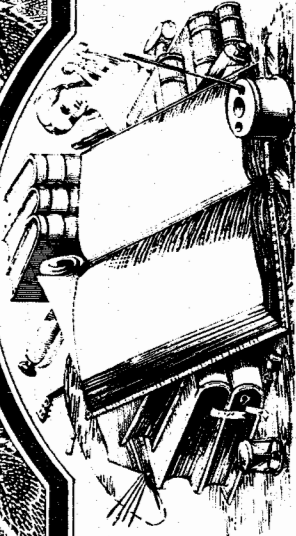


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# HOW TO SETTLE AN ESTATE YOURSELF

**AND SAVE \$500, \$1,000, \$UP**

Lawyers charge two percent of the estate and take at least four months. The writer tells step-by-step how she settled her father's estate in two months (about 30 hours of work) and saved \$600

**BY CONSTANCE MUNGALL**

**CANADIAN INFO**

What made me decide to administer my father's estate myself when he died a few months ago? Ironically, it was the "Do Your Own Divorce" drive. My divorce cost me \$600 in 1968; I could have done it myself for as low as \$40 and a few hours' work. At the standard lawyer's fee of about two percent of the estate, settling my father's affairs after his death would cost \$500 to \$600. It occurred to me, as I gathered together the information to turn over to the lawyer: "Maybe I could do it myself?"

I could and I did, saving the fee and time to boot. Lawyers take four months' minimum time to complete administration of an estate. I took exactly two months. In that time I spent maybe thirty hours — less than a week of work — and much of that puzzling over the meaning of requirements and legal terms that came clear as I progressed. Amounts paid out totaled \$101, about the same as a lawyer would have added to his bill for disbursements.

I was nearly through before I discovered, in the library, the Layman's Guide To Drafting Wills And Probate Procedure, published by Self-Counsel Press, 306 West 25th Street, North Vancouver. This unostentatious little guide helped me understand and double-check what I was doing. There are separate guides written for B.C., Ontario and Alberta and B.C. has a guide on probate alone. If you live in one of these provinces and plan to administer an estate yourself, I'd advise you to get one. If you live elsewhere, get the B.C. Probate Guide anyway. It's the best and refers to many points you need to know, like income tax, foreign death duties, capital gains tax and Canada Pension Plan benefits. These are the same wherever you live in Canada. Cost: \$2.95, worth it for the reassurance alone. Available: your local bookstore or variety store or from Self-Counsel Press.

## "First and most important, there was a will and it was a simple one. Mother was named executrix."

### WHEN TO GO IT ALONE?

I had several things going for me when I decided to handle my father's estate myself. First and most important, there was a will and it was a simple one. My mother was named executrix and sole beneficiary. Second, his assets were well under the \$150,000 allowed tax free to wives in B.C., so there was no succession duty. The federal government turned over succession duties to the provincial governments January 1, 1972. There is now no succession duty at all in four Canadian provinces: Alberta, Nova Scotia, New Brunswick and Prince Edward Island. The amount exempt varies in the others.

Third, the affairs were pretty well organized already. Moreover, my mother had always been the financial as well as the marital partner of my father, so she knew as well as he of any debts, investments, etc.

Fourth, I had time. My children and I flew from Toronto, where we live, to Nanaimo, B.C., to be with my mother, and we spent the summer making together the initial adjustment to the loss of someone dear and important to us. It would have been hard, though not impossible, to do the work I did on the estate from a distance, or if I had been working full time away from the house.

I had an additional advantage — I wasn't intimidated by legal forms or by government officials (most couldn't have been more helpful; only one had to be reminded of my rights as a citizen to public information).

Finally, my mother, the executrix named in the will, is an intelligent and courageous

If you decide to become a do-it-yourself legal pioneer, it will help to know the purpose of the legal administration of an estate. When a person dies, the provincial government assumes certain rights and responsibilities regarding the assets he leaves. In most Canadian provinces, if he leaves over a certain amount, it will tax the excess according to a sliding scale that increases with the amount. The tax also varies according to who is to inherit the assets: spouse, children and other relatives are allowed to inherit, tax free, different amounts depending on the province. In B.C., for instance, the minimum exemption for a spouse is \$150,000. In addition, the family home is totally exempt, and a minimum of \$25,000 life insurance and a noncommutable pension of \$3,000 a year is free of succession duties.

