

WILLS FOR ONTARIO

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A personal representative is well advised to publish in a local newspaper a notice to creditors and others who have a claim against the estate. The practice has developed of having the notice inserted on three separate occasions, the insertions being one week apart. The notice should be placed in a newspaper published in the region where the deceased lived prior to death. The notice that would be inserted by the personal representative of our hypothetical estate is shown in Sample #13.

The notice should allow from two to four weeks from the date of the final insertion as the time limit within which claims against the estate must be filed.

**d. FEES OF PERSONAL REPRESENTATIVES
AND LAWYERS**

Both the personal representative and any lawyer retained to act for him or her in handling the estate are entitled to a fee from the assets of the estate. Each is entitled to be reimbursed for any money spent in performing his or her duties, as well.

**SAMPLE #13
NOTICE TO CREDITORS AND OTHERS**

IN THE ESTATE OF JOHN ADAMS SMITH, late of 42 Rose Avenue in the City of Toronto.

All persons having claims against the estate of JOHN ADAMS SMITH, late of 42 Rose Avenue in the city of Toronto who died on or about the 1st day of June, 19__ are hereby required to send full particulars of such claims to the undersigned personal representative on or before the 28th day of July, 19__, after which date the estate's assets will be distributed having regard only to claims that have then been received and the undersigned will not be liable to any person of whose claim she shall not then have notice.

MARY MATILDA SMITH

A personal representative is generally entitled to a fee of 5% of the value of the estate. If the administration of the estate involves holding and investing the assets over a period of years, he or she is also entitled to 5% of the income earned by investment of estate assets. On occasion a further two-fifths percent of the value of that portion of the estate being held and invested is also allowed as additional compensation by way of a management fee.

These fees are allowed to the personal representatives as a group if there is more than one. It is up to the group to decide how the compensation should be split between them. The court will assist them if a dispute arises.

The fees for the normal legal services rendered by a lawyer in the administration of an estate will depend in part on the aggregate value of the estate. Traditionally, the scale recommended by the County of York Law Association (which includes all of Metropolitan Toronto) has been as follows:

- * (a) On the first \$10 000 or a portion thereof, 3% of the value of the estate (minimum \$500)
- (b) On the next \$90 000 or a portion thereof, 2%
- (c) On the next \$200 000 or a portion thereof, 1¼%
- (d) On the next \$400 000 or portion thereof, ½% of the amount
- (e) On the excess over \$700 000, additional fees may be charged on the basis of the time involved, the results achieved, and the value of the estate.

These are the recommended amounts for estates of average complexity. If extraordinary problems are encountered, the fee may be higher. If you feel that a lawyer is overcharging, it is always possible to have the account "assessed." This is a legal proceeding whereby a court official confirms the fairness of the account or reduces it to an amount he or she feels is reasonable. Legal fees may also be reviewed by the

court at the time the personal representative puts the accounts before the judge for approval.

e. **PERSONAL REPRESENTATIVE'S CHECKLIST**

The following is a checklist which may be of value in administering an estate. Some of the items have already been discussed, and the rest will be dealt with later in the book. This list is by no means comprehensive. It should merely serve as a guideline to anyone involved in the task of administering an estate. Each particular estate situation will vary and new considerations will enter the picture. The number of items in this list and the complexity of many of these items will illustrate the value of legal assistance in the administration of an estate.

- (a) Make all funeral arrangements and attend to burial of deceased.
- (b) Locate all bank accounts of deceased. Obtain information about the balance on deposit and notify bank of the death.
- (c) Locate all insurance policies and obtain information about the amount payable on each. Notify the insurer of the death.
- (d) List the contents of deceased's safety deposit box.
- (e) Completely review all personal papers of the deceased in order to locate all assets and debts.
- (f) Prepare a detailed inventory of deceased's assets and debts.
- (g) Arrange for storage of any assets requiring it. Advise insurers of any physical assets of the deceased. Arrange any insurance coverage required.
- (h) Notify the beneficiaries of the death, and send them a Notice of an Application for Certificate of Appointment of Estate Trustee.

