

# Suddenly You're An Ontario Executor



**Start Your Estate Journey Here**



**Edward Olkovich Law**

Certified Specialist, Estates and Trust Law

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# Message from Ed Olkovich



I wrote this report to help you cope with the stress of being an executor in Ontario. I've written several estate books to help people make better decisions, including *The Complete Idiot's Guide to Estate Planning in Six Simple Steps for Canadians* and **[Executor Kung Fu: Master Any Estate in Three Easy Steps](#)**.

I have practised law in my Toronto law firm since 1978. I am one of Ontario's few Certified Specialists in Trusts and Estates Law, and I also sit on the Law Society's specialist board that certifies all specialists. In addition, I edit Carswell's legal text on *Executor Duties and Compensation*.

I have spoken to the media, professionals and public audiences across Canada. I work hard to improve my clients' experiences with wills, estates and estate lawsuits.

My memberships include the Law Society of Ontario, the Ontario Bar Association, the American Bar Association and the Society of Trust and Estate Practitioners (STEP). I am a past member of the Canadian Association of Professional Speakers. I still find time to travel and play tennis at Toronto's Boulevard Club.

A handwritten signature in black ink, appearing to be 'Ed Olkovich'.

Edward Olkovich, B.A., LL.B., LL.M., C.S., TEP | **[MrWills.com](http://MrWills.com)**

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# Chapter 1: Wonder Why You Need This Guide?

**\$750 billion in inheritances will be transferred during the next decade.** You may be in charge of one of those estates as the Ontario estate executor for relatives, friends or business associates. You were likely chosen because you are trustworthy. However, research shows you may be in the dark about executor work.

**Being an executor is an honour, but it is also a job you may end up regretting,** even if you are a beneficiary. If you take the time to review this report, you'll have less stress. You can also stay out of trouble. That's my goal for you. I'll show you simple steps to confidently handle Ontario executor tasks.

**Take heart. Most executors are inexperienced and learn on the job.** This guide helps to set a roadmap for your journey and provides information about Ontario executors' duties that you won't find elsewhere. Take the time to review. You don't want to wing it and make costly mistakes.

**Start Your Executive Journey Here** helps you focus your time and efforts. When you handle another person's money, you shoulder tremendous responsibility – but you don't have to go it alone. Find the right professionals to help you.

**I've seen executors who failed to get help end up in court. Want to know why?** They don't understand their legal duties, and as a result, they make errors that add months of delay and extra work. Even worse, errors can cause financial losses and turn beneficiaries against executors.

**Executors can get sued for many scary legal reasons.** Knowing what these dangers are can help. But you need a roadmap for your journey. This guide can help you navigate around obstacles you may face.

**Ontario executors can pay personally for their mistakes.** In fact, Ontario executors who lose court cases can pay twice: they pay their own lawyers and much of the winner's legal costs. That's reason enough to avoid mistakes that can force you into court. This report helps you understand how to handle Ontario estates from start to finish.

# Chapter 2: What Are Your Estate Executor Goals?

Do you want to:

- Do things right the first time?
- Open and close estates with confidence?
- Break up estate projects into smaller, easier-to-manage steps?
- Feel less anxious about your responsibilities?
- Prepare your own executors for their roles?
- Sleep better at night without worry?
- Stay out of trouble?

**Start Your Executive Journey Here** can help you reach your goals. You can benefit from my experience advising executors. Knowing what to expect can also help you deal with surprises. And there are always surprises.

Some key points to keep in mind:

- **As an executor, you need to understand Ontario estate requirements.** This may sound complicated, but I'll explain it in plain language. I wrote this guide for first-time Ontario executors, not lawyers.
- **Ontario also refers to executors as "estate trustees with a will".** You may also be referred to as a fiduciary or estate representative. I use "executor" to include Ontario estate trustees with a will.
- **Every estate has different assets, beneficiaries and issues.** No two Ontario executor journeys are the same. That's why you need to understand basic executor duties. Relying exclusively on someone else's checklists can be dangerous. You need more than checklists to stay out of trouble.
- **Compare checklists to the will's terms, assets and Ontario rules.** But remember, not everything is covered by the checklists you find online. You may not even know what your checklist is missing. You need to customize and revise your checklists.

