



Protect your  
estate by  
**choosing the  
right executor.**



Appointing BMO Trust Company as your executor can help make the overwhelming manageable.



# Understand the duties involved before you make your choice of executor or decide to accept the role.

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## Role and Responsibilities of Executors

This guide is designed to help you select the right executor\* for your estate, and help executors understand their roles and responsibilities.

The executor of a will carries out the final wishes of the deceased.

Executors must perform specific tasks that require an understanding of tax, inheritance and family property laws, as well as court procedures. They have a duty to act honestly and prudently, and are entitled to fair compensation for their time and efforts. While it is certainly an honour to be asked to serve as an executor, settling an estate can be demanding and time consuming, especially if there is conflict among beneficiaries or family members.

## The tasks of an executor

The executor performs or oversees tasks beginning with making, or helping to make, funeral arrangements and ending with final distribution of the estate. The executor's responsibilities fall into five categories:

- making preliminary arrangements
- securing the assets
- valuation of the estate
- paying debts and legacies and ensuring tax compliance
- final distribution of the estate.

A helpful executor's task list is available at [bmo.com/estate](https://www.bmo.com/estate)

\*Note that where the term "executor" or "administrator" has been used in this brochure, it should be read to include "liquidator," the term used in Quebec, and "estate trustee," the term used in Ontario, for the person or trust company appointed or named to administer the deceased's estate.



## Duties of an executor.

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The executor must carry out certain fundamental duties; failure to do so can lead to legal liability. Subject to the terms of the will, the executor must do the following:

- protect the assets of the estate
- refrain from profiting from the position other than through authorized compensation
- act in the best interests of the beneficiaries
- deal fairly and even-handedly with all beneficiaries
- act unanimously, where there is more than one executor
- maintain and make available proper records

If all or a portion of the estate is to be managed for a period of time in trust for one or more beneficiaries, the executor is responsible for managing and investing the assets. This can extend over many years and includes preparing annual income tax returns, making payments, and reporting to beneficiaries.



Deciding who will be in charge of your assets after you're gone is an important decision that requires careful consideration.

# Selecting the right executor for your estate.

## Possible choices

### Family or friend

Be sure that the person you select has the skills and experience required and will not be placed in a conflict-of-interest position or cause family discord. If your will specifies one beneficiary (for example, your spouse), it might be wise to name that beneficiary as executor, while suggesting he or she seek professional assistance if it's needed.

### Professional or business associate

A professional associate such as your lawyer/notary or accountant can provide an extra measure of objectivity and skill, but may need to consult other experts if your estate includes complicated investments, long-term trusts, or other complexities. If you're a sole proprietor, partner or owner of a business, you'll need to make arrangements to preserve the value of the business and determine the estate's rights and obligations. A business associate might be an appropriate executor in these circumstances.

### Corporate executor

You can appoint a trust company as executor or co-executor. This is a good option if your estate requires in-depth investment, tax, and trust expertise.

A corporate executor might be the right choice under the following circumstances:

- You have a complex estate (numerous investments and assets, business interests, international holdings, many beneficiaries).
- Your will establishes a long-term trust, the administration of which could be a burden on an individual.
- There is potential for discord among family members or beneficiaries.
- No suitably qualified family member or friend lives near you.
- You're in a second marriage and require a neutral third party to balance the needs of spouses and children from both marriages.
- You have special concerns about certain beneficiaries.



The executor you choose should be someone you can count on to carry out your wishes.

## Additional executor options

### Co-executors

Two or more individuals may be named as co-executors. They can share the burden and balance interests.

### Alternates

If your executor is an individual, it is wise to name an alternate in case your first choice predeceases you or is unable or unwilling to act at the time of your death.

### Agent for Executor

When an individual is named as executor, he or she is permitted to hire an agent to assist with administrative duties. This can ease the day-to-day demands on the executor, but still leaves him or her with decision-making responsibility. Your will can authorize hiring professional advisors such as an investment counsellor or trust company.

## Factors to consider when selecting an executor

Whether you choose an individual or corporate executor, look for the following skills and qualities:

- competence in dealing with matters related to estate and trust law, tax, accounting, investments and real estate
- availability
- impartiality
- integrity
- emotional stability
- willingness to act

## Asking someone to serve as your executor

Before you appoint someone as your executor, be sure to ask his or her permission. This allows that individual to decline, request that you allow for professional assistance, or discuss the fee arrangement. Be sure your executor knows where your will is kept and has a basic understanding of your estate. Tell your executor where to find important records (be sure to keep these records current). You may want to give your executor a copy of this guide so that he or she understands the responsibilities involved.



