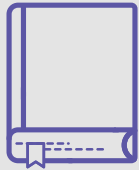


It is a difficult experience when a client dies. However, the right to confidentiality does not end with death and you have continuing professional duties.



1. MENTAL HEALTH SUPPORTS ARE AVAILABLE

- This can be a difficult experience for you and your colleagues. [The Member Assistance Program \(MAP\)](#), a confidential service funded by and independent of the Law Society of Ontario and LAWPRO can provide mental health support during this challenging time.



2. THE RETAINER IS AT AN END, BUT YOUR PROFESSIONAL DUTIES CONTINUE

- The duty of confidentiality and privilege owed to the deceased survive the deceased's death. (See Rule 3.1-1 of the Rules of Professional Conduct.)

3. NEXT STEPS

When there is litigation:

- If the deceased was a party to litigation, determine whether there are plans to open an estate. If there are, obtain consent of the deceased's family to continue representation until a personal representative is appointed.
- If there are not, file a motion to withdraw or a notice of substitution with new lawyer. Once the personal representative is appointed, determine whether they would like you to continue acting as the lawyer for the estate in the litigation. If they would, you may need to substitute the estate as the party. If they would not, file a motion to withdraw or notice of substitution with new lawyer. See [Rule 11 of the Rules of Civil Procedure](#) for civil actions commenced in Superior Court.
- If litigation has not yet commenced, and you have not been retained or instructed by the deceased's estate, your representation of the deceased will typically end.

Wills:

- If you drafted a will for the client, who is now deceased, review the will and the file to determine what steps may have been provided regarding releasing the will.
- Subject to your client's instructions, contact family members of the existence of the will.
- If requested to produce your will file, contact LAWPRO. See [When You Get a Call About a Will You Drafted... What Is Your Next Step?](#) for more information.

Real Estate and other transactions:

- A dead person cannot convey an interest in land. If the client passed away during a real estate transaction, do not register deeds/transfers after a transferer's death. This would create an [improper zombie deed](#). Instead, determine whether there are plans to open an estate. Contact the family as the estate will have obligations it will need to meet. Determine who has authority, and if they plan to probate the will.
- For other transactions, contact the Estate Trustee to seek instructions.



4. DEALING WITH FILE TRANSFER REQUESTS, RETENTION AND FILE DESTRUCTION

- After the death of a client, there may be requests from other parties for the release of the client's file. Whether or not you may release the deceased's file depends on who is making the request and on the dispute in which such a request is being made. Contact LAWPRO for guidance.