- **Keep records, hire experts and learn to manage beneficiaries, relatives and lawyers.** Don't let beneficiaries rush you; they may not understand that your duties or tasks can take one to two years to complete. You need legal advice to distribute estate assets.
- **Since 2015, Ontario executors must file new estate information returns.** Ontario can now penalize executors who cheat on provincial estate taxes. In addition, blended families and common law partners are making more legal claims to estates. Disputes are common and lawsuits add to your stress.

**How do I know so much about Ontario executors?** Since 1978, I've advised executors. I wrote *Executor Kung Fu*, the world's first self-defence guide for executors. I edit a legal text on executor duties and compensation. I offer you my secrets from decades of working with Ontario executors.

**Executors are often surprised by issues that arise handling estates.** They don't understand their duties and don't see problems coming.

**Don't worry. I'll explain how to stay out of trouble and make smarter decisions.** Discover what you likely don't know can cause executor nightmares.

Turn the page and test yourself about your job as executor.

## Chapter 3: Know This Before You Begin Your Duties

The estate beneficiaries dragged Connie to court. They wanted her to explain what she had done with their father's estate. As executor, Connie could not close the estate until the court case was finished.

Connie appeared in court to defend her actions. Surprise! No one thanked her for her service.

After Connie spent three years working as executor, a judge told her:

"Doing what you think is right may not be legal."

These words came as a shock to Connie. I hope you'll never hear those same words if you are an Ontario executor.

Next, I'll explain three common executor misconceptions that create dangers. Go ahead and test your knowledge about your estate duties. Read these three questions statements and mark your answers true or false. Then read my explanations.

### (i) **Executor Duties Start After the Formal Reading of the Will.**

True       False

Some executors ask me, "When does the reading of the will take place?" They want to know who invites people to the will reading. Well, the truth is, "will readings" only happen in novels and Hollywood movies. Executors need to start work immediately and shouldn't wait until after the funeral to secure assets.

Ontario law places executors in charge of the deceased's body, burial and remains, and requires them to pay out gifts within a year of death. You should find out about other deadlines immediately. It's dangerous to sit back and do nothing.

When David died, he left everything to his spouse, Vanessa. She only had to remove David's name from their joint bank accounts. Vanessa did not need a court certificate for David's will. However, this is not the case when Vanessa dies.



Vanessa's executor will need to probate, or court-certify, her last will. This court certificate confirms who is the estate executor. Vanessa's executor must empty her home to sell it, file tax returns, sell investments and distribute everything to beneficiaries. These tasks all take time. Few of us have enough time to manage our own affairs, let alone take on added executor responsibilities.

Every estate has different time commitments. Other executors' experiences may prove inaccurate to use for your time estimates.

Professionals can help you and save time. For example, accountants file tax returns and lawyers explain and help you carry out your duties. Realtors ensure real estate is sold at the best price and investment advisors can manage portfolios prudently.

The correct answer to this question is "false".

**(ii) Is Executor Record-Keeping is Important?**

True       False

Beneficiaries can compel executors to produce their estate accounting records. Years after you started, you may need to prove you prudently handled estate assets from the beginning. Beneficiaries want to know what you did with their money and each transaction can be questioned to show how the estate benefited. Remember, feuds surface even in the best families.

Let's detail what you need to record in your Ontario executor records. These records are also called your accounts. Your accounts include:

- assets as of the date of death
- how estate assets are disposed of
- all money received and disbursed
- investment transactions and unrealized investments
- liabilities, contingent or otherwise

Failing to keep records as executor is considered a breach of trust. Courts can remove executors for not keeping records. Executors often use spreadsheets for all their entries. Don't forget to keep back up copies.

You want to record the reasons for any decisions you made and why. Investment advice you receive should also be recorded in writing.

Keeping notes of your time may help you later as they may satisfy those who question your fees or remuneration. Yes, you are entitled to be paid as an Ontario executor. You can charge executor fees. That is so even if the will does not mention your compensation.

