



**OFFICE OF THE PUBLIC
GUARDIAN AND TRUSTEE**

*ESTATES
ADMINISTRATION*

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

**The Office of the Public Guardian and Trustee
Estates Administration**

ISBN 0-7794-5752-8

© Queen's Printer for Ontario, 2006

TABLE OF CONTENTS

Part I	Role of OPGT
Part II	Referral to OPGT
Part III	Administration of Estates
Part IV	Entitlement to Estate Funds
Part V	More Information/Contact Information

ESTATES ADMINISTRATION

QUESTIONS AND ANSWERS

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

1. What is the role of the Office of the Public Guardian and Trustee (OPGT) in Estates Administration?

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

2. What is the legal authority for this role?

The *Crown Administration of Estates Act* gives the Office of the Public Guardian and Trustee (OPGT) the right to apply to administer certain estates.

3. 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 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 \$10,000.00 after payment of the funeral and all debts owing by the estate.

4. 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.) The OPGT is the estate trustee of last resort, so we 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; neither does it supply forms for court applications.

5. What happens to estates that otherwise meet the criteria but 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 may clear out an abandoned apartment under current law applicable to residential tenancies.

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

Only in very limited circumstances and only with 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 OPGT

7. How do estates get referred to the OPGT?

Any member of the public may refer an estate to the OPGT for consideration. Typically, however, estates are usually 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 his or her lifetime.

8. What happens after a referral is made?

Once the referral has been received, the OPGT commences to gather 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 contact the executor and beneficiaries so that they can take over the administration of the estate.

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

Sometimes the OPGT can arrange the funeral and burial. The OPGT must first determine whether or not it is the appropriate party to be administering the estate and whether the estate is solvent. 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. There is also a special fund to pay for the funerals of deceased veterans and military personnel – The Last Post Fund – which 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.

10. How can I make a referral?

If you know of an estate that you think may be eligible for administration by the OPGT, call our main reception number at (416) 314-2800, explain that you are calling about the estate of a deceased person and tell the receptionist the last name of the deceased. You will then be connected to the appropriate staff person in the Estates Administration Unit.

PART III - ADMINISTRATION OF ESTATES

11. 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 debt (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.

12. 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 authorities over whom the OPGT has no control.

If an estate is relatively straightforward, it will usually take between one and two 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, such as litigation, the process can take longer. Since every situation is different, there is no standard time period for administration and distribution of an estate.

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

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 such as real estate maintenance, legal, investigative or genealogical services required, the associated fees are paid out of the estate as expenses.

PART IV - ENTITLEMENT TO ESTATE FUNDS

14. 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.

15. 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 and death notices and records in Canada and abroad.

16. 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. 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 any estate administered by the OPGT excluding legal fees that may be charged to their clients.

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.

17. 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.

18. How many estates does the OPGT administer?

The OPGT is appointed as estate trustee for approximately 225 new estates each year and has approximately 1,400 estates under administration at any given time.

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.

20. Where can I get more information?

You can link to the Ministry of the Attorney General website for general information on estate administration at:

<http://www.attorneygeneral.jus.gov.on.ca/english/estates/estates-FAQ.asp>

If you have more questions about the OPGT's Estates Administration Unit call us at (416) 314-2800 or toll free at 1-800-366-0335 or TTY: (416) 314-2687 and ask to speak with the Estates Unit's Team Leader.

Written enquiries should be directed to:

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

Faxed enquiries should be directed to (416) 314-2781.

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 surname 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 of Upper Canada has a Lawyer Referral Service which will put you in touch with a lawyer for a half-hour telephone consultation at no charge to help determine your rights and options. For more information about this service, please contact the Law Society of Upper Canada at 1-800-268-8326.

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 skills 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

If you have questions about other services provided by the OPGT you can access our website at www.attorneygeneral.jus.gov.on.ca/english/family/pgt or call toll-free at 1-800-366-0335 or (416) 314-2800 or TTY: (416) 314-2687.

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.

The Office of the Public Guardian and Trustee
Estates Administration
ISBN 0-7794-5752-8
© Queen's Printer for Ontario, 2006
Reprinted in 2011
Disponible en français