The government is also concerned that the rightful heirs get what's coming to them that spouse and children are cared for, at that one greedy brother, for instance, doesn't take it all because he happens to be on the spot twirling a waxed mustache.

### THE EXECUTOR'S ROLE

One or more executors named in the will therefore have certain obligations and duties. They must make an inventory of all the assets and all the debts, and protect them to the assets until they are able to transfer them to the beneficiaries. They must also file the succession duty and income tax returns, pay any debts, and finally see that the assets go to the beneficiaries.

The will alone gives executors the right to do these things, but "Probate" is the procedure, and "Letters Probate" is the court document that confirms the validity of the will and the appointment of the executors. The Letters Probate prove to outsiders that you have the right to transfer property, that

woman. She followed what I was doing, and usually came with me to make enquiries, file papers, sign affidavits, swear oaths, etc. If she had been overcome with her grief — or less willing to trust me — it would have been harder to do the job.

I mentioned this point to Jack James, the owner of Self-Counsel Press, which publishes the guide I recommended. He reminded me, "Lawyers aren't paid to hold hands. They're businessmen. Your mother would still have had to sign the forms if you'd used a lawyer, and someone else would have done the comforting."

If you've got roughly these points going for you: a will, the estate under \$100,000, all Canadian assets, some time, and are able to organize yourself fairly well, James recommends you go ahead and do it on your own. You've got one big safeguard: "The people in the courthouse will go through your papers when you present them. They know more than the lawyers about what's required. As long as they accept your papers, you're okay."

What if I left something out? "The lawyer would have left it out anyway," said James. "He counts on you to supply him with the information!"

Are there any cases where you should *not* try to do it yourself? "Yes," said James. "If litigation is involved, definitely. If there is foreign property. If it's a large estate with succession duties involved. Then get a good lawyer. He should save you enough on succession duties to pay his fee."

you are not trying to diddle anyone. Releases from the provincial Succession Duty office show that you have *not* diddled the provincial taxes.

Both Letters Probate and Succession Duty releases will be required at the Land Titles Office, the Motor Vehicles Registry, the bank or trust company, and by stock or bond transfer agents before they will change the title to most assets held by them. These officials can sometimes be irritatingly picky, but their caution could protect you, so you should be ready to satisfy their demands.

The law assumes that administering an estate takes a long time. Unfortunately it is often right. One young Vancouver widow, left with small children and few assets in her own name except the house they lived in, desperately phoned her lawyer when she had had no money from the estate months after the death of her husband.

"What's the rush?" he said. "Sell the house and live on the proceeds!"

To help in the interim, some assets can be collected before the legal work of the estate is completed, and without Succession Duty release forms and Letters Probate. The assets include, varying up to certain amounts according to province, insurance, bank, trust company and credit union accounts, salaries, wages or commissions owed, and pension plan payments.

You can find out what the amounts are by phoning or writing to the provincial Succession Duty office nearest to where you live. The insurance company, bank or other agency holding the asset will tell you what proof you will need before they will pay out the money. The insurance company we dealt with needed the original policy and a form filled in by the doctor to say my father had died. The trust company where my parents were known personally, transferred the bank account on request.

## "You can get instant cash to tide you over from insurance policies and bank and trust accounts."

Having obtained what "instant cash" you can, you, as executrix, or acting for the executrix of the will, are now ready to go ahead with the business of getting the rest of the assets into the legal possession of the beneficiaries under the will.

My father died in Nanaimo, and all his assets were in B.C., but his estate and what I did to administer it was typical enough to use as an example of how to proceed in most Canadian provinces. Here's what to do:

**1. Set up a filing system.** This is a good thing to do before a death anyway; I blessed my father's methodical organization. If you are starting from scratch, buy ten or a dozen filing folders, 9 x 11½ inches, from your local stationery shop. (While you're there, scout out the legal forms department; you'll be back.) This will be a good place to find the Layman's Guide To Probate Procedure, too. Also buy some legal-size paper 8½ x 14 inches (cheaper in a pad), carbon paper, paper clips and a couple of big manila envelopes. There's lots of paper involved, and you should keep copies of every letter you write and every form you complete.