The correct answer to this question is "true".

### **(iii) Can Executors Can Quit Any Time They Wish?**

True  False

Being executor is a lifetime appointment that carries personal risks if things go wrong. Your job may include handling: family disputes, beneficiaries with disabilities, a risky business, environmental issues and lawsuits. As a result, you may wish to decline the job at the very start. In addition, your personal health, age and travel requirements may prevent you from serving as executor.

Resigning is not the same as renouncing as executor. Make sure you understand this difference.

You can renounce before you start your executor journey by simply saying "no thanks". There may be alternate executors named in the will. If not, the beneficiaries can ask the court to appoint one.

On the other hand, resigning is what you do when you can't complete duties you started. You need good reasons to quit. And likely consent from courts and beneficiaries. You may even be compelled to pay legal costs to resign.

Do you have any doubts about taking on the job of executor?

Get legal advice immediately before you take any action. You may decide to renounce your position. It's easy. You just sign court forms to notify everyone. However, you do need to do it promptly and with proper notifications. Don't sit back and wait or do nothing.

The correct answer to this last question is "false".

Want to know more? Turn the page to read about Executor Tony. Tony thought he was in charge and could do whatever he wanted.

Was Tony right? You'll find out next ...

## Chapter 4: Tony and his Perfect Putter

When George died, his sister, Alice, told everyone, “My brother wants to be cremated with no funeral.”

“Too bad,” Tony said to Alice. “Uncle George never told me that. Since I am his executor, I get to make all the decisions. I don’t like cremation and I have discretion under the will. I can do anything I want. I don’t need anyone’s permission or approval.”

Tony thought he had all the power since his uncle had made him his executor. So, Tony proceeded to arrange his uncle’s funeral and reception. He bought a burial plot and an expensive headstone. Tony did this despite everyone’s protests.

Tony held George’s wake at his golf club. Tony’s golf buddies had never met George. However, they all toasted him with single malt Scotch at the estate’s expense. The food and bar tab was over \$3,500. Alice and other beneficiaries were not invited.

Tony did not tell anyone what he did next. He invested \$300,000 from George’s estate money in Tony’s new invention — the perfect putter.

Tony’s putter company went broke, and the \$300,000 was lost. Tony then told George’s beneficiaries there was nothing left in the estate to distribute. Oh, and Tony claimed George’s 2018 BMW for his services as executor.

### **Was Tony in trouble?**

Tony’s behaviour was reckless. Like some other executors, he abused his position and threw away estate money.

Alice took Tony to court. She asked the court to remove Tony as executor. Tony didn’t provide any accounting for his handling of the estate. He said he hadn’t kept any financial records.

Alice wanted Tony to pay back \$300,000. Tony claimed the estate had invested this money in his failed putter company. Alice claimed Tony had mishandled estate money and improperly invested it.

**The judge ordered Tony:**

- a) be replaced as estate executor
- b) pay back the improperly invested \$300,000 with interest
- c) forfeit his compensation for executor work (return the BMW)
- d) pay his own legal fees to defend himself
- e) personally pay Alice's legal fees

Tony should have protected and invested estate funds, avoided conflicts of interest and communicated with beneficiaries. He should have managed the estate without taking advantage of his position.

Tony didn't understand his duty as executor when he invested \$300,000. He also had no right to pay himself without beneficiaries' approval.

Now you know some fundamentals about your Ontario executor duties. Let's continue with an overview of your Ontario Executor Journey.

# Chapter 5: Your Ontario Executor Journey at a Glance

**No single roadmap works for every estate journey.** Each estate, large or small, has different assets, beneficiaries and tax issues. These variables create their own list of dos and don'ts.

## Your Ontario Estate Journey Has Three Phases

Don't worry about when each phase begins or ends. Phases overlap until you close the estate. I'll show you how to start and how to close estates.

In the first phase, you **protect assets**. This can be the most time-consuming phase: you must identify estate assets to protect them. It can also be a very difficult phase, especially if you are grieving.

In the second stage, you **probate wills**. It's critical to use estate lawyers to handle legal tasks, such as probating wills. Once the will is court-validated, you will receive an Ontario estate certificate. You can use it to collect estate funds and sell assets.