# Acting as executor.

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## Choosing to act and the power to decline

Even though a will names you as executor, you are not legally required to accept the position – even if you agreed to do so in the past. If you decide to renounce, you must do so quickly after the death of the testator (the deceased person), before probate (court confirmation that the will is operative) has been granted to you and before you have begun to act as executor. Resigning as executor after this time usually requires court approval and might be very difficult.

## Seeking assistance as an executor

There are many resources available to assist you in carrying out your executor duties. To protect yourself, and the beneficiaries, you should seek professional advice if you are ever in doubt about your duties and obligations. These services may be eligible for payment by the estate and can make a significant difference to the speed and ease of the process. For example, you can draw on the resources of a tax specialist, an estate and family lawyer, an investment advisor, a real estate specialist, and a trust company, which can act as your agent. Note, however, that depending on your compensation arrangements, fees for professional assistance may reduce your compensation.

## Tracking accounts and time

The estate will reimburse an executor for reasonable expenses associated with acting as an executor. Unless you're the sole beneficiary, you will probably be required to have your accounts approved either by all beneficiaries or by the court. You must keep detailed records of these expenses, subject to the provisions of the will. You must also keep all supporting documentation, including cancelled cheques, receipted invoices, investment transaction slips, bank statements, broker's statements and a diary of the time spent on estate matters (if you are being compensated for your time).

## Handling disagreements

As executor, you may encounter disagreements among beneficiaries, family members, business partners, creditors, and others. These disputes may concern the value of assets, or who takes what personal property (for example, if the will leaves property to "my children"). You may be able to resolve the disagreement by obtaining an independent appraisal or by establishing an impartial mechanism for dividing personal property (for example, choosing items in rotation, etc.). Other disputes, such as the interpretation of the will or a shareholders' agreement, should be resolved with professional assistance.

### TIPS

#### Selecting the Right Executor for Your Estate

1. Select your executor using the above criteria.
2. Make sure the person you choose is willing to take on the task.
3. Indicate your choice in your will.
4. Give your executor a copy of the will; make sure it is clear, current and comprehensive, that your records are up to date, and your executor has a basic understanding of your estate.

Our guide can help you understand the responsibilities of being an executor.



## How we can help.

If you've been named executor or trustee and find the responsibility too onerous or time consuming, we can help you fulfill your duties. We can act as your agent to complete the estate administration, manage the investments and keep required records for continuing trusts. You will deal with one advisor, who will coordinate all tax, investment, accounting and administrative services<sup>1</sup>.

When you are making your will, you can appoint BMO Trust Company, a division of BMO Private Banking, as executor or co-executor of your estate, or you can request the use of our Agent for Executor service to assist an executor (for example, if your executor is very busy or lives far away). We can also assume direct responsibility for managing your assets in trust for your beneficiaries.

BMO Trust Company can act as trustee of trusts set up during your lifetime or under the provisions of your will. Our trust and estate specialists work closely with you to protect and maximize your family wealth and help your assets pass from one generation to the next in a smooth, orderly manner.

### You can use our full range of services:

- estate planning
- safekeeping of your will
- acting as your corporate executor and trustee for trusts set up in your will

We also provide comprehensive wealth management services through a network of BMO Private Banking offices across Canada. You can consolidate all your retirement, investment, banking and estate needs under the guidance of your client advisor.

### Glossary of Terms

**Beneficiary** - a person or organization entitled to receive a benefit from the estate under the terms of the will

**Codicil** - a document that modifies a will

**Dependant** - a person to whom the deceased was providing support or was legally obligated to support at the time of death

**Estate** - the assets of the deceased

**Executor** (liquidator in Quebec/estate trustee in Ontario) - the person and/or trust company appointed in the will to administer the estate

**Probate** (certificate of appointment of estate trustee in Ontario) - the process whereby a court confirms a document to be the last valid will of the deceased and confirms the executor's legal authority

**Testator** - the person who made the will

**Will** - a document containing directions for the disposition of a person's property after his or her death

# Need a hand protecting your estate or fulfilling executor duties? We'd be pleased to help.



Call to arrange a meeting with us today.  
**1-800-844-6442**



Or visit our website to arrange to speak with  
someone in your community.  
**[bmoprivatebanking.com](http://bmoprivatebanking.com)**

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