- (i) Arrange with post office for mail to be re-addressed, if necessary.
- (j) Cancel any subscriptions or charge accounts. Return or destroy charge cards.
- (k) Obtain all unpaid wages and other benefits from former employer. See all service or veterans' clubs for death benefits that may be payable to estate.
- (l) Apply to Superior Court for Certificate of Appointment of Estate Trustee.
- (m) Advertise for creditors, if necessary.
- (n) File income tax return for year of death and any former years not yet filed by deceased.
- (o) Make all reasonable enquiries for persons who may be entitled to a share of the estate by reason of an illegitimate relationship.
- (p) Apply for Canada Pension Plan benefits, if any.
- (q) Apply for any amounts payable to the estate under insurance policies.
- (r) Pay funeral expenses, income taxes payable, and all debts of deceased.
- (s) Obtain income tax refund, if any.
- (t) Sell any estate assets which must be sold or those which the personal representative chooses to sell if he or she has the power.
- (u) Pay money bequests and distribute other property in accordance with instructions in the will (being sure to retain sufficient cash to carry out the final steps).
- (v) File the estate's income tax return and pay any tax owing (i.e., if the estate earned any income following the death of the deceased).

(w) Pay legal fees and any outstanding fees relating to the administration of the estate, including compensation for the personal representative.



(x) Obtain releases from all beneficiaries or pass estate accounts before a judge of the court.

(y) Distribute the balance of the estate assets to the rightful beneficiaries.

[note: court fees can be waived if plaintiff is indigent / on disability / on guaranteed income supplement, etc.]

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ADMINISTRATION

a. WHAT IS AN ADMINISTRATOR?

In the previous chapter we briefly outlined the steps in the handling of an estate where the deceased left a will. Some differences obviously exist where the deceased died intestate (i.e., without leaving a valid will). This chapter will deal with the application that is made to the court for a Certificate of Appointment of Estate Trustee Without a Will as well as with the fashion in which the estate will be distributed. The estate trustee without a will was formerly known as an administrator.

As in the case of the previous discussion in chapter 3, this chapter is not intended to be an exhaustive study. If you are considering administering the estate of someone who died without a will, it is suggested that *Probate Guide for Ontario* be reviewed for more specific information and examples of forms.

The application to the court is necessary in order to have an estate trustee appointed by the court to administer the estate. In the case where a will is left, that appointment has generally already been made in the will. Obviously, without a will, no such appointment exists.

The general rule is that the closest relative to the deceased has the right to be appointed administrator with the result that if more than one person applies to the court, the nearest relative will generally be appointed as estate trustee.

Although the ultimate decision as to the appointment of an administrator lies with the court, the following order of priority is generally followed:

- (a) Spouse of deceased
- (b) Children of deceased
- (c) Grandchildren of deceased
- (d) Parents of deceased
- (e) Brothers or sisters of deceased
- (f) Nephews or nieces of deceased

* Sometimes a person with superior or equal right to apply chooses not to do so and prefers to allow another individual to become the estate trustee. An example of this would be the son of the deceased applying when the deceased had been survived by a widow and two sons. In that situation, two forms known as Renunciation of Prior Right to Certificate of Appointment of Estate Trustee Without a Will and Consent to an Applicant's Appointment as Estate Trustee Without a Will must be completed by both the widow and the other son in order to complete the application.

It should also be noted that a creditor of the estate may apply to be appointed administrator where none of the relatives apply. However, please note that an estate trustee without a will must be a resident of Ontario.

If no one applies to be appointed estate trustee, a legal officer known as the public guardian and trustee has the right to become the estate trustee under provincial law. An estate trustee may also be called a personal representative.

b. HOW TO APPLY TO BE AN ESTATE TRUSTEE WITHOUT A WILL

The procedure for obtaining a Certificate of Appointment of Estate Trustee Without a Will is similar to that outlined in the

previous chapter. Again, no personal court appearance is necessary. The necessary forms can be purchased from any legal stationer or from the publisher. The forms necessary are not illustrated here, but they are discussed briefly. Examples of the forms can be found in *Probate Guide for Ontario*.