In the third stage, you **pay everyone**, including yourself. You identify what assets are to be sold, pay taxes and bills. If you are executor and residual beneficiary, you may not want to charge a fee. Why? Because executor compensation is taxable income.

**In most estates, original wills need to be court-certified or probated.** Ontario courts provide you with estate certificates to confirm your authority. You typically complete administering an estate within an "executor's year". This is the first year after a person's death.

**Check out your Ontario Executor Year at a glance on the next page.** Aim to finish work within one year after the date of death. You'll sleep better having my big-picture roadmap. I recommend you consult an estate lawyer before you start.

After you locate the original will, take these steps:



Now, I'll show you the three phases of your Ontario Executor Journey in more detail.



## Chapter 6: Protect Assets – First Phase Overview

**Find the original will, and read it for your instructions. You spend most of your time as executor in this first phase.**

You may feel overwhelmed, but setting priorities can save hours of time. You'll continue to handle some steps until you close the estate. You don't have to stop one phase to start another, but you do need to follow certain steps in each phase.

**Every estate is different.** Your duties may include helping orphans, managing a business or emptying a hoarder's home. You must protect estate assets and will need help to arrange insurance. Find estate lawyers to support you while you grieve.

**Start collecting papers and passwords, including:**

- marriage and divorce certificates
- income tax returns and assessments
- insurance and financial records

**Ontario executors need to prepare estate inventories.** Since 2015, Ontario requires executors to file Estate Information Returns. EIRs list estate assets to calculate Ontario's provincial estate administration tax. This provincial tax is roughly 1.5% of the estate. This was formerly called probate fees/taxes.

**Some estate assets are excluded from provincial tax calculations.** Assets not subject to probate tax include those with named beneficiaries, such as life insurance, pensions and registered investments.

**Don't give away estate property – despite anyone's demands.** Property valuations are required for tax calculations, division or distribution. Appraisals support your income and probate tax calculations.

**Here are your priorities in this phase:**

1. read your will instructions
2. prepare your estate asset inventory (include debts)
3. protect persons and assets at risk





## Chapter 7: Probate Wills – Second Phase Overview

**Collect investments and sell assets once the will is certified or probated.** Wills are probated in Ontario by applying for certificates of appointment of estate trustee with a will. You'll pay Ontario's probate or provincial estate administration tax when you file court documents to certify the will.

**Second phase work can vary in length from weeks to months or more.** While you wait for court-issued estate certificates, you can file income tax returns. Income tax filing takes time. Collect income tax information and meet Ottawa's tax deadlines to avoid penalties. Your inventory helps to identify taxable estate assets.

**Are you exhausted from tasks you performed in the first stage?** Don't worry. You can hire agents to handle executor tasks. You are responsible for all agents you hire to perform executor services and will pay them from your executor compensation.

**Know the differences between legal services and executor work.** You do not need to perform legal services. You can pay for legal services from estate funds. Can you pay lawyers for executor work? Yes, but with payments from your executor compensation. You may hire agents to assist you with administrative tasks. However, you cannot delegate your decision-making responsibility.

**Financial institutions require estate certificates to release assets.** They will then have their legal departments review court documents.

**In summary, your priorities in this phase are to:**

4. apply for estate certificates
5. file tax returns by deadlines
6. use estate certificates to sell assets



## Chapter 8: Pay Everyone – Third Phase Overview

This is a challenging time, but also the best time. You can claim your compensation and put everything to bed. You will end your Ontario Executor Journey – usually without applause.

Ending your Ontario Executor Journey means closing the estate. You must answer beneficiaries' questions. This should be a piece of cake – if you have kept records.

Your claim to compensation may depend on how well you communicate. You may be doing an interim distribution within the executor's year. You can wait for final distribution until you have an estate income tax clearance certificate. Beneficiaries can require you to "pass your accounts" to approve your accounting.

Tax clearance certificates confirm no income taxes are owed by the estate. As executor, you are responsible to pay all deceased's income taxes before distribution. Report income after death in separate estate tax returns. Getting a tax clearance certificate provides proof that no taxes are owed.