Make a file for each asset you want to transfer. We had a file each for Insurance, Bank Account, House and Property, Car and Trailer, Canada Savings Bond, Agreement for Sale, Debenture, Pension Plan, and Stocks. Make a separate file marked General Documents.

Into these files, put every piece of paper you can lay your hands on relating to each of the subjects: Land Title and assessment notices in the House and Property file, Car registration in the Car file, pension payment stubs in the Pension file, etc.

We found papers we needed not only in my father's files, but in his wallet, his car, and his workshop; after all, many of these documents, like car registration, etc., are in daily use, so you may have to search for them. Into the General Documents file put the will and, later, the legal forms you will be making out.

**2. Complete the files.** This may include, as for us, an inventory of a Safety Deposit Box. A trust company official opened the box in front of my mother and me, gave us the will, listed the rest of the contents (Canada Savings Bond, Land Title, Agreement of Sale) and sealed it again until we could bring in the release form and Letters Probate.

Find out from the stockbroker the value of any stocks at death. If you know there is an insurance policy but can't find it, fill out forms at the insurance company office asking for a new copy. The bank will give you details of accounts held and amounts. Here again it is an advantage if you already know the financial details — lawyers often take weeks and hold up the estate to assure themselves there is not more than one bank account.

Phone or write the employer and make sure what if any wages or commissions and company benefits are outstanding. To be

sure, ask about pensions and union benefits, too. At the same time, ask for a declaration of income tax paid.

Make a rough calculation of the total value of the estate: all the assets you have made files on, less any debts outstanding. Add up separately the proportions for property held jointly, for instance, land, house, cottage, bank account, bonds, mortgages, car, etc., which are registered in more than one name. You don't need Letters Probate to transfer these assets, and if the amount of the rest is small enough, you may be able to avoid applying for that legal document.

Excluding all the property he held jointly with my mother, and which automatically went to her, my father's estate was composed of a car, a trailer, and one small block of stocks, adding up altogether to about \$2,600. The maximum amount allowed to transfer without Letters Probate in B.C. is \$2,000, so we did have to apply for them.

Up to this point, all you have done you would have had to do anyway, before a lawyer could take action. The rest is in fact relatively simple, though the legal terms can sound scary.

**3. Make one more foray for information,** this time to find out "how to probate" from your nearest provincial courthouse. (Although my experience was characteristic in almost every Canadian province, there are minor differences you should check.) Take the will and your estimate of the value of the estate, not counting joint property, with you. Ask the reception clerk to direct you to the office dealing with probate.

In the Nanaimo courthouse, I was sent to the Registry Office. (In some provinces it is the Surrogate Court, in others the Probate Court.) In the Registry Office, I confided in the official (a Miss Cartwright, bless her). Did she think what I was trying to do was feasible? Yes, she assured me, it had been

done before by laymen, maybe once a year through her office. She glanced through the will, said she could see no problems, reeled off the names of legal documents I would have to file, and the address of the Succession Duty office in Victoria which would give me returns, and thrust at me copies of "precedents." (Ask for these precedents if they aren't offered to you; they are copies of papers which have been previously filed in some other case, usually with the names and amounts blanked out. Lawyers and their secretaries use precedents all the time, and they are an excellent how-to guide.)

Good. Miss Cartwright certainly didn't hold my hand, but she didn't treat me like a dummy either. I hadn't committed myself (or my mother's property) in any way, but I had the information I needed, and could retrace now, clutching the precedents, to figure them out in private.

Your documents and your head organized, and with a fairly clear idea of what you have to do, you are now ready to start the legal wheels turning. At this point, we took a quick run into the provincial capital, Victoria, to visit some of the government offices in person. If you can do the same, it will probably be easier, but all this business can be done by mail.