1. Notice of Application for Certificate of Appointment and Affidavit of Service of Notice

This is the same form described in chapter 3 except that it refers to your Application for Appointment as Estate Trustee Without a Will. As explained in chapter 3, it is necessary to send a Notice of your Application to all persons who are entitled to share in the distribution of the estate. Since there is no will, ~~it~~ obviously is not attached to the Notice, and it is not mentioned in the Affidavit of Service of Notice. The Affidavit of Service of Notice is signed in the presence of a notary public, and filed with the other documents.

2. Application for Certificate of Appointment of Estate Trustee Without a Will

This form is similar to the Application illustrated in the last chapter. The main difference is that it sets out the names and addresses of those who will be sharing in the estate. It also contains a statement explaining the applicant's entitlement to the appointment. For instance, the applicant will state that he is the brother of the deceased, or the son, or whatever the case may be. From this statement and the list of those who will share in the estate, the court can assure itself that the applicant is the proper person to apply.

3. Certificate of Appointment of Estate Trustee Without a Will

This is the document which appoints the applicant as estate trustee and authorizes him or her to deal with the assets of the estate. It is prepared by the applicant and submitted to the court to be signed and sealed by the Registrar.

The plaintiff(s) claim(s) from you \$ court costs, interest in accordance with
Le ou les demandeurs vous (Principal amount / \$, ainsi que des dépens et des intérêts conformément
demandent paiement de Montant en principal)

the Courts of Justice Act or payable by agreement at a rate of % per year, being
à la Loi sur les tribunaux judiciaires ou exigibles par accord au taux de pour cent par an,

pre-judgment interest of \$ to the date this claim was prepared, and post-judgment
soit des intérêts antérieurs au jugement de \$ jusqu'à la date de préparation de la présente demande

interest.
et des intérêts postérieurs au jugement.

To obtain forms and self-help materials to assist you in filing a Defence (Form 9A), attend the nearest Small
Claims Court or access the following website: www.ontariocourtforms.on.ca.
Vous pouvez obtenir les formules et la documentation à l'usage du client qui pourront vous aider à déposer une
défense (formule 9A) auprès de la Cour des petites créances de votre localité ou en consultant le site Web
suivant : www.ontariocourtforms.on.ca.

TYPE OF CLAIM / NATURE DE LA DEMANDE

(Check as many as apply / Cochez la ou les cases qui s'appliquent)

- Construction/Renovation
Contract
Damage to Property
Estates/Wills
Landlord/Tenant
Other:
Motor Vehicle Accident
Negligence
N.S.F. Cheque
Professional Malpractice
Promissory Note
Real Estate
Sale of Goods
Services Rendered
Unpaid Account/Invoice
Wrongful Dismissal

SMALL
CLAIMS
COURT
form

**Ministry of Government Services
Office of the Registrar General**

Payment Receipt

Applicant Name: Goesseringer **Date:** October 30/09

Name on the Certificate: Walter Trudi Goesseringer
Date of Death = March 11/2009

Product Description	Product Price	Service Level	Premium Service Fee	Total	Method of Payment
Small Birth Certified Birth File Size Marriage Certified Marriage File Size Death Certified Death	122.00	Emergency 5 Days 10 Day Expedited Regular Service	/	122.00	Cash Cheque Debit Money Order American Express Visa Master Card
Small Birth Certified Birth File Size Marriage Certified Marriage File Size Death Certified Death		Emergency 5 Days 10 Day Expedited Regular Service			Cash Cheque Debit Money Order American Express Visa Master Card
Small Birth Certified Birth File Size Marriage Certified Marriage File Size Death Certified Death		Emergency 5 Days 10 Day Expedited Regular Service			Cash Cheque Debit Money Order American Express Visa Master Card
Other:					

Signature of Applicant: _____

Contact Information:
 Toronto (416) 325-8305
 In Ontario Toll Free 1-800-461-2156

Website: www.serviceontario.ca

