 4:00 p.m. (call 1-800-277-9914) for more information.
2. Motor Vehicle: Attend at a Services Ontario Office with Ownership Certificate and new Insurance Certificate. If car is not being transferred to the spouse, it will also be necessary to bring a Certificate of Mechanical Fitness from a qualified mechanic.
3. Funeral Account: Arrange with Bank to pay from deceased's account, where permitted.
4. Joint Bank Accounts: Arrange with Bank to change into name of survivor after you are sure no further cheques will be coming payable to the deceased.
5. Life Insurance: Contact Life Insurance Agent to complete claim forms.
6. Old Age Pension Cheques: Return with request to make cheque for month of death payable to estate; OR DELIVER TO: Kemp Pirie Crombeen to do this for you.
7. Your Will and Powers of Attorney for Property and Personal Care: Review with Kemp Pirie Crombeen and revise, if necessary.
8. Probate or Administration: Obtain information required by Kemp Pirie Crombeen to prepare application for a Certificate of Appointment.
9. Estate Information Return: File the completed Estate Information Return with the Minister of Finance within 90 calendar days of the date the certificate of appointment is issued by the court.

# ESTATE

# ADMINISTRATION

**KEMP PIRIE CROMBEEN**  
BARRISTERS, SOLICITORS & NOTARIES

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Brochures

<http://www.esdc.gc.ca/en/cpp/index.page>

## INFORMATION ON ADMINISTRATION OF ESTATES

### 1. CANADA PENSION PLAN

The Canada Pension Plan provides for a lump sum death benefit of up to a maximum of \$2,500.00 and monthly pensions of \$593.62 to a surviving spouse under 65 years of age, \$655.50 to a surviving spouse over sixty-five years of age and \$237.69 to dependent children in full-time attendance at school. These are the 2016 benefits based on the deceased having made the **maximum** contributions; otherwise, the benefits may be less.

Call 1-800-277-9914 for more information.

<http://www.esdc.gc.ca/en/cpp/index.page>

You will need the funeral director's death certificate, marriage certificate, and birth certificate for yourself and each dependent child, as well as the social insurance number cards for the deceased, the dependent children and yourself in order to complete the forms.

If you need any assistance in this regard, our office will be pleased to help you.

### 2. AUTOMOBILES

If any car, truck, snowmobiles or trailer is registered in the name of the deceased, the ownership can be transferred at a Services Ontario Office near you, without any legal documents. You will require the ownership certificate which will be signed by yourself as estate trustee. You will also require a new insurance certificate in your own name which you can obtain from your insurance agent.

If the vehicle is being sold or transferred to someone other than the spouse, then it will also

be necessary to take a certificate of mechanical fitness which you obtain from a licensed mechanic at a garage. **This is not required if the vehicle is being transferred to a surviving spouse.**

**IMPORTANT:** If you are selling the vehicle, be sure to obtain cash or a certified cheque and attend at the Motor Vehicle Branch with the ownership and the purchaser so that you can be sure the ownership is changed and sales tax is paid. **THE ESTATE IS RESPONSIBLE FOR ANY DAMAGES THE MOTOR VEHICLE CAUSES WHILE IT IS STILL REGISTERED IN THE DECEASED'S NAME.**

Our office will be pleased to help you with regard to any of this.

### 3. JOINT BANK ACCOUNTS

The surviving joint bank account holder should attend at the bank and have the bank accounts changed over into his or her name alone after you are sure no further cheques will be coming payable to the deceased. The bank will have a new signature card and other forms to be signed but no other documents are required.

### 4. OTHER BANK ACCOUNTS

If there are bank accounts in the name of the deceased alone, then under normal circumstances the bank will not release them until a Certificate of Appointment of Estate Trustee with (or without) a Will has been obtained. However, in certain cases where there are no other assets of the estate for which a Certificate of Appointment of Estate Trustee with (or without) a Will is required and the bank account does not have a large amount in it, the bank will often waive this requirement. We

would be pleased to make the application for you and prepare the documents.