**4. Publish a Notice to Creditors** in the provincial government Gazette and your local paper. This is not a legal requirement, but it is a good idea if you are not sure what debts

are outstanding, and want to declare that you will settle them all within a certain time limit. B.C. lawyers usually allow a time limit of three weeks within which creditors can make their claims. Since my mother knew my father had no debts, we skipped this.

**5. Apply for a will search** at the Vital Statistics Office in your Parliament Buildings. This proves that the will you are going by was the last one made by the dead person. (It is not required in every province.) Our will search application (fee \$1) was completed and returned to us by mail in three days, and went into our "General Documents" file.

**6. Apply for a Death Certificate**, in the same Vital Statistics Office (fee \$2). This will be required to complete some transfers after you have obtained the Letters Probate and Succession Duty releases. Meantime, it goes into "General Documents."

**7. Write or go to the Succession Duty office**, Parliament Buildings, in your provincial capital (if you live in B.C., Saskatchewan, Manitoba, Ontario or Quebec). Tell them you are administering an estate, its estimated value excluding joint property, and ask for the necessary forms.

If you live in Alberta, Nova Scotia or P.E.I., you can skip this whole step. Since there are no longer succession duties payable in these provinces, you can apply for Letters Probate *without* filing a Succession Duty Return. Proceed to Step 8. If you live in New Brunswick or Newfoundland, I'm afraid you're out of luck. Only a solicitor can apply for Letters Probate in those provinces.

## "Don't be afraid to ask civil servants to help you with forms or questions; they help lawyers, too."

I went to the Parliament Buildings in Victoria, where a softspoken, businesslike woman in the Succession Duty office gave me a short form for Affidavit of Value and Relationship. Four pages long, this was for estates under \$2,000, where no application for Letters Probate was being made. We had to go to a large, stationery shop for the long form (see Step 1) as the estate we were handling was larger than that. The long form ran to ten pages and was more intimidating, but we were stuck with it.

Short or long, this form is really the declaration of the assets of the estate for taxation purposes. (An affidavit is a written, sworn declaration made before an authorized officer.) It is in fact the key to the whole exercise. Its acceptance will give you those release forms you need before you can get legal access or pass on to the proper beneficiaries the car, house and land, bank account, and other assets of the estate. More than that, this form will also, when it is completed, give you the final, correct, gross value of the estate, which is the figure you must also show in the affidavit you will file at the courthouse with your Application for Letters Probate.

Clearing a space and ensuring yourself of a few hours of privacy and quiet, you will now complete the Affidavit of Value and Relationship. (In some provinces it's called, simply, Succession Duty Return.) Use the information you have accumulated in your files, and, for reference and moral support, the Layman's Guide. Make out a trial copy in pencil, and after you've double-checked it, three with typewriter or pen. If you need more copies, you can buy them at the stationery store, where you located them during Step 1.

In our Affidavit of Value and Relationship, Schedule A was easy, mostly a matter of filling in the blanks with "his" or "her."

### OUR TOTAL COSTS FOR SETTLING THE ESTATE

Stationery: file folders, legal size paper, envelopes, carbon paper, paper clips	\$ 5.00
Layman's Guide to Drafting Wills/Probate Procedure	2.95
Will Search	1.00
Death Certificate	2.00
Forms for Affidavit of Value and Relationship	.95
Swearing by Commissioner for taking Affidavits	10.00
Probate fee	20.00
Copies of the Application for Letters Probate	3.00
Certified copies of the Grant of Letters Probate	4.00
Motor vehicle transfer fee	2.00
Land transfer fee	50.00
	<b>\$100.90</b>

In addition: three trips to Victoria, four to the Nanaimo Courthouse, all voluntary and combined with other business.

When I got to Inventory X, I had to be careful to give a full legal description of real estate, property mortgaged, stocks, cars, etc. This is where I consulted the documents already collected.

The tax notices showed the lot, plan and municipality as well as the assessed value of the house and land, for instance. It is important to get this right, as future transactions could be held up if the title is not transferred correctly at this point. We showed our own estimated market value for all the assets, including the house and car, and this was accepted with no question by the Succession Duty office, probably because there was no tax to be paid anyway. If there was tax, or if the property was to be divided among several beneficiaries who might disagree, you would no doubt get an independent appraisal. But then you would have a lawyer handling the estate anyway.

