

Retainer Agreement Administration of Estates (Grant of Probate)



This document should be adapted to suit your practice and the matter for which it is being used. See endnote.

This package contains five parts:

1. Cover letter
2. Contract for Legal Services and Fees
3. Guide called *Steps You Should Take Now*
4. Guide called *How to Safeguard the Assets of the Estate*
5. Guide called *How to List the Assets and Liabilities of the Estate*

It is designed to be given to your client following your first meeting. While some legal terms are briefly defined, it assumes you have discussed certain details with your client.

1. Cover letter

[Firm Name, Address, Telephone Number, Email]

[Date]

[Client Name]

[Client Address]

Dear [name of client]:

Re: Estate of [name of deceased], deceased

Thank you for asking my law firm to help you settle the estate of your [relationship], [name of deceased]. You have our sympathy on your loss. To follow up on our first meeting, you may find this outline of what we discussed helpful.

Four important documents enclosed

I enclose four important documents with this letter:

- Contract for Legal Services and Fees

This document may be adapted for use by lawyers and paralegals for their legal practices. It is available at practicepro.ca/retainers
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- Steps You Should Take Now
- How to Safeguard the Assets of the Estate
- How to List the Assets and Liabilities of the Estate

Please read the *Contract for Legal Services and Fees* carefully. It details the work my firm will do and the fees we will charge based on the discussions we had at our meeting. If you are satisfied with the contract, *please sign and date one copy and return it to us* so that I can begin work for you.

Steps You Should Take Now details the steps you need to take to prepare to administer the estate. One step is to make sure the estate assets are safe. Estate assets include money and property. *How to Safeguard the Assets of the Estate* describes this step. Another step you need to take is to list the assets and liabilities (debts) of the estate. This step is described in *How to List the Assets and Liabilities of the Estate*.

Obtaining a grant of probate

Once you give us the list of assets and liabilities, I will prepare the legal documents needed to apply to the court for a *grant of probate*. A grant of probate is a court order confirming that you are the executor or personal representative of the estate and have filed the necessary documents with the court. Usually financial institutions, the Land Title Office, and others will not deal with you as executor until after the court grants probate.

After probate is granted

As executor, your duties and responsibilities began when **[name of deceased]** died. Generally, the executor must settle or pay all estate debts and then distribute the estate as required by the will. I will help you put the assets into your name as executor and then pass them on to the beneficiaries, the people named in the will to receive the assets.

After probate has been granted, we will discuss the further steps which you will take.

Please call me if you have any questions or if I can help in any way.

Yours truly,

[Lawyer signature]

[Lawyer name]

[law firm]

[address]

[telephone number]

2. Contract for Legal Services and Fees

Part 1: Our Services

Legal Services Covered by This Agreement

We agree to:

- prepare all documents needed to obtain a grant of probate
- file the probate documents with the court (give the court official copies)
- obtain a grant of probate
- help confirm the ownership of the deceased's assets
- arrange to transfer the assets to your name as executor and then to the beneficiaries
- advise you generally about administering the estate
- **[Optional]** assist you in passing your first accounts as executor

At this time we have not been retained to represent you generally or in connection with any other matter. We will not be performing the following services:

(a) **[describe]**

(b) **[describe]**

(c) **[describe]**

[Optional] Your desired outcome and time frame for resolution of this matter is as follows:

[describe]

[Optional] We will work with you towards your desired outcome. However, all legal actions are subject to many possible variables such as the demeanour and recollection of witnesses, the availability of substantiating documents and other evidence, and the evidence marshalled by the other side—all of which affect the decision of a judge or jury. Accordingly, we cannot guarantee that your desired result will in fact be achieved. For us to work towards your desired outcome, it will be necessary for you to abide by the terms described in this agreement.

We will keep you informed about matters that arise and discuss with you any significant decisions you must make.

Time

It will take at least six months before you can distribute the estate to the beneficiaries and before this matter might finally be wound up. It could take longer, depending on the various factors we discussed when we met.

Your Role as Client

You understand the importance of giving us all the facts and of being totally honest with us. We can only do our best job if we have your trust and are fully informed.

In particular, we ask you to give us all information and documents you have, or have access to, which we need to go ahead. Some of the documents we need include the will and any *codicils* (additions or change to the will); the deceased's birth, marriage and death certificates; any separation agreements and court orders or judgments; all financial papers; and insurance policies. If necessary, we will ask you to give us written authorization to obtain this information.