### 5. PAYMENT OF FUNERAL

The funeral account may, of course, be paid out of funds other than those of the deceased or they may be paid from any joint bank account by having the surviving joint account holder attend at the bank and writing a cheque on it. In addition, under certain circumstances a bank will permit its customers to write a cheque on an account which is in the name of the deceased alone, in favour of the funeral director. Usually no other cheques can be written on such an account other than for fees payable to the Superior Court of Justice to obtain the Certificate of Appointment of Estate Trustee with (or without) a Will.

### 6. OLD AGE PENSION AND OTHER CHEQUES

The estate of the deceased is entitled to the Old Age Pension, Canada Pension Plan, and GAINS cheques for the month in which the deceased died. If they have not been cashed prior to death then these cheques should be returned with a letter setting forth the date of death and requesting the cheque to be made payable to the estate and returned to you. The address for this is:

- (a) Old Age Pension and  
Canada Pension Plan  
Income Security Programs  
P.O. Box 2013  
70 Cedar St. S., Ground Floor  
TIMMINS, Ontario P4N 8C8
- (b) GAINS  
Ministry of Revenue

Parliament Buildings  
Queen's Park  
TORONTO, Ontario M7A 2B3

anyone to enter the box, other than the executor to remove the original Will, until the Certificate of Appointment of Estate Trustee with (or without) a Will has been obtained. However, most banks will allow the estate trustee to enter the box by producing a copy of the Will, if any, and to remove or copy the other contents.

**Before returning these cheques, it may be worthwhile to attempt to cash or deposit the cheques at the bank.** These cheques and the Canada Pension Plan death benefit cheque can only be cashed by depositing them into an estate account or arranging permission with your bank to cash them if there was no estate account.

Most other cheques can be deposited when you receive them into an estate account or cashed with the bank's permission.

An estate account is one opened in the name of the estate and normally cheques cannot be written on it until the Certificate of Appointment of Estate Trustee with (or without) a Will has been obtained from the Superior Court of Justice and delivered to the bank.

**7. SAFETY DEPOSIT BOXES**

Safety deposit boxes are no longer frozen nor do the contents of the box have to be listed by the bank and the lawyer. If the box was jointly held, then the survivor can arrange to have the box transferred into his or her name and remove any of the contents that he or she may need. Under normal circumstances, bonds, stocks, Wills, deeds, etc., should be removed and delivered to your lawyer to be dealt with by your lawyer.

If the safety deposit box was in the name of the deceased alone, the bank is entitled not to permit

with (or without) a Will has been produced to the insurance company. Our office will be pleased to assist you with this.

**9. JOINT REAL ESTATE**

If the house or other real estate was held in joint ownership, then our office will proceed to prepare a Survivorship Application in order to have the title placed in the name of the survivor. In order to do so, we will require particulars of the property, so that we can do the necessary searches of title and prepare the necessary documents, and a copy of the funeral director's or Provincial death certificate.

**10. APPLICATION FOR CERTIFICATE OF APPOINTMENT OF ESTATE TRUSTEE WITH A WILL**

If there is a Will, an application is made to the Superior Court of Justice proving to the satisfaction of that Court that it was in fact the deceased's last Will and that it was validly made. At the same time, the Estate Trustee undertakes that the estate trustee will faithfully administer the property of the deceased and if the Estate Trustee's administration is ever called into question, the Estate Trustee will account to the Judge of that Court. After the Court officials have satisfied themselves that the documents and the Will are in order and ensure that no application is being made elsewhere for the same deceased, they issue a Court Order called

"Certificate of Appointment of Estate Trustee with a Will" formerly known as "Letters Probate". At the time the application is made, it is necessary to submit to the Court the value of the deceased's assets on the date of death. The Province, through the Court, charges an estate administration tax, commonly known as "probate fees", calculated on the basis of \$5.00 for each \$1,000.00 of the first \$50,000.00 of the value of the assets shown on the application and \$15.00 for each \$1,000.00 of the value of the assets in excess of \$50,000.00. It normally takes several weeks to obtain the information to prepare the application and the Court takes from three to eight weeks to review and issue the Certificate of Appointment of Estate Trustee with a Will. **(At the present time, we are finding three to five weeks to be more the norm.)**

We, of course, look after the preparing of the documents and obtaining the Certificate of Appointment of Estate Trustee with a Will.

