



The Role of the Public Trustee in: Estate Administration

What is the role of the Public Trustee (PT) in estate administration?

The PT administers estates of persons who die in Newfoundland and Labrador, or die elsewhere but have assets in Newfoundland and Labrador, where there is no one else able to do so. The PT is the administrator of last resort and does not seek to administer estates. We encourage other appropriate people to serve as administrator or executor where ever possible.

What is the difference between an administrator and an executor?

An **executor** is a person named in a Will that is given authority by the Supreme Court of Newfoundland and Labrador to administer an estate.

An **administrator** is any person given authority by the Supreme Court of Newfoundland and Labrador to administer an estate where there is no executor.

When does the PT administer an estate?

Where the PT provides prior written consent, the Court will appoint the PT as administrator of the estate where the named executor refuses or is unable to act, the deceased had no family in Newfoundland and Labrador who is able and willing to act, or there is a dispute over who should act or how to administer the estate.

The Court will appoint the PT as executor of the estate where named in the deceased's Will. If you are considering naming the PT as executor in your Will please consult with your lawyer and obtain the prior written consent of the PT (sections 4(3) and 9 of the *Public Trustee Act, 2009*).

What is involved in administering an estate?

Estate administration can be a complex process involving a great deal of research, transactions and paperwork for PT staff, as well as dealing with external authorities over which the PT has no control. This process includes:

- locating, identifying and valuing all assets;
- securing, maintaining, insuring and liquidating all assets;
- attending and searching the deceased's former residence and creating an inventory of all belongings;
- reviewing financial and personal papers;
- collecting any money and benefits owing;
- identifying and paying debts (including the funeral bill and legal fees directly relevant to having the PT appointed as administrator);
- starting or continuing legal actions on behalf of the estate;
- identifying and locating beneficiaries/heirs of the estate;
- filing tax returns;
- requesting and receiving tax Clearance Certificates from the Canada Revenue Agency;
- distributing estate money to the heirs/beneficiaries.

What happens if a Will is discovered after the PT is appointed administrator?

If a Will is discovered during the administration of an estate by the PT, the named executor will be contacted with the intention of having the executor appointed by the Court to continue and finalize the estate administration process.

Who is entitled to receive estate funds/assets?

If the PT is appointed as executor, the Will identifies the people who are entitled to inherit funds and specific assets from the estate. They are known as **beneficiaries**. If there are sufficient monies in the estate to pay all debts the specific assets will not be liquidated and will be given to the named beneficiaries. However, if there are not sufficient monies in the estate to pay all debts some or all of the specific assets may be liquidated to satisfy those debts.

If the PT is appointed as administrator with no Will, the estate is called **intestate** and the people entitled to receive funds from the estate are known as **heirs**. The *Intestate Succession Act* sets out the priority of next-of-kin to become heirs of the estate.

Where beneficiaries/heirs cannot be located, the PT will hold funds for their benefit until required by law to pay those funds to the Provincial Government's general revenue account. However, if the beneficiaries/heirs come forward at a later date to claim their funds they will be recovered from the general revenue account, with prescribed interest, and paid to the beneficiaries/heirs.

How does the PT find beneficiaries/heirs?

Beneficiaries/heirs are usually identified by reviewing the deceased's paperwork and contacting the deceased's caregivers, lawyer, family and friends. In extreme cases professional heir locators may be used.

How long does it typically take the PT to administer an estate?

Where there are minimal assets that can be easily located and dealt with, where the beneficiaries/heirs are easily determined, and where there are no disputes in or litigation against the estate, the PT can typically wind up an estate between **one and two years**. However, complications in any of these areas can extend the administration process to several years, so there is no guaranteed or standard time for completion.

How much does the PT charge for administering an estate?

The fees of the PT are set out in the regulations to the *Public Trustee Act, 2009*. Typically the fee is 8% of all funds entitled to be received on behalf of the estate. For further details, please review the regulations at: <http://assembly.nl.ca/Legislation/sr/regulations/rc130086.htm>

Fees for professional services required by the PT in the administration of the estate, such as real estate commissions, legal fees, accountant fees, etc., and costs incurred by the PT in the administration for maintenance and preservation of estate assets, such as insurance, storage, property taxes, etc. are paid out of estate funds as expenses. The PT does not have access to, and does not use, Government funds to pay estate expenses.

How many estates does the PT administer?

The PT is appointed as administrator or executor of approximately 70 new estates each year, and administers approximately 250 active estates at any given time.

How do I get more information?

Appointments can be made at the Office of the Public Trustee Monday to Friday (closed on statutory holidays) between 9:00 a.m. and 4:30 p.m.

You can call the Office of the Public Trustee at 1-709-729-0850 or fax 1-709-729-3063, or contact by mail at:

Office of the Public Trustee
Suite 401 – 136 Crosbie Road
St. John's, NL A1B 3K3

The PT is not able to provide a list of estates under administration due to privacy laws. Further, information about a specific estate can only be released to beneficiaries/heirs of that estate.

The PT does not assist individuals in the preparation of Court documents for the appointment of an administrator or executor. Please refer to the website of the Supreme Court of Newfoundland and Labrador at www.court.nl.ca/supreme/general/wills.html, or consult your lawyer as needed.

This brochure is intended as a brief overview of the Role of the Public Trustee in estate administration only, and not intended as legal advice.