

Office of the Public Guardian and Trustee

ESTATES ADMINISTRATION

**The Role of the Public Guardian and
Trustee**

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ESTATES ADMINISTRATION

The Role of the Public Guardian and Trustee

PART I - ROLE OF THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE

1. What is an estate?

An estate is basically a deceased's person's net worth. It is comprised of everything the person owns at the time of death - bank accounts, investments, home, car, furniture, personal possessions, etc., less everything they owe. All debts must be paid before the heirs/beneficiaries will get their share in the estate.

2. What is the role of the Office of the Public Guardian and Trustee (OPGT) in estates administration?

The OPGT protects the interests of potential heirs when an Ontario resident dies, and no eligible person is available to administer the estate.

3. What is the legal authority for this role?

The *Crown Administration of Estates Act* gives the OPGT the right to apply to administer certain estates.

4. In what circumstances will the OPGT administer an estate?

The OPGT will administer an estate if:

- the deceased was an Ontario resident or owned real estate here; and
- the deceased did not make a Will or the deceased did make a Will but the executor (now called estate trustee) has since died or become incapable; and

- there are no known next-of-kin living in Ontario or the next-of-kin are minors or mentally incapable adults; and
- the estate is valued at a minimum of \$10,000 after payment of the funeral and all debts owing by the estate.

5. Can someone other than the OPGT administer these estates?

Yes, in some cases. Certain people, such as a creditor or a person living in Ontario who is nominated by the deceased's next-of-kin, who live outside Ontario, may apply to court to be appointed as estate trustee. ("Estate trustee" is the term used to describe anyone who has the legal authority to administer an estate.) Since the OPGT is the estate trustee of last resort, the OPGT will actively try to locate appropriate people to serve as estate trustees and encourage them to seek appointment.

The OPGT cannot provide legal advice or assist individuals in preparing court applications for a Certificate of Appointment of Estate Trustee. The OPGT does not supply forms for court applications. Information pertaining to the court applications may be obtained at the Ministry of Attorney General's website at:

http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/estate_planning.php

6. What happens to estates that do not meet the OPGT's criteria for administration because they are insolvent or worth less than \$10,000?

Other interested parties, such as creditors, may ask the court for authority to administer the estate.

Most banks and trust companies will release money held in the name of a deceased person to cover the deceased's funeral expenses. Some will also release the money in small accounts to heirs without requiring formal estate administration. Unclaimed accounts held by a bank are eventually transferred to the Bank of Canada.

Landlords have the right to clear out an abandoned apartment under current legislation/law applicable to residential tenancies.

7. Can I name the OPGT as the “estate trustee” in my Will?

Only in very limited circumstances and only with the consent of the OPGT beforehand. The OPGT may agree to act as an estate trustee in a person's Will, as a last resort, if absolutely no one else—such as a friend, relative, lawyer or trust company—can be selected to do so. If you are considering naming the OPGT as your estate trustee, please consult your lawyer and then contact our office to discuss the matter.

PART II - REFERRAL TO THE OPGT

8. How do estates get referred to the OPGT?

Any member of the public may refer an estate to the OPGT for consideration.

Typically estates are referred to the OPGT by:

- police officers
- social workers
- hospital staff
- friends of the deceased
- funeral homes
- the deceased's lawyer
- relatives outside the province
- members of the public
- Regional Supervising Coroners

In addition, many estates are already known to the office because the OPGT was the deceased's guardian for property during their lifetime.

9. What happens after an estate referral is made?

Once an estate is referred, the OPGT gathers details about the estate to evaluate whether it qualifies for OPGT administration. This generally includes contacting financial institutions, conducting a preliminary search for next-of kin, attending at the deceased's former residence to review financial records and personal papers, compiling an inventory of the belongings and securing the premises. Sometimes a Will is discovered during the process. If this happens, the OPGT will try to contact the estate trustee and beneficiaries so that they can take over the administration of the estate.