#### **11. APPLICATION FOR CERTIFICATE OF APPOINTMENT OF ESTATE TRUSTEE WITHOUT A WILL**

If the deceased died without a Will and there are assets which cannot otherwise be dealt with, then an application for Certificate of Appointment of Estate Trustee without a Will is made by one of the next of kin to the Court to be appointed as estate trustee. This person must be nominated in writing on the proper forms by at least a majority of the next of kin who are over eighteen years of age. A value of the deceased's assets is shown and a "probate fee", calculated

on the same basis as set out under the immediately preceding heading "Application for Certificate of Appointment of Estate Trustee with a Will", is charged by the Court. It may take several weeks to obtain the information, and it is often difficult to obtain the signed nomination forms from the next of kin. The Court takes three to eight (usually eight) weeks to review the material and ensure that no other application is being made elsewhere. It then issues a Certificate of Appointment of Estate Trustee without a Will.

If the applicant for the Certificate of Appointment of Estate Trustee without a Will is other than the surviving spouse of the deceased, then the applicant must normally be bonded by an insurance company or by two (2) individuals.

Our office looks after the application for the Certificate of Appointment of Estate Trustee without a Will and for the bond.

In the absence of a Will, the estate is distributed in accordance with the Succession Law Reform Act, which provides that the surviving spouse is entitled to all of the estate if there are no children and to the first \$200,000.00 in value, if there are children, with the remainder being shared with the children and the spouse. Of course, assets of which a surviving person was a joint holder with the right of survivorship or a named beneficiary, such as in a life insurance policy, go to that person automatically.

#### **12. ESTATE INFORMATION RETURN**

Effective January 1, 2015, the Estate Administrative Act for the Province of Ontario and its regulations require anyone who receives a certificate of appointment of Estate Trustee to file an information return in the prescribed form with the Ministry of Finance for the Province of Ontario. The estate information return, when completed, contains very detailed information about the certificate of appointment, the deceased, the estate representative, and the assets of the estate. For example, if a motor vehicle is part of the estate assets a detailed description of it is required (make, model, year, VIN number) as well as a fair market value as of the date of death.

The completed and signed Estate Information Return must be received by the Ministry of Finance within 90 calendar days after a certificate of appointment is issued by the client a statement disclosing the subsequently discovered property must be filed with the court within 6 months of the discovery. In addition, an amended estate information return setting out details of the subsequently discovered property at its fair market value must be filed with the Ministry of Finance within 30 calendar days after the statement is delivered to the court.

An estate representative who fails to file the estate information return as required, or makes false or misleading statements on the return is guilty of an offence and, on conviction, liable to a fine of at least \$1,000.00 and up to twice the Estate Administration Tax payable by the estate, or imprisonment of not more than 2 years, or both.

The Ministry of Finance may conduct audits to ensure compliance with the Estate Administration Act and its regulations.

We would be pleased to assist you with the preparation of Estate Information Return and the timely filing of it. Please note that this is not a tax return.

13. HANDWRITTEN WILLS

The Succession Law Reform Act of Ontario now recognizes holograph Wills which are entirely in the handwriting of the deceased and signed by him. If you are aware of the existence of any handwritten Will or Memorandum of the deceased, you should deliver it to us to be checked for you.