Legal Services Not Covered by this Contract

This contract covers only the legal work described above. It does not cover the work to prepare or file income tax returns for the deceased or the estate. If you ask us to perform other legal services on matters that arise, I will discuss this with you at the time and give you a separate estimate of our fees for these other services.

Sole Representation

We will be representing solely you in this matter. Our representation of you does not include the representation of related persons or entities, such as family members; friends; the individuals or entities that are shareholders, directors or officers of a corporation, its parent, subsidiaries or affiliates; partners of a partnership or joint venture; or members of a trade association or other organization. In acting for you, we are not acting for or taking on any responsibilities, obligations or duties to any such related persons or entities and no lawyer-client or other fiduciary relationship exists between us and any such related persons or entities.

[Multiple Clients – Optional in the alternative if not sole representation]

Representing Multiple Clients with Apparent Same Interest (Joint Representation)

As you know the following [party/parties] are involved with you in this matter and you and they have asked us to represent all of you:

[name(s)]

We have discussed with you the principles we must follow of undivided loyalty. No information received from one of you as a part of the joint representation can be treated as confidential as between all of you. If we should receive information from one of you which we are instructed to keep confidential as between all of you, we will have to stop acting for all of you.

We have discussed these matters with you and have concluded that, at least at present, each of your individual interests in this matter are the same. The areas in which these individual interests may diverge in the future are:

[describe]

If we agree to act for one of you in a matter separate from this one, and we receive confidential information from that separate matter that is relevant to this matter, and the client in that separate matter wishes to keep it confidential, then

[Lawyer when drafting agreement must choose (i) or (ii) following]

(i) the information must not be disclosed to the other in this matter. This means we must withdraw from the joint representation.

or

(ii) the information must be disclosed to each of you in this matter and we may continue to act jointly for both of you.

Other conflicts may arise that cannot as yet be foreseen. A conflict of interest occurs when what is best for one of our clients somehow is not best for or hurts another of the firm's clients. At the present time we can represent all of you. However, if it later becomes apparent that there is a conflict, we confirm each of your instructions to attempt to resolve this conflict. If a successful resolution cannot be accomplished in a timely way or at all, or if our attempts to resolve the issue cause us ethical concerns, we will have to withdraw from representing all of you.

[if applicable] We confirm your agreement that if a contentious issue between you and _____ arises, we may continue to advise _____ about the contentious matter and that I we will refer you to another lawyer or paralegal.

Our billings will name and be sent to all of you and each client is responsible for payment of the entire amount. You will need to decide between you how our accounts will be divided.

Part 2: Fees, Expenses and Billing Arrangements

Our Fee is an Hourly Fee

Our fees will be based on an hourly rate and will depend on the actual time spent. I will be the main lawyer responsible for your file, but from time to time other people in our office may do some of the work. Some work may need to be done by a more senior lawyer, and other work can be done equally well by a more junior lawyer.

There are also many services, such as gathering information and preparing routine documents, that our paralegal assistant is well qualified to perform. A paralegal works under the supervision of a lawyer, but may not give legal advice. Our paralegal can serve you at a lower cost than one of our lawyers can.

Our hourly rates are:

My rate	[\$amount] per hour
[senior lawyer's] rate	[\$amount] per hour
[junior lawyer's] rate	[\$amount] per hour
[paralegal's] rate	[\$amount] per hour

Legal Expenses (also called disbursements)

In addition to our fees, you agree to pay all expenses (also called disbursements). The major expense will be court fees which are levied at the rate of \$15 for every \$1,000 (or part thereof) of the value of the estate, *in excess of \$50,000* (regardless of total value of estate). These fees are payable when the application is made for the grant. If the estate value is less than \$50,000 there are no fees payable. In the case of these court fees, we will require funds in advance to pay them when required by the probate registry. Often these funds may be obtained directly from the deceased's bank account. Minor expenses include any long distance telephone calls, photocopying costs, costs to deliver documents to court, and faxes.

HST

In addition to our legal fees and expenses, you agree to pay any Harmonized Sales Tax (HST) that we must charge you.

Billing Arrangements

We will bill you after we obtain the grant of probate, and then every three months until the estate work is finished. You may pay these bills directly from the estate.

Interest on Overdue Bills

We charge interest at [one] percent per month ([12]% per year) on the balance of any bills that remain unpaid for more than 30 days. We will tell you in advance if we change the interest rate.