10. Who makes funeral and burial arrangements for the deceased?

Next of kin or an estate trustee is responsible for funeral and burial arrangements. If there are no known next of kin or estate trustee, the OPGT can sometimes arrange the funeral and burial. However, the OPGT must first determine whether or not it is the appropriate party to be administering the estate and whether the estate has a value of at least \$10,000. It is not always possible to determine this by the time the funeral and burial must take place.

Municipal Social Services will arrange a funeral if a person dies without the money to cover the cost. Application for Social Services burial can be made to the local municipal office where the deceased resided at the time of death. There is also a special fund to pay for the funerals of deceased veterans and military personnel – The Last Post Fund which is supported financially by Veterans Affairs Canada, Government of Canada, and private donations – that may be approached. As a last resort, the Coroner's Office is responsible. It has the legal duty to arrange the burial of deceased persons when no one else is available to do so.

11. How can I make a referral?

If you have knowledge of the death of someone whose estate may be eligible for administration, please call the estate referral line at (416) 325-8854 or toll free at 1-(800) 366-0335. The line will be monitored daily from 8:30 a.m. to 5:00 p.m., Monday to Friday.

PART III - ADMINISTRATION OF ESTATES

12. What is involved in administering an estate?

The work involved in administering an estate includes:

- gathering information to determine the nature, location and value of the deceased's assets (bank accounts, real estate, vehicles, investments, etc.) and debts (credit cards, mortgages, loans, etc.);
- applying to court for appointment as estate trustee;
- securing the assets, including maintaining and managing real estate, if necessary;
- collecting any money or benefits owing to the estate;
- liquidating all the assets and disposing of personal effects;
- paying debts;
- initiating or defending legal proceedings on behalf of the estate;
- filing tax returns;
- establishing who the lawful heirs are and locating them; and
- accounting to the heirs and distributing the money in proper shares among the heirs.

13. How long does it take the OPGT to administer an estate?

Estate administration is a complex process involving a lot of research, transactions and paperwork. It also involves obtaining information and approvals from external agencies over whom the OPGT has no control.

If an estate is relatively straightforward, it will usually take between two to three years to be fully administered and distributed. But if the identity and/or whereabouts of the heirs are not known or there are legal complications, the process can take longer. Since every situation is different, there is no standard time period for administration and distribution of an estate.

14. How much does it cost for the OPGT to administer an estate?

OPGT estate fees are set by regulation. The OPGT charges usually amount to approximately 6% of the total value of the estate. OPGT fees for estate administration are comparable to fees charged by estate trustees in the private sector.

If there are professional services required such as preparation of tax returns, real estate maintenance, legal, investigative or genealogical research, the associated fees are paid out of the estate as expenses.

There are other costs to administer an estate, including but not limited to, Estate Administration Tax payable to the Ontario Minister of Finance based on the value of the estate, costs to publish notice to creditors and others online, etc.

PART IV - ENTITLEMENT TO ESTATE FUNDS

15. Who is entitled to the money from estates administered by the OPGT?

The *Succession Law Reform Act* sets out, in order of priority, which next of-kin are entitled to inherit if a deceased person did not make a Will (this is called "intestate"). Even very distant relatives may be entitled to inherit if there are no next-of-kin closer in relationship.

If the deceased did make a Will, the persons named as beneficiaries in the Will are entitled to the money in accordance with the deceased's instructions.

The OPGT conducts a careful and thorough search for heirs. If none can be found within 10 years, the money is transferred from the OPGT to the provincial government's general account. However, it can still be claimed by heirs who come forward after that. Entitlement to the money that is transferred is never lost.

16. How does the OPGT find the heirs?

The OPGT makes extensive efforts to find heirs when it administers an estate. Sometimes the next-of-kin can be identified by reviewing the deceased's personal

papers. Sometimes they are identified by others, such as the deceased's caregivers, lawyer or friends. In these cases, it is usually a fairly simple matter of determining which of the next-of-kin are entitled by law to inherit, and then making contact and receiving proof of their identity and their relationship to the deceased.

In many cases, however, it is very hard to identify and locate next-of-kin. The OPGT often retains professional genealogists to trace the deceased's family tree. These experts use a variety of techniques including searching birth, marriage, death notices and records in Canada and abroad.