14. NOTICE TO BENEFICIARIES OF THE ESTATE AND OTHERS

The rules of civil procedure applying to estates require that a Notice of an Application for a Certificate of Appointment of Estate Trustee with (or without) a Will be served along with a copy of the Will upon all adult persons named as beneficiaries in the Will, all charities named as beneficiaries in the Will, the Public Guardian and Trustee where charities are named as beneficiaries in the Will or mentally incompetent persons or persons incapable of managing their affairs and who do not have committees are entitled to share in the distribution of the estate, the parent or guardian of any person less than eighteen (18) years of age entitled to share in the distribution of the estate and the Children's Lawyer on behalf of

persons who are less than eighteen (18) years of age and are entitled to share in the distribution of the estate or where there are unborn or unascertained persons who may be entitled to share in the distribution of the estate. Our office will arrange for this notice and the copy of the Will to be served upon those people the estate trustee is required to serve pursuant to the rules. Service is by regular letter mail.

15. ADVERTISEMENT FOR CREDITORS

There commonly appears in the local newspaper the notice to creditors which advises that all claims must be submitted prior to a fixed date. These advertisements are to be recommended in any case where the estate trustee is not aware of the deceased's affairs and wishes to find out what debts may be owing so that the estate trustee will not be personally responsible for any debts. However, if the estate trustee is also the sole beneficiary then he or she is still responsible for the debts of the deceased. We will advise you as to whether an advertisement for creditors is required. Our office customarily prepares it and submits it to the newspaper on your behalf.

16. INCOME TAX

It is necessary that a final income tax return be prepared for the portion of the year in which the deceased was alive. The final income tax return for the deceased is due or before the later of:

- a.) April 30<sup>th</sup> of the year following the date of death; and, or,
- b.) six (6) months after the date of death.

Included in the final return is the normal income that would have been declared by the deceased in that year together with any accrued interest or income on bonds or investments. Unless the property is passing to the deceased's spouse it is all deemed to have been sold at the date of death and capital gains tax is payable. If the property passes to the surviving spouse then no capital gains tax is payable until the spouse sells that property or dies also. The deceased's principal residence is, of course, not included in property on which capital gains tax is charged.

In the case where the deceased owned rental or business property on which he was taking depreciation, then special consideration must be given to the recapture of depreciation and the payment of the tax on this.

Tax returns for years prior to the year of death must be prepared and filed, where required, within six months of the deceased's death.

If, after the date of death, the estate earns any significant amount of income, then an estate and trust return must be prepared and filed with Canada Revenue Agency on a timely basis. T-3 slips are given to the beneficiaries to be included with their income tax returns showing the income to which they were entitled and upon which they are taxable.

Our office or your accountant will be pleased to help with these tax matters.

17. **YOUR WILL AND POWERS OF ATTORNEY**

If your spouse has passed away, it is imperative that you also have a Will and Powers of Attorney for Property and Personal Care, making provision for the dispositions of the assets on your death. If you already have a Will, you should have it reviewed by us and updated if necessary. Probably a new estate trustee should be chosen and appointed under the Will and provisions should be made for dividing your estate as you wish amongst your children or other beneficiaries. Consideration should also be given to the situation in which one of your children might predecease you. In that case, you will have to consider to whom that child's share should be left.

You should also have us review your Powers of Attorney for Property and Personal Care since the deceased is often named as the attorney of first choice.

18. **SUCCESSION DUTY AND ESTATE TAXES**

There are no longer any Succession Duties, Estate Taxes or other death duties payable in Ontario. The only taxes on death are those referred to in Paragraphs 10 and 15.

19. **LEGAL FEES**

For estates, our office charges a fee based in time spent for our work applying for the Certificate of Appointment of Estate Trustee with (or without) a Will and transferring the

assets to the Estate Trustee and subsequently to the beneficiaries. Depending on the complexity of the estate there may be additional fees charged. In any case, we have a minimum fee of \$2,000.00 for an application for Certificate of Appointment of Estate Trustee with a Will and \$2,200.00 for an application for Certificate of Appointment of Estate Trustee without a Will. A further charge of approximately \$600.00 is made in connection with joint real estate. Other charges for the assistance we give you in connection with other matters depend upon the amount of time spent by us on them. There may, of course, be other costs, for example, H.S.T. on legal fees and disbursements, the cost of advertising for creditors, registration charges for documents registered at the Land Registry Office, etc.

We will be pleased to give you an estimate, at any time, of the total legal costs.