For property my father held in joint tenancy with my mother, I showed the total value, and then calculated the half interest for the Total column. I included the insurance policy, although it was payable to my mother as beneficiary, because since my father had paid the premiums it was considered an asset of his estate. The stocks and bonds I listed according to the name and number on the face of each of them, showing the principal and interest and the rate of interest. I had to show where the bonds actually were at the time of my father's death: at his home, in the safety deposit box, or in the hands of the stockbroker.

I stumbled over the section titled Property Transferred as a Donatio Mortis Causa or Gift Inter Vivos, but found that the first means a gift made in contemplation of death, and the other a trust, and assumed that both were plays for avoiding tax, used in large estates under legal advice. I knew my father had done no such thing, so I put "nil."

## "My mother checked my arithmetic, and caught an error I'd made in the value of some joint property."

been nearer. I suggest you ask for advice, too, if you get stymied. Bank and trust company managers can often be helpful too.

Bravo! Your big, basic document completed, and your total value of the estate calculated, you are nearly finished. Just three more brief documents to make out. Unfortunately, there are not forms of these documents; you have to type them out yourself, but with the precedents you got from the courthouse (Step 3) to guide you, they are not difficult.

**8. Oath of Executrix.** This is an affidavit saying that you (or whoever, if, as I was, you are helping someone else) are the executrix of the will, that you will do your best to administer it, and that the gross value amounts to . . . (here you fill in the amount you showed in the Affidavit of Value and Relationship, or Succession Duty Return). You attach the original of the will, marked "Exhibit A." The executrix will sign this oath before a commissioner for taking affidavits later. (See Step 12.)

**9. Application for Letters Probate.** This is an affidavit asking that you or the person you are acting for be recognized, and the appointment be confirmed, and listing the beneficiaries shown in the will. In B.C., our affidavit also said that my mother had mailed a Notice of this application to other people "entitled to apply under the Testator's Fam-

### PROVINCE-BY-PROVINCE GUIDE TO ESTATES

Province	Layman permitted to apply for probate	Succession Duties payable on estate to anyone over	spouse over	children over
British Columbia	yes	\$ 10,000	\$150,000 +	\$150,000 +
Alberta	yes	no	Succession Duties	
Saskatchewan	yes	\$ 50,000	\$200,000 (if sole beneficiary)	
Manitoba	yes	\$ 50,000	\$150,000 (if sole beneficiary)	\$150,000
Ontario	yes	\$100,000	no duties payable at all	\$100,000
Quebec	yes	\$ 10,000	\$150,000	\$150,000
New Brunswick	no	no	Succession Duties	
Nova Scotia	yes	no	Succession Duties	
Prince Edward Island	yes	no	Succession Duties	
Newfoundland	no	\$ 50,000	\$500,000	\$ 10,000 plus

ily Maintenance Act." This affidavit will also be signed by the executrix before a commissioner (Step 12).

**10. The notice, or affidavit, referred to in Step 9** (again to be signed in Step 12). In it I listed the name of my sister and myself, as the only surviving children of my father. Make out and mail one copy of each of the people named, plus an additional copy marked "Exhibit A," to accompany the Application for Letters Probate.

**11. The Praecepte**, "a slip of paper upon which the particulars of a writ are written." This is really a form for the court official to complete, showing the date set for the consideration of your Application for Letters Probate.

Each of these documents, in steps 8, 9, 10 and 11, is one legal-size page long. You should make three copies of each, one for the Registry Office (or Probate Court or Surrogate, depending on your province), one to accompany the Succession Duty Return to your provincial Parliament Buildings, and one to keep. The notice in Step 10 has as many additional copies as people named, of course. All these documents except the Praecepte have to be sworn, that is, affirmed by an oath made to an official appointed under provincial law.