17. What if I am approached by a person who agrees to give me information about an inheritance in exchange for a percentage of the estate?

There are individuals and companies – sometimes referred to as “heir tracers” – who, as a business endeavour, track down people who are not aware of their entitlement to an inheritance and charge a fee for doing so. Occasionally, the beneficiaries of an estate that the OPGT is administering are approached by an heir tracer.

For any agreements signed on or after January 14, 2010 the fees that heir tracers can charge for their services are limited to a maximum of ten percent (10%) of the value of the share in any estate administered by the OPGT, excluding legal fees that may be charged to their clients. If you have any concerns about the legal fees charged, there are certain steps that you can take. Please refer to the Law Society of Ontario's website: <https://lso.ca/protecting-the-public>

If you think that you may have an interest in an estate that this office is administering but are not sure, contact the OPGT. Provide the last name of the deceased person and your relationship to him or her. The OPGT will try to assist you in determining whether you may be a potential heir. The OPGT does not charge for this information, and if you are found to be an heir, OPGT staff will explain all the paperwork requirements and guide you through the necessary steps to obtain your inheritance. You can then decide if you want to do the work yourself or pay a fee to have someone else assist you.

18. How does the OPGT know whether a person claiming to be the lawful heir to an estate has a legitimate claim?

The OPGT must be reasonably certain that there is no one living who is closer in relationship than the person(s) claiming to be the heir(s), and that the documentary proof of the heir's identity is sufficient. We do this by carefully reviewing the deceased person's family tree, making sure that all the connections between the ancestors are substantiated and that proof of identity is provided. The material is reviewed and verified by an OPGT lawyer and senior staff before the estate is distributed.

PART V - MORE INFORMATION/CONTACT INFORMATION**19. What are the operating hours of the Estates Administration Unit?**

The unit operates between 8:30 AM and 5:00 PM, Monday to Friday and is closed on statutory holidays.

Contact Us

Telephone

OPGT's Estates Administration Unit:
(416) 325-8854 or toll free at 1-800-366-0335 or TTY: (416) 314-2687

OPGT General:
Toll-free 1-800-366-0335 or (416) 314-2800 or
TTY: (416) 314-2687

Fax Inquiries

Estates Administration Unit:
(416) 314-2781

Web Sites

General information of estate matters:
http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/estate_planning.php

OPGT:
www.attorneygeneral.jus.gov.on.ca/english/family/pgt

Written Inquiries

Team Leader, Estates Administration Unit
Office of the Public Guardian and Trustee
595 Bay Street, Suite 800
Toronto, ON M5G 2M6

Privacy laws do not allow the OPGT to give out a list of estates under administration by the OPGT, although the OPGT will assist individuals who think they may have an interest in an estate if they can provide the last name of the deceased.

Please be advised that the OPGT cannot give individuals, professionals, facilities or organizations legal advice about specific cases or their own legal obligations. These questions should be directed to a lawyer. The Law Society Referral Service (LSRS) can put you in touch with a lawyer for a half-hour at no charge. Information about how to be referred to a lawyer through the LSRS is available at www.lsr.info. A request to the LSRS may be made by completing the online request form at www.lawsocietyreferralservice.ca. A crisis line is available Monday

to Friday, 9:00 am to 5:00 pm. The crisis line is intended for people who are unable to use the online service, such as those without access to the internet. The phone number for the crisis line is 416-947-5255 (toll free 1-855-947-5255).

Alternatively, you may contact JusticeNet which is a not-for-profit service promoting increased access to justice for low and moderate-income Canadians. The lawyers in the program offer their services at a reduced fee to clients of limited means, based on a sliding scale that takes into account both income and number of individuals supported. They can be contacted at: Toll Free: 1-866-919-3219 or by e-mail at www.justicenet.ca.

This brochure provides a very general overview of the mandate and operation of the Estates Administration Unit. It does not include all of the details of the law, policies, procedures and exceptions that may apply in a particular case. For information about the law governing estates, please refer to the applicable statutes and contact your lawyer.

Alternate formats of this brochure are available upon request. Please contact 416-314-2803 or toll free 1-800-366-0335.

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