Part 3: Dealing With Each Other

Fraud Prevention

To prevent fraud and ensure the safe and accurate receipt, release, and transfer of any funds or assets, the following steps will always be taken to safeguard such assets:

1. We will only accept funds [or assets] from you [or additional party] by way of:
 - Electronic funds transfer to our trust account numbered _____
 - Wire transfer to our trust account numbered _____
 - Certified cheque delivered to us at _____
 - Additional method of funds or asset transfer _____

2. We will only transfer funds [or assets] to you [or additional party] by way of:
 - Electronic funds transfer to your account numbered _____
 - Wire transfer to your account numbered _____
 - Certified cheque delivered to you at _____
 - Additional method of funds or asset transfer _____

3. We will only release funds or assets to a third party upon receiving verbal confirmation of the transfer from you and any other party necessary to confirm the veracity of the transfer details.

4. You [or another party] should not expect to receive any revised instructions for the transfer of funds or assets from us. If you [or another party] receive any written communication advising of such a change that appears to come from us, immediately contact us at [insert telephone number] to verbally confirm these changes.

5. If we receive any changes to your [or another party's] contact information, or any changes to the instructions for the transfer of funds or assets as set out above, we will not act on these changes until we have verbally confirmed the new instructions in-person or by calling you [or another party] at the following phone number: **[insert phone number]**

Ending the Relationship

By You

You have the right to terminate our services to you upon written notice to us. If you do, you agree to pay our fees and expenses for our legal services up until the time we stop work. We will ask you to sign a court form which tells the court we are no longer your lawyers.

By Us

Subject to our obligations to you to maintain proper standards of professional conduct, we reserve the right to terminate our services to you for good reasons which include, but are not limited to:

- (a) if you fail to cooperate with us in any reasonable request;

- (b) if our continuing to act would be unethical or impractical;
- (c) if our retainer has not been paid; or
- (d) if you fail to pay our accounts when rendered.

If you terminate our services or we withdraw, you would only have to pay our fees and expenses up until the time we stopped acting for you.

Confidentiality

As your lawyers, we have to share relevant information about this matter with the court and other parties involved. But unless we need to share this information as part of our work, all information you give us will be kept confidential between us.

You confirm communication via the following is confidential and consent to me/our firm contacting you at:

- [client address]
- [client home number]
- [client cell number]
- [client email]

Part 4: Signing this Contract

This contract contains the whole agreement between us about our relationship with each other and our legal fees and expenses. It will not be changed unless you and we both agree and sign any changes. It will legally bind anyone, such as heirs or legal representatives who replace either you or us, but it does not legally bind other lawyers who might act for you if you decide to end our relationship.

If you want us to proceed on the basis described above, please **sign both copies of this agreement in the space provided and return one copy to us** in the enclosed self-addressed envelope. If there is anything you do not agree with, or if there is anything you would like to discuss before signing, please inform us promptly.

Lawyer's signature

Date

Client's signature

Date

3. Steps You Should Take Now

1. Safeguard the assets of the estate. See the enclosed guide *How to Safeguard the Assets of the Estate*.
2. Apply for Canada Pension Plan death benefits.
3. List all assets of the estate and estimate their value at the time of **[name of deceased]**'s death. As a guide see the enclosed sheet called *How to List the Assets and Liabilities of the Estate*. You may need to contact the banks and stockbrokers that the deceased used to complete your list.
4. Provide the latest tax assessment notices on property owned by **[name of deceased]**, or have the property appraised as of the date of death.

You can consult the list of appraisers under Real Estate Appraisers in the phone book, or I can give you the names of one or two appraisers.

5. List all the debts and liabilities of the estate. Again, use the guide *How to List the Assets and Liabilities of the Estate*.
6. Record all money you spend or receive as executor. You are entitled to be repaid from the estate for your reasonable expenses. Also, keep a diary of the steps you take as executor: telephone calls made, interviews attended, mail sent or received, time spent, and so on.
7. Arrange to prepare and file income tax returns.

Three main tax returns are needed:

- one for the year before the death, if the deceased had not filed a return and if tax is payable;
- one for the year of death; and
- one for the tax year of the estate administration.

Contact an accountant to discuss the tax liabilities of the deceased and your responsibilities as executor. The accountant can file the returns.

8. List the names of all those who must be legally notified, and include addresses. Depending on the circumstances, these people may include beneficiaries under the will, current or previous spouses whether common-law or not, all children, other next-of-kin, and anyone else who might make a claim on the estate or who might dispute the will. I will tell the people that

must be legally notified that you intend to act as executor of the will. Please indicate if anyone listed is under 19 years old or is mentally incompetent.