**12. Put all these documents** in the General Documents file, and take them to a commissioner for taking affidavits. Nanaimo has four listed in the telephone book under Notary Public, all working in real estate offices. We went to the one who happened to be available on Saturday afternoon, and were grateful that he read each document over carefully before he asked my mother to sign her name to each, and himself signed. He seemed surprised that we were not in the town of a solicitor, but assured me all my forms lacked was the Exhibit stamp standard in law offices. He copied by hand the one on

## "We filed just six weeks after my father's death, well within the six-month limit in our province."

the precedents (thank you, Miss Cartwright), charged us \$10, and we were ready to file!

It was just six weeks after my father's death. We were well within the time limit. In B.C., you have six months to file the Succession Duty Return. Watch and ask: it may be different in other provinces.

**13. File the documents at the courthouse.** Monday morning, we were into the Nanaimo Court Registry once again, this time with our General Documents file, and handed the forms completed in steps 7, 8, 9, 10 and 11, and sworn in Step 12, across the counter. Miss Cartwright was on holiday, but the man clerk looked the papers over, ignored my typing erasures, granted "seems all right," and charged my mother \$20 probate fee, based on the total value of the estate, plus \$3 for more copies. He helped us calculate and made a note that we would need two extra certified copies of the Grant of Letters Probate when they were made, to transfer the land, car and safety deposit contents. My mother's application for Letters Probate would come before a judge in about two weeks, he informed us, and his office would give us a ring when they were ready to pick up.

The day after Miss Cartwright returned from holidays, two weeks and one day later, the Letters Probate, including the original will, and the two certified copies, were ready for us.

It was part of the Registry Court clerk's job to send on the Affidavit of Value and

Letters Probate, so you can mail off applications for several transfers at once.

Since the Nanaimo Motor Vehicle Registry was also in the provincial courthouse, we went right there and transferred the car and trailer the day we picked up the Letters Probate. The clerk at the desk took our two release forms, one for the car and one for the trailer, along with the registration forms for each vehicle, looked over the Letters Probate, and filled out transfer forms for my mother to sign as executrix and then as beneficiary, charged her \$2, and handed her the new registration slips. The transfer took about twenty minutes and was the same as if she was buying the car instead of inheriting it, except that she didn't have to pay sales tax. The clerk said the transaction was usually done by the lawyer's secretary, but it made no difference to him, as long as we had the proper documents.

The business at the trust company was even more simple and quick. On her regular banking day, my mother took in the General Documents file, along with the release forms for the safety deposit box contents, the debenture, and the Canada Savings Bond. The freeze was removed from them all, and the trust company sent the release to Ottawa to re-register the bond in her name alone. If my parents' joint bank account had been larger than the "instant cash" minimum, the remainder would have been released at the same time. If the bank account had been in my father's name only, my mother would still have been permitted to draw out a maximum amount (which varies according to the province) earlier to tide her over.

The insurance release was not needed, because the amount was within the "instant cash" allowed.

The transfer of the Land Titles was only complicated by the reluctant cooperation of the clerk behind the counter — the only one

Relationship to the Succession Duty office in Victoria, but if we were in a hurry, he said, we could speed up the process by taking in a copy ourselves. We did, were asked to come back in three hours, and were then handed a release for each asset we had listed. No payment was necessary. If we had waited, we would have received the releases from the Parliament Buildings in the mail.

We felt as solemn and significant as if we had just voted for the first time. I was gleeful and relieved that the wheels had turned the way I'd pushed them. My mother was admiring (She said) and relieved that the whole process was nearly over.

And like voting, of course, it was only a start. My mother now had the legal authority to transfer the assets. She hadn't actually done it yet. That was the next step, or rather sequence of steps. Since I had to return home to enroll my children in school, my mother carried out almost all the transfers herself. Since each transfer is similar, I will group them all under one big step:

**14. Transfer the property.** Back to your file folders. In each folder, put the appropriate release you have obtained from the Succession Duty office. The Letters Probate go into the General Documents file, along with the Death Certificate. Then go, carrying the appropriate file and the General Documents file, or write, to each office where the title to the separate assets is held.

If you live in a small town or rural area, you will have to deal by mail. That is why you need the extra certified copies of the