Your completed inventory helps with income tax filings. You will have your lawyer prepare a release for residual beneficiaries to sign. Releases confirm beneficiaries are satisfied with your accounting and compensation claim. Releases are signed by residual beneficiaries to informally discharge you. Releases allow you to take your executor's compensation and close the estate.

Ontario courts may need to formally discharge executors by court order. Court orders are required when beneficiaries are incapable or minors. These beneficiaries cannot sign releases. Court orders may require that minors' inheritances are paid into court.

In summary, your priorities in this phase are to:

1. pay all creditors
2. pay all beneficiaries
3. pay yourself after approval

# Congratulations! You've Done it

**Your Ontario Executor Journey has ended.** On your journey you likely met fellow travellers and shared stories. What you learned will help you choose and prepare your own executor.

**You need to keep your records in case there's a tax audit.** Don't start shredding estate papers just yet because audits can happen up to six years after the estate is closed. There is no clearance certificate to obtain for provincial estate administration tax. The Ontario government requires you to keep records to support your calculations.

**Ed Olkovich,**

**Certified Specialist in Estates and Trust Law**

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# Glossary

**Accounts** – Records that executors and other fiduciaries are required to keep. Accounts explain who benefited from the fiduciaries' conduct.

**Assets** – What a person owns, including land, money, investments and personal effects like jewellery.

**Beneficiary** – Persons or organizations who benefit. You can be a beneficiary if you are left something in a will. You can also be designated a beneficiary under a life insurance policy, pension or registered plan.

**Blunder** – Mistake you make when you die without naming an executor in your will. No one can protect your loved ones or your money.

**Estate** – Whatever you leave behind when you die, including your assets less debts, taxes and liabilities.

**Estate Accounts** – Includes a history of all transactions, income and assets received and expenses paid. Used to calculate executor compensation that is payment for services treated as taxable income.

**Estate Certificate** – This is what Ontario estate courts provide to certify the last will. Estate certificates confirm executors can sell assets.

**Estate Information Return** – Since 2015, executors must file EIRs to confirm all provincial estate administration taxes were paid. Executors must provide details of asset values. Ontario imposes penalties for misrepresenting values.

**Estate Income Tax Certificate** – This certificate confirms there are no outstanding owed taxes by the estate. Tax clearance certificates protect executors who must first pay creditors.

**Estate Trustee** – Another name for executor in Ontario. Your estate is frozen on your death unless you have an estate trustee or executor named in your will. It can also mean the person who handles a trust created under a will or estate.

**Executor** – Also called an estate trustee in Ontario. This is your estate's legal representative named in your will, if you have one.

**Executor Year** – Executors are expected to administer estates within the first year after a person's death.

**Fiduciary** – Person in a position of trust and control. Laws require them to account for their actions.

**Income Tax** – At death, certain property is treated as income for income tax purposes. It is deemed disposed of at fair market value and taxed even if gifted and no proceeds are received.

**Intestate** – A dirty word meaning you died without a will. The government writes a will for you that you may not like. The government's will decides who gets what and when. It also decides who is in charge of your money.

**Pass Accounts** – The formal court process to audit executors' records is called passing accounts.

**Probate** – Process that proves who shares and administers your estate. Probate or estate courts have jurisdiction over estates when someone dies whether with or without wills.

**Will** – Legal document you sign to deal with your estate. You appoint executors who manage and distribute your estate to beneficiaries after you die.

## Need additional help?

If you have an urgent legal matter, it's important to get legal advice immediately. Only a lawyer can assess your particular needs and protect you from suffering any loss.

### Book an Appointment with Ed

If you are an Ontario resident, you can book an initial in-person consultation with Ed in his Toronto office. The appointment is 45 minutes and **\$375 Cdn.** You will be asked to pay the \$375 (includes HST) in advance to book your appointment as well as sign and return an [Agreement for Initial Meeting Legal Services](#).

To book your appointment, please call

416.769.9800 (local)

1.877.679.4557 (toll-free)

or book online at:

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