9. Gather the documents we will need to go ahead.

As we discussed, these are the will and any codicils (additions or changes to the will); the deceased's birth, marriage and death certificates; any separation agreements, court orders or judgments; and financial papers.

4. How to Safeguard the Assets of the Estate

1. Keep cash, insurance policies, securities (stock certificates), jewelry, and other valuables in a safe place.

2. Lock up the deceased's home if nobody is staying there, and tell the police. Most insurance policies will allow you to leave a house vacant for 30 days and still provide coverage. Get vacancy coverage after that time.

3. Check the insurance on the deceased's assets (car, house, furniture). Check the expiry dates and tell the insurers of the death.

4. Arrange for someone to manage the deceased's business until the estate is settled.

5. Make banking arrangements. Tell the banks of the death. Collect and deposit any outstanding cheques (pensions, dividends, interest, salary). Cancel the deceased's credit cards.

6. Redirect mail if necessary.

7. Check the dates that bonds mature.

8. Check mortgages and agreements for sale. Make the payments to keep them up to date, if possible.

9. Check leases and tenancies. Pay rent that is owed, if possible. Also, give tenants notice of termination, if necessary, and notice about where to send rent payments.

10. Review the last cheques written by the deceased to make sure there are no irregularities.

5. How to List the Assets and Liabilities of the Estate

These steps apply to many estates, but they *may not all apply to the estate that you are administering*. Please call me if you have any questions about these possible steps.

1. Arrange with the deceased's bank to view and list the contents of the safety deposit box. A bank employee is required to review the contents with you and make a list.

Write down the names, numbers and maturity dates of the securities; expiry dates of warrants and conversion rights; the transfer agents for stocks and bonds; details of unclipped coupons; and dates of issue of stock certificates.

2. Record all your expenses as executor. Keep a record of all the time you spend to do your job as executor, to support your executor's fee.

3. List all banks where the deceased had accounts or loans. Include the account numbers.

For each account, ask the bank for the balance as of the date of death, including any accrued but unposted interest. Collect any bank books or statements of account, and get the bank to update them to the date of death. Remember that accounts may include term deposits, GICs, Registered Retirement Savings Plans, and Registered Retirement Income Funds.

4. List all securities, stocks or bonds owned by the deceased which are not listed in the contents of the safety box.

If possible, ask the deceased's broker for their market value at the date of death.

5. List all real estate which the deceased owned alone or with others.

Also list any mortgages or agreements for sale which the deceased owned. Provide the full addresses of all property. Give the latest tax assessment notices on property owned by the deceased, or have the property appraised as at the date of death.

[Add this sentence if needed] Do this same step for any property owned by someone else, but on which the deceased held a mortgage and loaned money to the owner to buy the property. Also do this same step for property sold by the deceased under an agreement for sale where the purchaser still owes money to the deceased.

6. List any cheques or refunds owing to the deceased which have not been received or deposited. This includes pay cheques, pension cheques and any repayments or refunds owing to the deceased.

[Add this sentence if needed] It also includes cheques or income owing from deferred profit sharing plans, dividends, and interest.

7. List any business assets or shares in a company owned by the deceased. If possible, get these assets or shares valued as of the date of death.

8. Identify all people or businesses who owed money to the deceased. Give any details you can about the nature of the debt and the amount owing.

9. List any other assets such as cars, boats, household goods, jewelry, cameras and other personal effects. Describe them briefly, including available serial numbers. Include their estimated values.

10. List all outstanding debts and liabilities.

11. List any agreements or court orders involving the deceased.

This might include divorce decrees, maintenance orders, marriage agreements, guarantees, buy-sell agreements, partnership agreements, leases, employment contracts, or insurance the deceased owned on the life of another.

NOTE & DISCLAIMER: Model retainers are provided by LAWPRO for your consideration and use when you draft your own documents. They are NOT meant to be used "as is." Their suitability will depend upon a number of factors, such as the current state of the law and practice in each area of law, your writing style, your needs, and the needs and preferences of your clients. These documents may need to be modified to correspond to current law and practice. These documents do not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research.

Retainer letters or agreements should include reference to the following:

- identity of the lawyer and the client;
- scope of service (is your work to be limited in any way?);
- obligations of client;
- delegation of work;
- expected chronology;
- fee arrangement;
- billing format;
- rate changes;
- withdrawal or termination of services; and
- conflicts of interest.

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